

STATE OF MICHIGAN
COURT OF APPEALS

MARY LORRAINE LEONE,

Petitioner-Appellee,

v

SECRETARY OF STATE,

Respondent-Appellant.

UNPUBLISHED
November 9, 2001

No. 226282
Washtenaw Circuit Court
LC No. 00-000157-AL

Before: Doctoroff, P.J., and Wilder and Schmucker*, JJ.

MEMORANDUM.

Respondent Secretary of State appeals by leave granted from the circuit court order that set aside a mandatory five-year revocation of petitioner Mary Lorraine Leone's driver's license, pursuant to MCL 257.303(4)(a)(ii). We vacate the circuit court order. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A decision of the Secretary of State to revoke a person's driver's license based upon the person's convictions for drunk driving is subject to review by the circuit court for a substantial and material error of law. MCL 257.323. However, subsection 323(1) of the Motor Vehicle Code provides a specific time period in which to file a petition for review in the circuit court:

The [aggrieved] person **shall** file the petition [for review] within 63 days after the determination is made except that for good cause shown the court may allow the person to file petition within 182 days after the determination is made. [MCL 257.323(1). Emphasis added.]

The vehicle code expressly defines the term "shall" to mean "mandatory." MCL 257.82.

Given the plain language of the vehicle code, we conclude that the time limits in subsection 323(1) are jurisdictional. See *Calloway-Gaines v Crime Victim Services Comm*, 463 Mich 341, 346; 616 NW2d 674 (2000) (holding that statute governing appellate review must clearly reflect intention of legislature to make the specified time limit a jurisdictional limitation). See also J Martin, R Dean & R Webster, *Mich Ct R Prac*, Rule 7.105, Authors' Comment, point 2 (3d ed 1992) and (Supp 2000) (the authors opine that the statutory time restrictions for review of an administrative decision "are considered jurisdictional, and may not be extended by the

* Circuit judge, sitting on the Court of Appeals by assignment.

circuit court”). Accord *Schommer v Dep’t of Natural Resources*, 162 Mich App 110; 412 NW2d 663 (1987); *Gunderson v Rose Hill Realty*, 136 Mich App 559; 357 NW2d 718 (1984); *Hitchingham v Washtenaw County Drain Comm’r*, 179 Mich App 154; 445 NW2d 487 (1989). To the extent that subsection 323(1) can be read as permitting a delayed petition, it must be filed within 182 days of the agency’s decision and must be accompanied by an explanation of good cause for the delay. Here, the secretary of state’s decision to revoke petitioner’s license was made in June 1997, yet petitioner did not file a petition for review of that decision in the circuit court until early 2000—nearly three years later.

Accordingly, because the secretary of state issued its mandatory revocation of petitioner’s license on June 4, 1997, and petitioner did not file a petition for review of that revocation until early 2000, the petition was untimely, depriving the circuit court of jurisdiction to hear the appeal. Therefore, we vacate the circuit court’s order that set aside the revocation of petitioner’s license.

Vacated.

/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder
/s/ Chad C. Schmucker