IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CARLOS RODRIGUEZ, Appellant/Defendant Below	)	
v.	)	
	)	ID. No. 0102007324
STATE OF DELAWARE Appellee/Plaintiff Below	)	

OPINION AND ORDER

On the Defendant's Appeal from the Court of Common Pleas of the State of Delaware in and for New Castle County

Date Assigned: October 31, 2002
Date Decided: January 31, 2003

Lydia S. Cox, Esquire, Office of the Public Defender, 900 N. King Street, Second Floor, P.O. Box 951, Wilmington, DE, Attorney for the Appellant.

Josette DelleDonne Manning, Esquire, Deputy Attorney General, Department of Justice, Carvel State Office Building, 820 North French Street, Wilmington, DE 19801.

TOLIVER, Judge

STATEMENT OF FACTS AND NATURE OF THE PROCEEDINGS

On February 29, 2000, the State of Delaware filed a notice of petition to declare Carlos Rodriguez as an habitual offender pursuant to 21 Del. C. Ch. 28. The Court of Common Pleas issued an order dated March 8, 2000, setting April 5, 2000 as the date for Mr. Rodriguez to show cause why he should not be declared an habitual offender. The Clerk of the Court of Common Pleas mailed copies of the rule to show cause, the petition, the order for a hearing and Mr. Rodriguez's driving record by first class mail to Mr. Rodriguez at the address found in the Division of Motor Vehicle's records, as per 21 Del. C. §2805.[1] Mr. Rodriguez requested a continuance on March 24, 2000 in a letter bearing that same address. The Clerk sent a notice of the new hearing date, July 26, 2000, to Mr. Rodriguez on July 13, 2000, again to the address listed with the Division of Motor Vehicles.

The exact date is unclear from the record, but at some

[1] The address listed for Mr. Rodriguez was, and remains, 6 Edinburg Drive, Coventry, New Castle, Delaware 19720.

point during the period between July 13 and the July 26 hearing, the envelope containing the letter notifying Mr. Rodriguez of the July 26, 2000 hearing date was returned to the Clerk of the Court of Common Pleas. The envelope appeared to be stamped "Attempted, Not Known". In any event, the hearing proceeded as scheduled on July 26, 2000 in Mr. Rodgriguez's absence, and he was declared an habitual offender. The record and the Court of Common Pleas docket do not reflect that notification of the Court's decision was ever sent or issued to Mr. Rodriguez.

On February 8, 2001, Mr. Rodriguez, while sitting in an automobile, was approached by Wilmington Police Officer Michael Gifford following what the officer perceived to be a hand-to-hand drug transaction. Mr. Rodriguez attempted to speed away when the officer approached the automobile. Once the officer managed to stop the car, Mr. Rodriguez was unable to produce a valid registration, insurance card, or driver's license. As a result, he was issued citations for Driving

After Judgment Prohibited; Driving While Suspended or Revoked; Operating an Unregistered Vehicle; Fictitious or Cancelled Registration Card, Plate or Tag; and Failure to Have Insurance.[2]

Trial on these offenses was held in the Court of Common Pleas on October 17, 2001. Mr. Rodriguez was found guilty of Operating an Unregistered Vehicle, Operating a Motor Vehicle with a Fictitious Registration Tag, and Operating a Motor Vehicle Without Insurance. The Court reserved decision on the charge of Driving After Judgment Prohibited because Mr. Rodriguez claimed he did not receive proper notice of the July 26, 2000 proceedings that resulted in his habitual offender status. He then moved to vacate that judgment.

The Court denied Mr. Rodriguez's motion on February 7, 2002, finding that he had received sufficient notice of the State's petition to declare him a habitual offender under the provisions of 21 Del. C. §2805. Mr. Rodriguez was also found

[2] *See* 21 Del. C. §§2101, 2115, 2118, 2756 and 2810.

guilty of Driving After Judgment Prohibited. He was sentenced on all charges on February 22, 2002. For the charge of Driving While Judgment Prohibited, the Appellant was sentenced to 90 days in jail and was ordered to pay a fine in the amount of $500.00, plus costs and assessments.

Mr. Rodriguez filed a notice of appeal on March 1, 2002, and his opening brief on September 30, 2002. His argument is that the imposition of a criminal penalty for the offense of Driving While Judgment Prohibited renders the Habitual Offenders statute a "quasi-criminal" statute. Therefore, his failure to receive notice of the hearing which served as a predicate for such a penalty is in violation of his rights to due process under the Fifth Amendment to the United States Constitution and Article I, § 7 of the Delaware Constitution. The State filed its response on October 21, 2002, contending that Mr. Rodriguez received proper notice of the pending judgment as required by 21 Del. C. §2805, a statute which satisfies the due process requirements of both the United

States and Delaware Constitutions.[3] That which follows is the Court's response.

DISCUSSION

Although the parties disagree, the correct standard of review is for abuse of discretion by the trial court.[4] However, in order to do so, the Court must first address Mr. Rodriguez's allegations regarding the constitutionality of 21 Del. C. Ch. 28. Once the constitutional issue is resolved, the questions of what process was due Mr. Rodriguez and whether, as a result, the Court of Common Pleas abused its discretion in denying his motion to vacate his declaration as an habitual offender, may be determined.

Twenty-one Del. C. §2805 requires that upon the filing of a petition to declare an individual a habitual offender

[3] In re Majeed, 1998 Del. Super. LEXIS 670.

[4] Williams v. State, 609 A.2d 669 (Del. 1992).

pursuant to 21 Del. C. §2802:

> . . . a copy of the petition, the show cause order and the abstract shall be served upon the person named therein either by personal delivery thereof or by deposit of such in the United States mail in an envelope with postage prepaid, addressed to such person at that person's address as shown by the records of the Division of Motor Vehicles. The service of the petition, order and abstract by mail is complete upon the expiration of 4 days after such deposit of those documents . . . .

Twenty-one Del. C. Ch. 28 has been found by the Courts of this state to be constitutionally sound, and to comport with due process.[5] Due process in this context requires that the State afford an individual proper notice and a hearing before revoking his license, unless an emergency situation is presented.[6] This hearing, be it civil or administrative, is required to safeguard against the erroneous revocation, suspension or termination of benefits of privileges.[7]

---

[5] State v. Kamalski, 429 A.2d 1315 (Del. Super. 1981).

[6] Carter v. Dept. of Public Safety, 290 A.2d 652 (Del. Super. 1972).

[7] Goldberg v. Kelly, 397 U.S. 254, 25 L. Ed.2d 287(1970).

However, as the issues to be determined grow less complex, so does the hearing required to satisfy due process.[8]

In the instant case, "proper" notice was afforded Mr. Rodriguez, as set forth in 28 Del. C. §2805. The appropriate documents were mailed to Mr. Rodriguez at the address listed for him in the records of the Division of Motor Vehicles on March 13, 2000. He received all prior correspondence from the Court at that address without difficulty, and it could be reasonably expected that the subsequent July 13, 2000 notice would also reach him there. In addition, Mr. Rodriguez cannot claim that he had no notice whatsoever of the pending proceedings, as he came to the Court of Common Pleas to personally request a continuance from the original April 5, 2000 hearing date.

In interpreting the statutory language of §2805, this Court infers that the Legislature's intent was to effectuate service by the mailing of the appropriate notice, not

[8] State v. Kamalski; Mathews v. Eldridge, 424 U.S. 319, 47 L. Ed. 18 (1976).

necessarily by its receipt. Although receipt may appear to be implied, the Court is of the opinion that the Legislature intended to prevent potential habitual offenders from circumventing the statute's purposes by claiming non-receipt of court notices. It is clear from the record that Mr. Rodriguez was aware that a hearing was pending regarding his habitual offender status. Moreover, while it is mysterious and unfortunate that Mr. Rodriguez did not receive the July 13, 2000 notice from the Clerk of the Court of Common Pleas, service was technically completed under §2805. Consequently, Mr. Rodriguez cannot claim that there was a procedural defect, and due process was therefore satisfied under both the Delaware and United States Constitutions.

It is also worth noting that 21 Del. C. §2805 is not a quasi-criminal statute, as argued by Mr. Rodriguez. "The Courts have consistently characterized these procedures as civil administrative procedures and rejected the contention

that they are criminal proceedings."[9] The same holds true here. It was not Mr. Rodriguez's classification as a habitual offender that imposed mandatory criminal penalties, but his subsequent violation of the limitations imposed by that classification. Accordingly, he will not be excused from the consequences of violating the conditions of his habitual offender status simply because a criminal penalty is implicated.

Lastly, Mr. Rodriguez argues that the high level of involvement of the attorney general in the habitual offender process renders that process and the underlying statute quasi-criminal. He compares the habitual offender proceeding to the paternity proceedings addressed by the Delaware Supreme Court in Allen v. Division of Child Support Enforcement.[10] The Court does not find this comparison compelling. In that case, the Supreme Court opined that due to the "presence of a Deputy

---

[9] Kamalski, 429 A.2d at 1318.

[10] 515 A.2d 1176 (Del. 1990).

Attorney General representing the interests of both the State and the Mother, the paternity hearing takes on "quasi-criminal overtones."[11] However, the Court quoted Little v. Streater in support of that determination, which held that the presence of prosecutors at a proceeding were one indication of a need for a defense attorney.[12] In the case at bar, Mr. Rodriguez does not argue that his rights of due process were violated because he was not assigned counsel to mount a defense. Allen is therefore inapplicable.

Mr. Rodriguez seeks actual notice, which is not required by either the United States or Delaware Constitutions.[13] While the suspension or revocation of the "licensed privilege of driving must meet the requirements of procedural due process,"[14] "this privilege has never been categorized as a

---

[11] Id. at 1181.

[12] 452 U.S. 1, 9 (1981).

[13] In re Majeed at *3.

[14] State v. Bergmann, 1994 Del. Super. LEXIS 324 *quoting* Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L. Ed. 2d 90 (1971); Kamalski, 429 A.2d at 1318-19.

life, liberty or property interest."[15] Therefore, compliance with the requirements of §2105 statute satisfies any due process concerns raised by Mr. Rodriguez, and there was no abuse of discretion by the Court of Common Pleas as a result.

[15] State v. Bergmann, 1994 Del. Super. LEXIS 324.

CONCLUSION

Based upon the foregoing, the decision of the Court of Common Pleas is **affirmed**, and the Defendant's appeal is hereby **dismissed.**

IT IS SO ORDERED.

_____
Toliver, Judge