

AFFIRMED
N. J. MOTOR VEHICLE COMMISSION
By DLA Date 11/21/22



AFFIRMED
N. J. MOTOR VEHICLE COMMISSION
State of New Jersey
Office of Administrative Law
Date _____

INITIAL DECISION

OAL DKT. NO. MVH 07434-22
AGENCY DKT. NO. 01992

MOTOR VEHICLE COMMISSION,
Petitioner,
v.
JEFFREY MONTOYA,
Respondent.

Motor Vehicle Commission, petitioner, appearing pursuant to N.J.A.C. 1:1-5.6(a)

Jeffrey Montoya, appearing pro se

BEFORE: KIMBERLY A. MOSS, ALJ

Record Closed: September 30, 2022

Decided: October 5, 2022

STATEMENT OF THE CASE

Petitioner, New Jersey Motor Vehicle Commission (MVC) alleges that respondent Jeffrey Montoya's (Montoya) driving privileges should be suspended for sixty days because he had a motor vehicle violation within nine months of having been ^{proposes}

given a warning notice and him being placed beginning a one-year probationary period. Respondent contests the suspension.

PROCEDURAL HISTORY

The matter was transmitted to the Office of Administrative Law (OAL) and filed on August 29, 2022. A hearing was held on September 30, 2022. At which time I closed the record.

FACTUAL DISCUSSION

After hearing the witnesses and evidence, I **FIND** the following **FACTS**:

On January 20, 2021, Montoya received a warning notice stating that on the date of his completion of the Probationary Driving Program, he would begin of a one year probationary period. It further stated that if he received a violation within the six to nine months of the probationary period, he will be suspended for sixty days. The warning notice was sent to Montoya in Dover, New Jersey, which he states is his address.

(Written warning confirms the in-person warning at the PDP class)

On October 13, 2021, Montoya received a violation for speeding, to which he pled guilty. Montoya stated that he was driving a car that was not his and he did not realize how powerful the car was. He was driving the car of a relative because the relative was intoxicated. Montoya told the relative that he would take the car to the relative after work. Montoya did not realize that he was speeding when he received the ticket.

Montoya stated that he did not receive the warning notice, but he received the suspension notices and the notice for this hearing which were all addressed to the same address.

LEGAL ANALYSIS AND CONCLUSION

The Commission is empowered to suspend a motorist's driving privileges for a violation of any provision of the motor vehicle statutes or for any other "reasonable grounds." N.J.S.A. 39:5-30. The Legislature has vested the authority in the Commission, subject to prompt review, to impose a driver license suspension as a preliminary matter prior to a plenary proceeding in a motor vehicle fatality case. N.J.S.A. 39:5-30(e)(3). Where the Commission proposes suspension of driving privileges under N.J.S.A. 39:5-30 as an administrative enforcement of the motor vehicle regulations, it bears the burden of proof by the preponderance of the competent and credible evidence of facts essential to such suspension. *Atkinson v. Parsekian*, 37 N.J. 143, 149 (1962).

The primary object of a suspension or revocation of a driver's license "is to foster safety on the highway and not to impose criminal punishment to vindicate public justice." *Atkinson*, supra, 37 N.J. at 155; see also *David v. Strelecki*, 51 N.J. 563 (1968). The determination rests on a finding that "a law of the highway has been violated and that the highway would be a safer place for the public if the violator were removed as a driver for some period of time." *Ibid*. Suspensions must be imposed only for the purpose of reforming the particular motorist and are not to be imposed administratively for the purpose of deterring others.

N.J.A.C. 13:19-10.6 provides:

(a) Persons whose licenses are restored after a suspension imposed under N.J.A.C. 13:19-10.2 or after a suspension imposed under this section, persons who are officially warned after an administrative hearing, and persons who successfully complete a Commission Driver Improvement Program or Probationary Driver Program may retain their licenses upon the express condition and understanding that any subsequent violation of the Motor Vehicle and Traffic Law of the State of New Jersey committed within one year of the restoration, official warning, or warning following successful completion of a Driver Improvement or Probationary Driver Program shall, except for good cause, result in suspension of driving privileges for the following periods:

1. When the subsequent violation occurs within six months of the date of the restoration, official warning or warning following completion of a Driver Improvement or Probationary Driver Program--90 days;
2. When the subsequent violation occurs more than six months but less than nine months after the restoration, official warning or warning following

completion of a Driver Improvement or Probationary Driver Program--60 days;

3. When the subsequent violation occurs more than nine months but less than one year after the restoration, official warning or warning following completion of a Driver Improvement or Probationary Driver Program--45 days.

(b) A second violation of the Motor Vehicle Laws committed within one year of the restoration, official warning or warning following successful completion of a Driver Improvement or Probationary Driver Program shall, except for good cause, result in suspension of driving privileges for the following periods:

1. When the second violation occurs within six months of the date of the restoration, official warning or warning following completion of a Driver Improvement or Probationary Driver Program--180 days.

2. When the second violation occurs more than six months but less than nine months after the restoration, official warning or warning following completion of a Driver Improvement or Probationary Driver Program--120 days.

3. When the second violation occurs more than nine months but less than one year after the restoration, official warning or warning following completion of a Driver Improvement or Probationary Driver Program--90 days.

(c) Persons licensed on a probationary basis in accordance with N.J.S.A. 39:3-10b who have been subject to a license suspension action under (a) or (b) above may be required to successfully complete additional programs of driver rehabilitation within the discretion of the Chief Administrator.

In this matter, Montoya received a motor vehicle violation within nine months of completing the Probationary Driver Program. He was sent a warning notice to the address that he stated was his address informing him that he was on a one-year probationary period and the consequences he would face if he received a violation during the probationary period. He received a speeding ticket within nine months of the warning notice. However, the reason that Montoya was driving was to prevent an intoxicated person from driving. He was also not familiar with the car he was driving. In consideration of these facts the suspension should be twenty-day suspension

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I **CONCLUDE** that Montoya incurred a motor vehicle violation within nine months of being completing the Probationary Driver Program and being placed on a one-year probationary term by NJMVC.

ORDER

I **ORDER** that petitioner's proposed suspension of respondent's New Jersey driving privileges is hereby **MODIFIED** to twenty days.

I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 5, 2022



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

October 5, 2022

Date Mailed to Parties:

October 7, 2022

ljb

WITNESSES

For Petitioner

None

For Respondent

None

EXHIBITS

For Petitioner

P-1 Certified Motor Vehicle Abstract of Jeffrey Montoya

P-2 Warning Notice Dated January 20, 2021

P-3 Scheduled Suspension Notice Dated February 3, 2022

P-4 Hearing Request Received Dated February 23, 2022

P-5 Conference Report Dated April 29, 2022



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-7143

A copy of the administrative law
judge's decision is enclosed.

This decision was mailed to the parties
on OCTOBER 7, 2022

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE NUMBER: SXXXX XXXXX 08772
OAL DOCKET NUMBER: M.V.H. 04749-22**

IN THE MATTER OF :
RYAN J. SMITH : **FINAL DECISION**

The Motor Vehicle Commission (“Commission”) hereby determines the matter of the proposed administrative suspension of the New Jersey driving privilege of **RYAN J. SMITH**, respondent, for driving during a period of suspension in violation of N.J.S.A. 39:3-40, N.J.S.A. 39:5-30 and N.J.A.C. 13:19-10.8. Pursuant to N.J.A.C. 13:19-10.8, respondent’s New Jersey driving privilege is subject to suspension for a period of 180 days. Prior to this final agency determination, I have reviewed and considered the Initial Decision rendered by the Administrative Law Judge (“ALJ”). Based upon a de novo review of the record presented, I shall accept and adopt the ALJ’s findings and conclusions. However, as to the remedial sanction to be imposed based on the totality of the circumstances here, including the overall driver history record, I shall modify the recommendation of the ALJ, for the particular reasons specific to this case, as indicated below.

In the Initial Decision, the ALJ concluded, after a careful examination of the testimonial and documentary evidence and analysis of the applicable legal principles, that the Commission met its burden of proof in this proposed administrative suspension action for respondent’s having driven on July 3, 2020 during a valid period of suspension. Initial Decision at 3-4. The ALJ determined that the respondent, Smith, “did not dispute that he received notice that his driving privileges were to be suspended as of April 24, 2020” and

that he had “admitted that he made an error paying only one of the two outstanding tickets issued to him on November 25, 2019” and further acknowledged that he “did not address the outstanding summons until August 4, 2020, when he paid the second ticket.” Initial Decision at 3. The ALJ specifically found that respondent “was aware of the suspension of his license but still drove his vehicle on July 3, 2020.” Initial Decision at 4. The ALJ noted that the “Covid-19 pandemic did affect many legal functions in 2020” but that the respondent “offered no evidence” to support his claims that he had been attempting to address the matters with the Hamilton Township court. Ibid.

The ALJ also specifically found that, while respondent failed to address the outstanding municipal summons, he “did so out of a lack of knowledge of the legal procedures, not out of an intent to break the law”, thus concluding as to the recommended sanction that the proposed suspension term be significantly reduced in light of these circumstances. Initial Decision at 4.

Evaluating this record on a de novo basis to determine the appropriate remedial sanction that should be imposed in this matter, I must balance respondent’s need for his driving privileges against the public’s interest in ensuring public safety on its roadways. In reviewing the totality of the circumstances of this matter, and with specific reference to respondent’s recent and overall driving record and the mitigating factors present, I conclude that the proposed suspension term shall be reduced from the 180-day term proposed, but that there is still a need for some period of suspension for the purposes of reforming this respondent’s behavior. I concur with the ALJ’s assessment that some period of suspension is needed as an appropriate remedial sanction, in order to drive home to respondent the absolute necessity that he comply with all administrative notices

including those sent at the direction of municipal courts, as well as comply with all motor vehicle and traffic laws.

As for the mitigating factors in the particular circumstances of this case, in addition to the mitigation noted by the ALJ in the Initial Decision, I note from this respondent's driver history record the following: prior to the November 25, 2019 "failure to give proper signal" violation he had not committed any traffic violations for a period of more than nine years; also prior to that 2019 violation he had not committed a point-carrying violation for a period of just short of 15 years; in over 28 years of driving history, he had never had any other suspension of his driving privilege; he currently he has a zero (0) point-total on his New Jersey driving record, never having had more than a four-point total at any time, with only three violations that were point-carrying on his record; and that the triggering subject matter here was an accident for which he did not receive any summons¹; and that he did promptly resolve and get his privileges restored after the confirming Order of Suspension for the failure to satisfy the municipal summons was issued.

Despite the mitigation noted, it remains that driving while suspended is a serious matter – respondent should not have been driving on July 3, 2020, when he had not taken the appropriate steps to keep his driving privileges in good standing; he may not fail to follow through as to his court summons and then fail to heed the Commission's scheduled suspension notice without sanction on this record. Consequently, in my judgment, based

¹ Respondent's hearing request letter notes that, in the accident he was "severely injured ... suffered broken bones", and his vehicle was totaled. He further indicates that a license suspension would cause substantial hardships affecting his job and childcare, noting that he is a "single father that works 3 jobs in healthcare."

on a de novo review of the record, this driver's behavior is in need of reform and a short period of suspension is needed to reinforce his need to comply with the governing motor vehicle laws and regulations, as well as court and Commission notices/orders.

While I am sympathetic regarding the hardship that respondent may suffer as a result of his New Jersey driving privilege being suspended, respondent must nevertheless appreciate the responsibility that he owes to the public under the motor vehicle laws. Motor vehicle license suspensions are primarily intended to protect the safety of the public by temporarily removing offenders from the highways of New Jersey. David v. Strelecki, 51 N.J. 563, 566 (1968); Cresse v. Parsekian, 43 N.J. 326, 328-29 (1964). Moreover, respondent is reminded that the operation of a motor vehicle on New Jersey roads is a privilege, not a right. State v. Nunez, 139 N.J. Super. 28, 30 (Law Div. 1976); State v. Kabayama, 94 N.J. Super. 78, 82-83 (Law Div.), aff'd, 98 N.J. Super. 85 (App. Div. 1967), aff'd, 52 N.J. 507 (1968). A period of suspension of five (5) days is both warranted and reasonable in the present case when respondent's need to maintain his driving privilege is balanced against the public interest in having drivers comply with court-directed notices/orders of suspension. The Commission notes that respondent's suspension is intended to be rehabilitative rather than punitive in nature. Accordingly, the ALJ's recommended sanction is modified.

ORDER

It is, therefore, on this 21st day of November 2022, **ORDERED** that the New Jersey driving privilege of **RYAN J. SMITH** be suspended for a period of five (5) days for driving during a period of suspension. **NOTE:** The **effective date** of this suspension is set forth in the "Order of Suspension" which the Commission has included in this mailing.

A handwritten signature in black ink, appearing to read "Latrecia Littles-Floyd". The signature is fluid and cursive, with the first name being the most prominent.

Latrecia Littles-Floyd

Acting Chair and Chief Administrator

LLF/kw

Enclosure: **Order of Suspension (suspension effective 12/13/2022)**