STATE OF MICHIGAN

COURT OF APPEALS

MARK DAVID BECKWITH,

Petitioner-Appellee,

v

SECRETARY OF STATE,

Respondent-Appellant.

UNPUBLISHED
June 4, 1996

No. 181333
LC No. 94481110 AL

Before: Corrigan, P.J., and MacKenzie and P.J. Clulo,* JJ.

PER CURIAM.

Respondent Secretary of State appeals by right the order directing it to remove a Florida conviction for operation while under the influence of intoxicating liquors (OUIL) from petitioner's driving record, or to disregard the conviction as it relates to petitioner's eligibility to secure a review hearing on his status as an habitual violator. We reverse.

Petitioner has a history of alcohol-related driving offenses. He was convicted of operating while impaired (OWI) in 1985 in Michigan, of OUIL in 1986 in Florida, and of unlawful blood alcohol level (UBAL) in 1989 and 1993 in Michigan. After the revocation of petitioner's driver's license in 1989 for a minimum of one year under MCL 257.303; MSA 9.2003, his license was again revoked as a result of the 1993 Michigan UBAL conviction for a term not less than five years. Because the 1993 conviction occurred within seven years of a prior revocation, respondent was required to impose a five year term of revocation under MCL 257.52(1); MSA 9.1852(1). Thus, respondent could not review petitioner's license revocation until 1998. Such review is a prerequisite for the circuit court's review. MCL 257.323(6); MSA 9.2023(6).

In this case, petitioner sought to expunge his 1986 Florida conviction from his driving record so that he could obtain a discretionary determination by the circuit court before 1998. Petitioner

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

apparently reasoned that if the court struck his 1986 Florida conviction, it would also strike the original 1989 revocation as he would not have had two convictions within seven years to warrant revocation under the statute. MCL 257.303(2)(c); MSA 9.2003(2)(c). Thus, he would become eligible for review of his license after one year rather than after five years. Petitioner claimed, and the circuit court agreed, that because the Florida court processed his 1986 conviction without the benefit of an attorney or a formal plea, the circuit court should have disregarded it.

Respondent first argues that the circuit court erred when it ordered respondent to remove or disregard the 1986 OUIL Florida conviction from petitioner's driving record because petitioner did not submit sufficient proof that his 1986 conviction was constitutionally infirm. Respondent also asserts that, even assuming that the 1986 conviction was constitutionally infirm, the court properly used it to revoke petitioner's driving privileges.

Petitioner failed to establish that his 1986 Florida conviction was constitutionally infirm. Petitioner did not present prima facie evidence, such as a docket entry or transcript showing that he did not have counsel, that his Florida conviction violated *Gideon v Wainwright*, 372 US 335; 83 S Ct 792; 9 L Ed 2d 799 (1963). Nor did petitioner present evidence that he had requested such documentation from the Florida court, and the court either refused or failed to furnish copies of the records, *People v Carpentier*, 446 Mich 19, 31; 521 NW2d 195 (1994).

Petitioner counters that because *Carpentier, supra,* was released on the same day he filed his petition, due process bars retroactive application of *Carpentier* to this case. In the alternative, petitioner argues that he should be given an opportunity to meet the standard of proof imposed under *Carpentier*. Petitioner's argument lacks merit for two reasons. First, as *Carpentier* was released almost three months before the motion hearing in this case, petitioner had the opportunity to meet the burden of proof imposed by *Carpentier* and failed to do so. Second, the revocation or suspension of petitioner's driving privileges is not an enhancement of a punishment against petitioner, but merely an administrative action aimed at the protection of the public. *Matheson v Sec'y of State*, 170 Mich App 216; 428 NW2d 31 (1988).

Respondent further argues that even if petitioner had presented sufficient evidence to satisfy his burden of proof, respondent could still properly consider the constitutionally infirm conviction. Under MCL 257.303(2)(c); MSA 9.2003(2)(c), respondent must revoke an operator's license when it receives notice of a second conviction within seven years under section 625 of the Michigan Vehicle Code, or under a law of another state that substantially conforms to Michigan law. *Matheson, supra,* at 219. Further, an OUIL conviction found constitutionally infirm on collateral attack can form the basis of a license revocation under MCL 257.303(2)(c); MSA 9.2003(2)(c), *Broadwell v Michigan Dept of State*, 213 Mich App 306; 539 NW2d 585 (1995), *Matheson, supra,* at 220. The 1986 Florida conviction supported an administrative action and did not enhance petitioner's punishment. Thus, even if the Florida conviction is a constitutionally infirm basis for revocation of petitioner's driving privileges, it would not violate the state or federal constitutions. MCL 257.323(6)(a); MSA 9.2023(6)(a).

Therefore, the court erred in ordering respondent not to consider petitioner's 1986 Florida conviction, even if it was constitutionally infirm, as it relates to petitioner's eligibility to secure a review hearing.

In light of our disposition, we need not reach respondent's claim of laches.

Reversed. We do not retain jurisdiction.

/s/ Maura D. Corrigan
/s/ Barbara B. MacKenzie
/s/ Paul J. Clulo