

STATE OF MICHIGAN
COURT OF APPEALS

ANDRZEJ JAKOBEK, a/k/a ANDRJEZ
JAKOBEK,

UNPUBLISHED
November 21, 2006

Petitioner-Appellee,

v

DEPARTMENT OF STATE,

No. 261773
Macomb Circuit Court
LC No. 04-004836-AL

Respondent-Appellant.

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Respondent Department of State appeals by leave granted the circuit court's order holding that the five-year revocation of petitioner Andrzej Jakobek's driver's license would expire on August 30, 2005. We vacate the circuit court order.

Petitioner was convicted of four alcohol-related driving offenses within a 3-year period between 1997 and 2000. After the third conviction on June 29, 2000, respondent revoked petitioner's driver's license for one year from August 13, 2000.¹ On August 30, 2000, petitioner was convicted in district court of operating a motor vehicle under the influence of alcohol, second offense, his fourth alcohol-related driving conviction. This conviction required a 5-year revocation because it occurred while petitioner's license had already been revoked or suspended.² The district court did not send an abstract of the conviction to respondent until June 2002.³ Respondent thereafter revoked petitioner's driver's license for a 5-year period from July 14, 2002 to July 13, 2007. In August 2003, respondent denied petitioner's request to "backdate" the start date of the 5-year revocation period to August 30, 2000. At petitioner's request, the circuit court backdated the start date of the revocation and held that the revocation "shall end" on August 30, 2005, five years after the date of conviction. Respondent argues that the petitioner's

¹ MCL 257.303(2)(f), now MCL 257.303(g), (4)(a)(i).

² MCL 257.303(c), (4)(a)(ii).

³ In the meantime, one of respondent's hearing officers approved a restricted license for petitioner effective October 24, 2001.

petition was not timely filed and therefore the circuit court did not have jurisdiction to consider the petition.

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 Michigan Vehicle Code provides a specific time period in which to file a petition for review in the circuit court:

A person aggrieved by a final determination of the secretary of state . . . revoking, suspending, or restricting an operator's or chauffeur's license . . . may petition for a review of the determination . . . in the circuit court in the person's county of residence. The person shall file the petition within 63 days after the determination is made except that for good cause shown the court may allow the person to file a petition within 182 days after the determination is made.

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

Given the plain language of the vehicle code, we agree with respondent 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 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). See also *Taylor v Secretary of State*, 216 Mich App 333, 337-338; 548 NW2d 710 (1996) (judicial review provision of MCL 257.312f of the Michigan Vehicle Code is jurisdictional). 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, respondent's determination to revoke petitioner's driver's license for five years occurred in the summer of 2002. Petitioner filed his petition in November 2004, more than two years after respondent's determination and well over one year after respondent's August 12, 2003, letter to petitioner's counsel indicating that respondent denied petitioner's request to backdate the revocation. The petition was untimely, depriving the circuit court of jurisdiction to hear the appeal. Therefore, we vacate the circuit court's order.

Given our conclusion that the circuit court did not have jurisdiction to review respondent's determination, we need not address respondent's remaining argument that the circuit court exceeded its statutory authority under MCL 257.323(4).⁴

⁴ We note, however, that under MCL 257.323(4), the circuit court can only set aside the Secretary of State's decision; it cannot be modified. *Rodriguez v Secretary of State*, 215 Mich (continued...)

Vacated.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

(...continued)

App 481, 482; 546 NW2d 661 (1996). Additionally, respondent was merely following the precise language of MCL 257.303(2), which provided that “[u]pon receiving the appropriate records of conviction, the secretary of state shall revoke the operator’s or chauffeur’s license of a person” who is convicted of multiple incidents of drunk driving within a 7-year period. (Emphasis added.)