

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY FITZGERALD BOATMAN,

Petitioner-Appellee,

v

SECRETARY OF STATE,

Respondent-Appellant.

UNPUBLISHED

June 16, 2005

No. 252575

St. Joseph Circuit Court

LC No. 03-001012-AL

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Respondent appeals by leave granted the trial court’s order setting aside respondent’s mandatory additional license revocation imposed upon petitioner under MCL 257.904. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

Respondent is obligated to enforce statutes that penalize those who drive while their licenses are suspended or revoked. MCL 257.904(10). The penalty for those who drive on revoked licenses includes increasing the length of time before they may seek their license’s reinstatement. *Id.* The additional period of revocation is equal to the original length of revocation, so those whose licenses have been revoked for five years will receive a “second” revocation for an additional five years, if they are caught driving. *Id.*

On August 7, 1990, respondent revoked petitioner’s driver’s license and provided petitioner with notice that it would not return the license’s privileges “until approved,” and he would not be eligible for review until August 7, 1995. The revocation stemmed from two felony convictions involving petitioner’s operation of a motor vehicle. Petitioner was in an accident on September 17, 1993, while his license was still revoked, so on August 8, 1995, respondent revoked the license for another five years. Petitioner challenged this second, automatic revocation, and on April 6, 1998, the trial court granted petitioner a temporary restricted license that was good until April 6, 1999. The trial judge ordered that on April 6, 1999, the “petitioner shall appear before the Court for further examination and review.” He never did. On May 30, 2000, petitioner was again arrested for driving without a valid license. The arrest came more than one year after the court’s temporary license expired.

On June 26, 2000, less than a month after the arrest and five days after petitioner’s conviction for the driving offense, the trial court again issued a restricted license to petitioner, ordering respondent to restore full driving privileges to petitioner by June 26, 2001.

Nevertheless, respondent again automatically extended petitioner's revocation another five years beginning August 2, 2000, because of the conviction. The trial court set the additional revocation aside, and respondent appeals.

Respondent first argues that the trial court lacked subject matter jurisdiction to set aside petitioner's revocation. We disagree. We review de novo a trial court's decision on questions of subject matter jurisdiction and statutory interpretation. *Bruwer v Oaks (On Remand)*, 218 Mich App 392, 395; 554 NW2d 345 (1996); *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002). The trial court had jurisdiction to review petitioner's claim in this case because the challenge was brought under MCL 257.323(4), which allows a court to set aside a revocation "if the petitioner's substantial rights have been prejudiced because the determination is . . . [i]n excess of the secretary of state's statutory authority or jurisdiction." MCL 257.323(4).

However, we agree with respondent that petitioner's license was revoked when he was arrested on May 30, 2000, so it did not exceed its statutory authority or jurisdiction when it imposed an additional license revocation upon petitioner. The trial court's grant of a temporary license did not alter the fact that petitioner's operator's license was revoked, because the revocation remained effective until reinstatement was approved. The temporary license was preliminary to the adjudication of petitioner's rights and did not, in itself, reinstate petitioner's license. Plaintiff derived no driving authority from the temporary license after it expired, and his original license was still in a state of revocation.

This legal analysis of events arises from the statutory language, which requires the additional revocation period if an individual is convicted of an infraction "while the person's . . . operator's license . . . is revoked," and then adds, "This subsection applies only . . . if the violation occurs before the person is approved for a license following a revocation." MCL 257.904(10). The violation occurred "while" petitioner's operator's license was officially "revoked," and he was never officially "approved" for reinstatement of a license. The temporary license was only granted in anticipation that the trial court would eventually review petitioner's situation and determine whether reinstatement was appropriate. Therefore, petitioner's license was "revoked" on May 30, 2000, and the secretary of state did not exceed its statutory authority or jurisdiction when it imposed an additional revocation period upon petitioner. It follows that the trial court erred when, pursuant to MCL 257.323(4), it set aside respondent's imposition of the additional revocation period.

Reversed.

/s/ Peter D. O'Connell
/s/ Bill Schuette
/s/ Stephen L. Borrello