

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,)
)
 Petitioner,)
)
v.)
)
VALERIE I. ANDERSON,)
)
 Respondent.)

C.A. No. CPU4-09-006133

Submitted: February 5, 2010
Decided: February 26, 2010

On State's Motion To Vacate Order Granting Relief From Judgment

DENIED

MEMORANDUM OPINION AND ORDER

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Department of Justice, Wilmington, Delaware. Attorneys for Petitioner.

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ROCANELLI, J.

On September 25, 2009, this Court conducted a hearing on the State of Delaware's petition to have Valerie I. Anderson declared an habitual offender pursuant to 21 *Del. C.* §2801 *et. seq.* The State of Delaware appeared by and through a Deputy Attorney General. Anderson was self-represented. Other habitual offender petitions were also heard by the Court on September 25, 2009.

After receiving assurances from the Deputy Attorney General regarding its pending petition against Anderson and the prior petition the State had filed against Anderson, the Court declared Anderson an habitual driving offender. After the hearing, the Court, on its own initiative, issued an Order vacating its prior Order declaring Anderson an habitual offender.

The Delaware Department of Justice ("DOJ") filed a Motion to Vacate the Order Granting Relief from Judgment. The Court appointed the Office of the Public Defender to represent Anderson. The parties submitted legal memoranda. This is the Court's decision denying the State's Motion to Vacate the Order Granting Relief from Judgment.

STATE'S USE OF DISCRETION IN HABITUAL OFFENDER PETITIONS

The Director of the Division of Motor Vehicles is delegated the responsibility to monitor driving records and forward to the DOJ a certified copy of any such record that meets the requirements of an habitual driving offender. "The Attorney General, upon receiving the abstract from the Director of the

Division of Motor Vehicles, *shall* forthwith file a petition against the person named therein in the Court of Common Pleas[.]”¹ Despite the mandatory language in 21 *Del. C.* §2804, the DOJ does not proceed with habitual driving offender petitions against all drivers meeting the statutory definition of habitual offender. Rather, the DOJ exercises prosecutorial discretion at two stages of the proceedings. First, the DOJ reviews the abstracts submitted and determines which habitual offender petitions it will file with the court. Second, after an habitual offender petition is filed, the DOJ considers whether to offer a six-month “standard” continuance to certain alleged habitual offenders to give those chosen drivers an opportunity to improve their driving records. If the driving record of the driver who was offered a six-month “standard” continuance improves during the period of the continuance granted, the petition is withdrawn by the DOJ.

There is no statutory authority granted to the DOJ to exercise discretion whether to file an habitual offender petition in the first instance or, once filed, whether to proceed on a petition at a hearing. Nevertheless, the DOJ concedes it is standard practice to exercise discretion at these two stages.

FACTS AND PROCEDURAL HISTORY

On October 26, 2007, Anderson appeared in the Court of Common Pleas for the DOJ’s first habitual offender petition against her. The hearing was continued

¹ 21 *Del. C.* §2804 (*emphasis added*).

to give Anderson an opportunity to obtain counsel, and it was rescheduled for February 29, 2008. At the February 2008 hearing, the petition was withdrawn by the DOJ. The Deputy Attorney General did not offer any explanation on the record for the decision to withdraw the first petition against Anderson. More than thirteen months after the DOJ's first petition was withdrawn, Anderson paid a \$200 fee to the Department of Motor Vehicles to have her driving privileges reinstated. On April 6, 2009, Anderson received a driver's license.²

On July 27, 2009, the State filed a second petition to have Anderson declared an habitual driving offender. The DOJ relied upon three convictions to have Anderson declared an habitual offender in its second petition: October 7, 2006 Driving with No Valid License; July 28, 2006 Driving While Suspended or Revoked; and September 12, 2008 Failure to Reinstate. The hearing on the second petition took place on September 25, 2009.

Anderson responded to the State's second petition that she had been "to court for this before." The Court's clerk discovered that Anderson was subject to a previous petition that was withdrawn by the DOJ on February 29, 2008. The Court

² Anderson argues that estoppel should operate to prevent the State from proceeding with a second habitual offender petition against her on the grounds that she relied upon the DOJ's withdrawal of its first petition and paid a substantial fee to have her license reinstated. According to Anderson, if had she known the State intended to file a second petition, she would not have invested \$200, which she had saved since February 2008. The Court does not reach this argument in denying the State's Motion to Vacate.

asked whether the first petition had been withdrawn with prejudice or without prejudice, to which the Deputy Attorney General responded, “I can only assume, because I *have no particular knowledge of this case*, that the State looked at it and said we are not going to proceed with it because of the previous convictions.” This was the Deputy Attorney General’s first representation to the Court at the September 25 hearing regarding the DOJ’s exercise of discretion with respect to Anderson.

Anderson explained to the Court the extreme hardship that a three-year license revocation would cause her and her extended family, explaining that she picks up her grandchildren everyday from school and drives to and from work three times a week. Nevertheless, based on the representations made to the Court by the Deputy Attorney General, the State’s request to declare Anderson an habitual driving offender was granted.

In addition to the petition filed against Anderson, the Court heard several other habitual driving offender petitions on September 25, 2009. During the proceedings, the Court also accepted the DOJ’s request for continuances of the hearings for five other individuals.³ The DOJ also withdrew petitions against two individuals who previously had been granted six-month “standard” continuances.⁴

³ Lucian Chandler received a six-month “standard” continuance from the DOJ. The petition against Lucian Chandler included one conviction for No Valid License and two separate convictions for Driving While Suspended or Revoked.

Following the DOJ's request to grant continuances or dismiss the petitions for other respondents, the Court called the Deputy Attorney General to sidebar and asked whether a "standard" continuance could have been offered to Anderson and, if it could not, asked for an explanation of the difference between Anderson and the other respondents who had been granted such continuances. Despite the fact that the Deputy Attorney General had previously represented to the Court that he had "no particular knowledge" of the previous habitual offender petition against Anderson, the Deputy Attorney General made the following statements in response to the Court's questions:

THE COURT: So the lady with the three kids and a job, and the grandkids; you couldn't [offer a "standard" continuance] for her?

DAG: No.

THE COURT: What's the difference?

DAG: Because we did it once for her.

THE COURT: Oh, you already [granted her a "standard" continuance] once?

Stephanie Cockerham, Ronald Re and Svetlana Kogan were granted continuances to obtain counsel. At their rescheduled hearings, Stephanie Cockerham was given a six-month "standard" continuance and the petition against Svetlana Kogan was withdrawn. The petition against Ronald Re is still pending. Kenneth Barnes also received a continuance from the DOJ despite the fact that the State's petition against him included one conviction for Driving Under the Influence of Alcohol ("DUI") and two convictions for Reckless Driving. Kenneth Barnes cited several reasons why he needed a continuance, including his need for transportation to school. The DOJ did not oppose Kenneth Barnes' request for a continuance, in an attempt to ameliorate the hardships that a license revocation would cause him.

⁴ Michael Davis and Keith Parker were granted six-month "standard" continuances on March 27, 2009. The petitions were rescheduled for September 25, 2009, when the DOJ reviewed the petitions against both respondents and decided to withdraw the petitions against both individuals.

DAG: That's correct. The thing was submitted.

Not only were the representations to the Court by the Deputy Attorney General inconsistent with the prior representations made during the hearing on the petition against Anderson, the representations at sidebar were inaccurate. In fact, Anderson had not been offered a "standard" continuance. The Court has reviewed the circumstances of the first habitual driving offender petition against Anderson and concludes that the State never offered Anderson a "standard" continuance to improve her driving record.

After all other matters scheduled for the September 25, 2009 habitual offender calendar were completed, the Court reviewed the DOJ's habitual driving offender petition against Anderson and compared it to other petitions presented the same day that had been granted, continued, withdrawn, or dismissed after a continuance. The Court was not satisfied that the information represented to the Court by the Deputy Attorney General was accurate or that the DOJ was consistently and fairly exercising prosecutorial discretion. Specifically, the Court was troubled by the Deputy Attorney General's contradictory statements regarding the previous petition against Anderson. Moreover, the Court was concerned that Anderson's driving record was no worse than that of others who had been granted "standard" continuances. Therefore, this Court vacated its Order declaring Anderson an habitual driving offender.

ANALYSIS

Revocation proceedings for habitual driving offenders are civil administrative actions.⁵ The Attorney General has the statutory duty to file habitual driving offender petitions in the Court of Common Pleas.⁶ If granted, a Chapter 28 petition operates as a revocation of the respondent's driving privileges for up to five years.⁷ An "habitual offender" is defined by 21 *Del. C.* §2802 as one who has violated a requisite number of certain traffic laws in a specified period of time.⁸ The Court of Common Pleas has jurisdiction over revocation proceedings by statutory grant and is required by the statute to conduct hearings on the State's petitions.⁹ The statute, on its face, does not grant discretion to either the DOJ or the Court. However, the statute sets forth the public policy to provide "maximum safety" for persons who use the roadways; the statute identifies those to whom the privilege of driving should be denied; and the statute states its purpose is to discourage repetition of criminal acts.¹⁰

It is a "basic principle of jurisprudence that courts are generally afforded inherent powers to undertake whatever action is reasonably necessary to ensure the

⁵ *Villa v. State*, 456 A.2d 1229, 1231 (Del. 1983).

⁶ 21 *Del. C.* §2804.

⁷ 21 *Del. C.* §2809.

⁸ *Villa*, 456 A.2d at 1231.

⁹ 21 *Del. C.* §2803.

¹⁰ 21 *Del. C.* §2801.

proper administration of justice.”¹¹ “The administration of justice requires a fundamental fairness.”¹² “Justice must satisfy the appearance of justice.”¹³ Further, the Court has the inherent and express authority to vacate its own orders and properly did so in this matter.

Delaware courts may vacate a final order or judgment pursuant to two sources of authority: (i) its statutory or express authority and (ii) its inherent authority. The Court possesses express authority to vacate a final order either by motion from one of the parties or on its own initiative. Court of Common Pleas Civil Rule 60(b) provides that the Court may relieve a party from a final judgment for several enumerated reasons, including mistake, newly discovered evidence, misrepresentation or any other reason justifying relief from the operation of the judgment.

It is well-established that Delaware courts also have inherent judicial authority to vacate the court’s own orders. For example, in *State v. Sloman*, the defendant was convicted of felony Driving Under the Influence and sentenced in Superior Court.¹⁴ The Superior Court modified Defendant’s sentence after a

¹¹ *State v. Sloman*, 886 A.2d 1257, 1265 (Del. 2005) (quoting *State v. Guthman*, 619 A.2d 1175, 1178 (Del. 1993).

¹² *People ex rel. Constatino v. Lorey*, 28 A.D.3d 1041, 1043 (N.Y. App. Div. 2006).

¹³ *Regents of Univ. of Cal. V. Bakke*, 438 U.S. 265, 319 (1978) (citing *Offutt v. United States*, 348 U.S. 11, 14 (1954) (citations omitted)).

¹⁴ *Sloman*, 886 A.2d at 1258.

request from a Treatment Access Center case manager.¹⁵ As it does in this case before the Court, the DOJ challenged the Superior Court’s authority to modify its own order. The Delaware Supreme Court affirmed the sentence modification and stated that Delaware courts “have the inherent power to vacate, modify or set aside their judgments or orders.”¹⁶

This Court properly exercised its authority to vacate its own Order declaring Anderson an habitual driving offender because the Court relied upon inaccurate representations by the Deputy Attorney General when the Court issued its first Order. First the Deputy Attorney General claimed to have “no particular knowledge” of the previous habitual offender petition against Anderson and later inaccurately represented to the Court that the State had already offered Anderson a “standard” continuance. The latter representation was specifically calculated to address the Court’s stated concern that Anderson was being treated differently by the State than were other respondents who were given “standard” continuances. The Deputy Attorney General assured the Court that the same opportunity had already been afforded to Anderson. This was an incorrect representation.

Moreover, upon a careful review of Anderson’s driving record, the Court concluded it was patently unfair for the DOJ to offer “standard” continuances to other respondents whose drivers’ records were worse than Anderson’s record. The

¹⁵ *Id.*

¹⁶ *Id.* (quoting *State v. Guthman*, 619 A.2d 1175, 1178 (Del. 1993)).

unequal treatment of Anderson could not be justified by the State's inaccurate representation that Anderson had already been offered a "standard" continuance and also could not be justified on the grounds that her driving record was worse than similarly situated respondents or that her need to drive was any less compelling.

The Court's conclusion, that the exercise of prosecutorial judgment as to Anderson violated principles of justice, required that the Court exercise its express and inherent authority to vacate its own Order declaring Anderson an habitual driving offender. The Court concluded that the exercise of prosecutorial discretion as applied to Anderson was not consistent with notions of basic fairness in that Anderson was not offered the "standard" continuance offered to other respondents to improve her driving record. Moreover, Anderson's driving record could not be distinguished from other persons who were offered the opportunity to continue the hearing for six months to improve their driving records, at which time the petitions would be withdrawn by the State. In addition, the Court's first Order was premised upon inaccurate representations by the DOJ.

The DOJ argues that the Court has no authority to review the exercise of the DOJ's discretion. For support, the State relies upon *State v. Kamalski* in which the Superior Court held that a hearing pursuant to Chapter 28 satisfies the requirement of procedural due process as long as the DOJ presents evidence that the respondent

is the driver identified in the Department of Motor Vehicles abstract and that the Title 21 convictions have entered.¹⁷ The Kamalski Court stated, the “[l]egislature has limited the issues before the Court to whether the person named in the abstract is the person whose license is to be revoked, and whether that person was convicted of the offenses listed in the abstract which subject him to the provisions of the Habitual Offenders Act.”¹⁸

Kamalski is distinguishable. The present case before the Court involves the authority of this Court to vacate its own Order when said Order was premised upon a misrepresentation by a Deputy Attorney General whereas the *Kamalski* respondent challenged the constitutionality of Chapter 28. Accordingly, the State’s reliance on *Kamalski* is misplaced when considering this Court’s reasons for vacating its Order declaring Anderson an habitual driving offender. The different context of the *Kamalski* Court’s analysis renders the conclusion inapposite here.

Finally, while the DOJ seeks to strictly construe Chapter 28 to limit the nature and scope of review by the Court, the State seeks to expand its own authority under the statute by exercising discretion not granted by the statute. If adopted, the DOJ would have discretion whether to proceed against a respondent; but application of that discretion would not be subject to review by the Court despite the statute’s provision for a hearing.

¹⁷ *State v. Kamalski*, 429 A.2d 1315 (Del. Super. Ct. 1981).

¹⁸ *Id.* at 1319.

Indeed, it is entirely appropriate for the DOJ to exercise discretion, particularly as the discretion is utilized to enforce the public policy rationale expressed by the legislature. However, the DOJ's discretion must be exercised fairly and consistently with due process. Similarly, the Court must ensure that due process rights of litigants are respected; that proceedings are fair; and that justice prevails.

CONCLUSION

This Court had express and inherent authority to vacate its Order declaring Anderson an habitual driving offender. Justice demands fairness, including a consistent application of prosecutorial discretion. Although the State represented to the Court that Anderson had been given the same opportunity for a "standard" continuance that the State had offered to others, this was an inaccurate representation to the Court by the State.

The State's Motion to Vacate is **DENIED**. The State's petition dated July 27, 2009 to declare Valerie I. Anderson an habitual offender is **DENIED**.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli