

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 1109

COURTNEY C. HOOGE

VERSUS

STATE OF LOUISIANA, DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS, OFFICE OF MOTOR VEHICLES

Judgment Rendered: FEB 12 2010

Appealed from the
Twentieth Judicial District Court
In and for the Parish of East Feliciana
State of Louisiana
Docket Number 39082

The Honorable George H. Ware, Jr., Judge Presiding

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Louisiana Department of Public Safety
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BEFORE: WHIPPLE, GUIDRY, PETTIGREW, HUGHES, AND

WELCH, JJ.
Pettigrew, J. dissents.
Hughes, J., dissents.

WHIPPLE, J.

This matter is before us on appeal by defendant, the Louisiana Department of Public Safety and Corrections, Office of Motor Vehicles (“the Department”), from a judgment of the district court reinstating plaintiff’s driver’s license. For the reasons that follow, we vacate the judgment of the district court and remand with instructions.

FACTS AND PROCEDURAL HISTORY

On April 12, 2008, plaintiff, Courtney C. Hooge, was arrested by Louisiana State Trooper Bryan Lee for improper lane usage, a violation of LSA-R.S. 32:79, and DWI first offense, a violation of LSA-R.S. 14:98.¹ According to the citation issued at the time of his arrest, plaintiff’s driver’s license was thus suspended by the Department for a period of ninety (90) days pursuant to Louisiana’s Implied Consent Law, LSA-R.S. 32:661, *et seq.*, to commence thirty days from the date of his arrest.

On May 23, 2008, plaintiff filed a petition in the Twentieth Judicial District Court, seeking reinstatement of his driving privileges and a stay of the automatic suspension of his driver’s license. Therein, plaintiff contended that he “has applied for an administrative hearing, but has not been given an opportunity because due process had not been followed in accordance with La. R.S. 32:667” in that he was not given “the requisite notice” to file for an administrative hearing within fifteen (15) days of his arrest, and that his request for an administrative hearing thus had been denied as untimely.²

¹After submitting to an intoxilyzer analysis, plaintiff’s blood alcohol content resulted in a reading of .214g%.

²In support of his request that the district court reinstate his license (despite his failure to submit a timely request for administrative review), plaintiff additionally alleged that his job required him to travel throughout the state and that the ninety-day suspension of his license would cause a great hardship to him and prevent him from earning a living.

After a hearing in the district court on August 18, 2008, the district court ordered that plaintiff's driving privileges be reinstated.³ However, the written judgment reinstating plaintiff's driver's license, effective immediately, was not signed until February 6, 2009.

The Department appeals, contending that the district court erred in: (1) finding that the plaintiff sufficiently proved that he failed to receive adequate notice of his right to an administrative hearing; and (2) failing to order that the case be remanded to the Division of Administrative Law for an administrative hearing.

DISCUSSION

Pursuant to LSA-R.S. 32:667, when a person is arrested for a violation of LSA-R.S. 14:98:

[t]he officer shall seize the driver's license of the person under arrest and shall issue in its place a temporary receipt of license on a form approved by the Department of Public Safety and Corrections. Such temporary receipt shall authorize the person to whom it has been issued to operate a motor vehicle upon the public highways of this state for a period not to exceed thirty days from the date of arrest or as otherwise provided herein.

LSA-R.S. 32:667(A)(1).

Further, "[t]he temporary receipt shall also provide and serve as notice to the person that he has **not more than fifteen days** from the date of arrest to make written request to the **Department of Public Safety and Corrections** for an administrative hearing in accordance with the provisions of

³The district court noted that although the Department had received notice on July 21, 2008, no appearance was made by the Department. The Department does not dispute the court's determination that it had received notice of the hearing.

[LSA]R.S.32:668.” (Emphasis added).⁴ LSA-R.S. 32:667(A)(2). If such written request is not made by the end of the fifteen-day period, the person's license shall be suspended “for ninety days from the date of suspension on first offense violation, without eligibility for a hardship license for the first thirty days.” LSA-R.S. 32:667(B)(1)(b). Moreover, the time period set forth in LSA-R.S. 32:667 within which to file for an administrative hearing has been held to be preemptive. Green v. Louisiana Department of Public Safety & Corrections, 603 So. 2d 800, 802 (La. App. 1st Cir. 1992).

The Department contends in its first assignment of error that the district court erred in finding that Hooge failed to receive notice, as required by law, of his right to an administrative hearing. We agree. Although Hooge alleged in his petition that he did not receive notice pursuant to LSA-R.S. 32:667, he acknowledged at the hearing his receipt of the statutorily-mandated notice. Notably, Hooge filed into evidence a copy of the temporary receipt for his driver's license, which he undisputedly received and which bears his signature. As shown in the following colloquy, plaintiff identified this documentation, received from the officer upon his arrest, referred to as “Copy of Tickets with Attachments” and marked as Exhibit P-1, as follows:

Q. I'm going to show you a document I've marked as P-1. I want you to identify the documentation for me if you would.

A. Yes, this is a ticket that he gave me.

Q. Is that the ticket you received from this incident and what else is attached to it?

⁴Louisiana Revised Statute 32:668, entitled, “Procedure following revocation or denial of license; hearing; court review; review of final order; restricted licenses,” provides, in part, as follows:

A. Upon suspending the license or permit to drive or nonresident operating privilege of any person or upon determining that the issuance of a license or permit shall be denied to the person, the Department of Public Safety and Corrections shall immediately notify the person in writing and upon his request shall afford him an opportunity for a hearing based upon the department's records or other evidence admitted at the hearing, and in the same manner and under the same conditions as is provided in R.S. 32:414 for notification and hearings in the case of suspension of licenses[.]

A. This is everything that I received.

Q. That was the notice with the ticket which is a request for an administrative hearing?

A. Yes, sir.

Q. And fees regarding the ticket?

A. Right.

(Emphasis added.)

The record also includes: (1) a copy of the citation; (2) a copy of the intoxilyzer test results; and (3) a Department form with sections entitled, “Request for Administrative Hearing,” “Receipt for License and/or Temporary License,” and “Official Notice of Withdrawal of Driving Privileges,” which contain Hooge’s signature. The documents received by Hooge provide clear notice regarding the ninety-day suspension period and that Hooge had fifteen days from the date of his arrest to request a hearing. The back of the form provides other information concerning penalties and fees, and notifies that Hooge had fifteen calendar days from the date of his arrest to request an administrative hearing to contest the suspension or disqualification of his driver’s license. A toll free number is also provided “for more information regarding your driving privilege.”

Although plaintiff argued at the hearing and in his brief on appeal that he was deprived of due process, and thus deprived of his opportunity to timely file for administrative relief because he never received “notice,” his testimony at the hearing, wherein he candidly acknowledged that he received the temporary receipt required by LSA-R.S. 32:667, which he referred to in his testimony as “the first one,” and bears his signature, indicates otherwise. Further, we find no merit to plaintiff’s claim that he was deprived of due process because, at the time of his arrest, he was not furnished with the particular separate form for applying for a hearing, introduced as an additional exhibit, which he later obtained from the

Department.⁵ Given plaintiff's testimony, his failure to seek timely review clearly resulted from his own inaction, or failure to read the form he was given at the time of his arrest, and not by any action of the Department or arresting officer.

Accordingly, we find that the district court erred in allowing plaintiff to bypass the administrative procedures established by law and in reinstating plaintiff's driver's license, staying the statutory suspension, and reinstating the license "with full driving privileges." For the above reasons, we likewise find merit in the Department's second assignment of error, and agree that the district court exceeded its jurisdiction and authority in granting the relief sought by plaintiff.⁶ Thus, we will vacate the judgment of February 6, 2009, and remand to the district court with instructions that the matter be further remanded to the Division of Administrative Law for a determination of the remaining period of suspension, owed by plaintiff, if any, and any further relief to which plaintiff may seek or be entitled to by law. See generally LSA-R.S. 32:667 and 668. See also and compare Corley v. State, Department of Public Safety and Corrections, Office

⁵This blank Department form was identified as Exhibit P-2 and is entitled, "Request for Hearing." Notably, this form provides the same toll free number that is provided in the "Information and Penalties Safety Responsibility Law" form issued upon arrest. The form also provides an address for mailing the form in to the Department once completed. To the extent that Hooge bases his claim for relief on the fact that he did not receive a copy of this blank form upon his arrest, we note that the arresting officer is only mandated by the statutes cited to issue a temporary receipt-of-license form. LSA-R.S. 32:667(A)(1). The temporary receipt provides and serves as notice to the person that he has not more than fifteen days from the date of arrest to make a written request for an administrative hearing. See LSA-R.S. 32:667(A)(2). The statutes relied upon by Hooge do not require the arresting officer to issue an application for administrative hearing, nor do they mandate any particular form for such a request.

⁶Pursuant to LSA-R.S. 32:668(C):

After a person has exhausted his remedies with the department, he shall have the right to file a petition in the appropriate court for a review of the final order of suspension or denial by the Department of Public Safety and Corrections in the same manner and under the same conditions as is provided in R.S. 32:414 in the cases of suspension, revocation, and cancellation of licenses. The court in its review of the final order of suspension or denial by the Department of Public Safety and Corrections may exercise any action it deems necessary under the law including ordering the department to grant the person restricted driving privileges where appropriate as provided in Subsection B of this Section.

(Emphasis added).

of Motor Vehicles, 93-1776 (La. App, 1st Cir. 5/12/94), 648 So. 2d 936 (per curiam) (where this court held that a district court cannot order the Department to take action in contravention of the mandatory suspension requirements of subsection B of LSA-R.S. 32:668).

CONCLUSION

For the above and foregoing reasons, the February 6, 2009 judgment of the district court is vacated and the matter is remanded to the district court with instructions to remand to the Division of Administration Law for further proceedings consistent with the views expressed herein. Costs of this appeal are hereby assessed to plaintiff, Courtney C. Hooge.

JUDGMENT VACATED; REMANDED WITH INSTRUCTIONS.