

2010 WL 1027882

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UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.

Douglas F. MARTINEZ, Defendant-Appellant,
v.

NEW JERSEY MOTOR VEHICLE
COMMISSION, Plaintiff-Respondent.

Argued March 3, 2010.

| Decided March 22, 2010.

West KeySummary

1 Automobiles

 [Extent of discipline in general; hardship and mitigating circumstances](#)

Under New Jersey law, decision of Motor Vehicles Commission (MVC) to treat driver as a second offender based upon a guilty plea to a charge of driving under the influence of alcohol (DUI) in New York was statutorily required and thus was not arbitrary, capricious or an abuse of discretion. Driver was subject to punishment for driving under the influence in both New York and New Jersey within a ten-year period. [N.J.S.A. 39:5D-1](#); [N.J.S.A. 39:5D-4](#); [N.J.A.C. 13:19-11.1\(b\)](#); [N.J.S.A. 39:4-50](#).

[Cases that cite this headnote](#)

On appeal from the Motor Vehicle Commission.

Attorneys and Law Firms

[Patrick A. Mullin](#) argued the cause for appellant.

[Judith Andrejko](#), Deputy Attorney General, argued the cause for respondent ([Paula T. Dow](#), Attorney General, attorney; [Melissa H. Raksa](#), Assistant Attorney General, of counsel; Ms. Andrejko, on the brief).

Before Judges [FISHER](#) and [ESPINOSA](#).

Opinion

PER CURIAM.

*1 Plaintiff appeals from the final administrative decision of the Motor Vehicles Commission (MVC) to treat him as a second offender based upon a guilty plea to a charge of driving under the influence of alcohol (DUI) in New York State. We affirm.

On July 9, 2008, plaintiff was arrested in New York and charged with driving under the influence of alcohol, [N.Y. Veh. & Traf. Law § 1192\(3\)](#). He entered a guilty plea to that charge on March 16, 2009 and was sentenced as a first offender to a six month suspension of driving privileges in New York, a fine of \$500 and a surcharge of \$225.

Plaintiff was previously convicted in New Jersey of driving under the influence, [N.J.S.A. 39:4-50](#), on June 21, 1999. As a result, his conviction in New York occurred less than ten years after his first conviction in New Jersey. Accordingly, the MVC notified plaintiff that his driving privileges would be suspended as of May 19, 2009 for 730 days, the penalty appropriate for a second offender. [N.J.S.A. 39:4-50](#); [N.J.A.C. 13:19-11.1\(b\)](#).

The notice sent to plaintiff advised him that if he decided not to accept the suspension, he could request a hearing in writing. He was notified that

Your request must specify all disputed material facts and legal issues you and your attorney intend to raise at a hearing and must present all arguments on those issues you wish the Commission to consider. If your request fails to set forth any disputed facts, legal issues, or arguments of such issues, the request will be denied and a suspension will become effective on a date specified by the Commission and constitute the Commission's final decision in this matter.

Plaintiff's counsel made a request for a hearing based upon a legal argument that New Jersey should treat plaintiff as a first offender and apply the same suspension as that imposed in

New York. His request for a hearing was denied. Although the letter acknowledged the legal argument set forth in counsel's letter, the reason stated for the denial was that plaintiff had "failed to identify any disputed material fact(s) and/or legal issues(s) to be resolved at a hearing due to the conviction for the alcohol related offense in the State of New York[.]" The letter advised that his suspension was effective September 11, 2009. His motions for a stay of the suspension pending appeal were denied by the MVC and this court.

In this appeal, plaintiff presents these issues:

POINT I

PURSUANT TO LAWS OF STATUTORY CONSTRUCTION AND THE RULE OF LENITY, THE INTERSTATE DRIVER'S LICENSE COMPACT, AS ADOPTED BY THE NEW JERSEY LEGISLATURE, REQUIRES THAT NEW YORK JUDGE VICTORIA CAMPBELL'S MARCH 18, 2009 SENTENCE BE APPLIED.

A. RULES OF STATUTORY CONSTRUCTION REFLECT AMBIGUITY IN THE PENALTY PROVISIONS OF [N.J.S.A. 39:5D-4](#).

B. THE RULE OF LENITY REQUIRES THAT JUDGE CAMPBELL'S NEW YORK RULING BE APPLIED TO THE SUSPENSION OF DR. MARTINEZ.

POINT II

IN THE ALTERNATIVE PURSUANT TO [N.J.S.A. § 39:5D-4](#), NEW JERSEY'S DRIVER COMPACT, THE PENALTY IMPOSED UPON DR. MARTINEZ SHOULD BE THAT FOUND IN NEW YORK STATUTES, WHERE THE OFFENSE TOOK PLACE.

*2 Our role in reviewing the decision of the Director of the MVC is limited. In the absence of a "a clear showing that it is arbitrary, capricious, unreasonable or not supported by credible evidence in the record as a whole [.]" the decision will be sustained. *Klusaritz v. Cape May County*, 387 *N.J.Super.* 305, 313, 903 A.2d 1095 (App.Div.2006), *certif. denied*, 191 *N.J.* 318, 923 A.2d 232 (2007); *see Brady v. Bd. of Review*, 152 *N.J.* 197, 210-11, 704 A.2d 547 (1997); *Henry v. Rahway State Prison*, 81 *N.J.* 571, 579-80, 410 A.2d 686 (1980).

New Jersey is a party to the Interstate Driver License Compact, [N.J.S.A. 39:5D-1](#) to -14 (the Compact), which

provides for party states to impose penalties upon licensed drivers who have been convicted of specific offenses in other states. When a New Jersey driver has been convicted of driving under the influence of intoxicating liquor or drugs in another state, [N.J.S.A. 39:5D-4](#) directs the licensing authority (MVC) to "give the same effect to the conduct reported ... as it would if such conduct had occurred in the home state," New Jersey. There is no question that if plaintiff's conviction arose from conduct in New Jersey, he would be subject to sentencing as a second offender. Although the statute provides that the licensing authority shall apply the penalties of either "the home State or of the State in which the violation occurred," [N.J.S.A. 39:5D-4](#), [N.J.A.C. 13:19-11.1\(b\)](#) explicitly states that the driving privileges in New Jersey for a driver convicted for operating a motor vehicle while under the influence of intoxicating liquor shall be suspended pursuant to New Jersey law:

If the out-of-State conviction or administrative determination constitutes said driver's second, third or subsequent violation for operating while under the influence, a suspension shall be imposed under [N.J.S.A. 39:4-50](#) corresponding to the number of the violation.

In *New Jersey Division of Motor Vehicles v. Egan*, 103 *N.J.* 350, 511 A.2d 133 (1986) the Supreme Court reviewed the policy of the Director of the Division of Motor Vehicles to exercise the discretion granted by [N.J.S.A. 39:5D-4](#) to "uniformly impos[e] New Jersey's more stringent penalty instead of being reduced to 'the least common denominator of other States[.]'" *Egan, supra*, 103 *N.J.* at 357, 511 A.2d 133. Recognizing that the "legislative policy of exacting stringent penalties for drunk-driving offenses has never been stronger[.]" the Court concluded that the "Director's administrative policy of imposing these home state penalties furthers this legislative policy" and was not an abuse of discretion. *Ibid.* It follows that treatment of plaintiff as a second offender pursuant to that policy, as codified in [N.J.A.C. 13:19-11.1\(b\)](#), was not arbitrary, capricious or an abuse of discretion.

Pursuant to the Compact, plaintiff was subject to punishment in both New York and New Jersey for driving while intoxicated. *See State, Div. of Motor Vehicles v. Pepe*, 379 *N.J.Super.* 411, 418, 879 A.2d 747 (App.Div.2005). The New York suspension only involved plaintiff's driving

privileges within that state. *Boyd v. Div. of Motor Vehicles*, 307 N.J.Super. 356, 360, 704 A.2d 1029 (App.Div.), certif. denied, 154 N.J. 608, 713 A.2d 499 (1998). The MVC was, therefore, both authorized and required to impose a separate suspension pursuant to New Jersey law, even if the period of suspension is longer than that imposed in New York. See *Pepe, supra*, 379 N.J.Super. at 418, 879 A.2d 747;

Boyd, supra, 307 N.J.Super. at 360, 704 A.2d 1029. Since no disputed issues of material fact existed, no evidentiary hearing was required before the suspension was imposed. *Pepe, supra*, 379 N.J.Super. at 419, 879 A.2d 747.

***3** Affirmed.

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