

STATE OF VERMONT  
WASHINGTON COUNTY, SS.

FILED

2003 AUG 12 P 12:04

In re: Appeal of )

JEREMY J. SMITH b/n/f )

DELORES M. SMITH )

Washington Superior Court

Docket No. 114-2-03 Wncv

SUPERIOR COURT  
WASHINGTON COUNTY

Decision

Appellant Jeremy J. Smith appeals from the decision of a Department of Motor Vehicles (DMV) Hearing Officer deciding that his junior operator's license was properly recalled for 90 days. Appellant is represented by Paul R. Morwood, Esq. The DMV is represented by Thomas A. McCormick, Esq.

On August 29, 2002, Mr. Smith, driving with a junior operator's license (23 V.S.A. § 607), was cited for speeding. The citing officer alleged on the ticket that Mr. Smith exceeded the local 35 miles per hour speed limit, violating 23 V.S.A. § 1007, by traveling 50 miles per hour. The ticket states on its front that a court appearance may be avoided with payment of a waiver amount and a plea of admitted or no contest. The back of the ticket states, among other things:

**IF YOU PLEAD ADMITTED OR NO CONTEST:** Mark your plea and sign above. Deliver your plea to the Judicial Bureau within 20 days with payment of the WAIVER AMOUNT shown on the front of the Complaint. Pay by check or money order in U.S. funds, make checks payable to JUDICIAL BUREAU. Judgment will be entered against you and any points and suspension required by law will be imposed.

Mr. Smith paid the waiver amount and judgment was entered against him by the Judicial Bureau. See generally 4 V.S.A. §§ 1102-1108 (Judicial Bureau procedure). Three points were assessed against Mr. Smith's driving record. See 23 V.S.A. § 2502(7) (three points for more than ten miles per hour over the limit).

Mr. Smith's license then was recalled for 90 days pursuant to 23 V.S.A. § 607a(a), which states in part:

A learner's permit or junior operator's license shall contain an admonition that it is recallable and that the later procurement of an operator's license is conditional on the establishment of a record which is satisfactory to the commissioner and showing compliance with the motor vehicle laws of this and other states. . . . The commissioner shall also recall any learner's permit or junior operator's license for 90 days following a single speeding violation resulting in a three-point assessment

90 days following a single speeding violation resulting in a three-point assessment or when a total of six points has been accumulated . . . .

Mr. Smith requested a hearing pursuant to 23 V.S.A. § 607a(b), which was held on December 18, 2002. At the hearing, Mr. Smith argued that he was not advised by the ticketing officer or anyone else that his license would be recalled automatically if he was adjudicated for speeding more than ten miles over the limit. Had he known that recall would result, he would have challenged the ticket at the outset because he believes that he was not exceeding the limit by more than 10 miles per hour. The Hearing Officer noted that the judgment of the Judicial Bureau on the speeding ticket had not been vacated or amended, and was not subject to challenge at the administrative hearing before her. The Hearing Officer also found that based on that Judicial Bureau judgment, Mr. Smith was assessed three points correctly, and that a 90 day recall was required by statute.

Mr. Smith then filed this appeal pursuant to 23 V.S.A. § 105(b) and Rule 74; his memorandum on appeal is styled as a "Motion for Post-Conviction Relief." The court treats this case as an appeal under Rule 74. Mr. Smith is not "in custody under sentence" for purposes of 13 V.S.A. § 7131.

Mr. Smith does not deny that Vermont statutes automatically require a 90 day recall after a junior operator is correctly assessed three points following a single speeding violation. Rather, he argues that if he knew that his license would be recalled, then he would have challenged the ticket intending to prove that he was not traveling more than ten miles above the limit. Filings by Mr. Smith's mother reflect her concern that the recall is out of proportion to the seriousness of her son's mistake, does not help to make the episode a learning experience, and impedes her son's ability to help with necessary family driving. She also notes that the points assessment affects insurance rates.

The court does not have the authority to change a result that is mandated by statute. Arguments about the fairness of the recall under these circumstances must be taken up with the Legislature. The court must uphold § 607a(a) as written, and it requires the 90 day recall. The court understands that Mr. Smith might not have actually realized that by waiving a hearing in front of the Judicial Bureau that he would automatically receive the recall. The back side of the citation did not specifically state that a recall results from a three point assessment for a speeding violation by a junior operator, but it did say that "any points and suspension required by law will be imposed." Mr. Smith received his junior operator's license subject to this requirement of the law, and by law, a junior operator's license is recalled in the circumstances of this case.

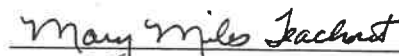
A person who obtains a license holds it subject to all requirements of law, whether or not he or she, as an individual, has a full appreciation of all possible legal consequences of conduct or decisions, such as speeding, or deciding not to contest a speeding ticket. This principle of law applies regardless of the age of the licensee.

In summary, the Hearing Officer issued a correct judgment, and there is no legal basis for changing it on appeal.

**Order**

For the foregoing reasons, the decision of the Hearing Officer is *affirmed*.

Dated at Montpelier, Vermont this 12<sup>th</sup> day of August, 2003.



Mary Miles Teachout  
Superior Judge