

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

JEANNE VASQUEZ-FORSGREN,

Petitioner,

v

File No. 95-13821-AL
HON. PHILIP E. RODGERS, JR.

SECRETARY OF STATE OF THE
STATE OF MICHIGAN,

Respondent.

Robert W. Brott (P11253)
Attorney for Petitioner

Dennis M. Labelle (P24091)
Attorney for Respondent

DECISION AND ORDER

The parties appeared before the Court on the Petitioner's request for restricted driving privileges. The Secretary of State argued that this Court was without authority to grant any relief to the Petitioner. Accordingly, the Court requested that the parties file supplemental briefs. Each party has timely done so and the Court has reviewed the same. The Court dispenses with further oral argument MCR 2.119(E)(3). Based upon the Court's review of the materials submitted to it and for the reasons that will now be described, the Petitioner's request for relief must be denied.

Petitioner pled guilty to OUIL - 3rd Offense in the Thirteenth Circuit Court on September 30, 1991. The undersigned was the Judge who accepted the Petitioner's plea and ultimately sentenced her. As a part of that sentence, the Petitioner's driver's license was revoked for the period that she was on probation. The Petitioner was placed on probation for the maximum statutory period of 60 months.

Accordingly, a conviction was entered consistent with MCL 257.625(6)(d). The conviction was reported to the Secretary of State, and the Secretary of State administratively revoked Defendant's license for a period of five years, i.e., from September 30, 1991, through midnight of September 29, 1996. This revocation was implemented consistent with MCL 257.303(1)(f)(ii) and MCL 257.303(2)(c).

Recognizing that the Petitioner's license was revoked as a result of her plea based conviction to OUIL - 3rd Offense and for so long as she was on probation, Petitioner nevertheless asks this Court to restore her to limited driving privileges prior to the expiration of that five year period. In assessing this request, the Court recognizes that the Petitioner was successfully discharged from probation prior to the termination of five years and with the recognition of considerable improvement.

The relevant statutory provision precludes the Secretary of State from issuing a driver's license to a person convicted of felony drunk driving until both of the following conditions occur:

- (1) the person meets the requirements of the department, and
- (2) the expiration of not less than five years after the date of a subsequent revocation or denial occurring within seven years after the date of any prior revocation or denial.

MCL 257.303(4).

The legislature has precluded the Secretary of State from taking any action with respect to a felony drunk driver's license until the minimum five year period has expired and the person meets the requirements of the department. The question presented by this Petition is whether the Circuit Court has authority to provide limited driving privileges prior to the termination of

the five year period. Towards that end, the Court does not question the limitations on its ability to modify the sentence of another trial court. See, Rodgers v Secretary of State, 159 Mich App 808 (1987), Dudley v Secretary of State, 204 Mich App 152 (1993), Dobrowski v Secretary of State, 201 Mich App 218 (1993). The more interesting argument presented by this Petition recognizes that the Petitioner's license was revoked by the trial court for the period of time that she was on probation, that the original probationary period was 60 months and that the Petitioner has been successfully discharged from probation early due to her substantial improvement and rehabilitation. There is, then, no disability of sentence that acts as a precondition to license restoration.

Michigan law has long recognized that driving is a privilege and not a right and one that is controlled by statute. The ability of the trial court to restore driving privileges is controlled by statutory law. The authority of the trial court to review license suspensions and grant restricted or full driving privileges is found at MCL 257.323. The relevant subsection of MCL 257.323(6) provides as follows:

In reviewing a determination resulting in a denial or revocation under section 303(1)(d), (e), or (f) or section 303(2)(c), (d), (e) or (f), the court shall confine its consideration to a review of the record prepared pursuant to section 322 or the driving record created under section 204a, and shall not grant relief pursuant to subsection (3). The court shall set aside the secretary of state's determination only if the petitioner's substantial rights have been prejudiced because the determination is any of the following:

- (a) In violation of the Constitution of the United States, the state constitution of 1963, or a statute.

- (b) In excess of the secretary of state's statutory authority or jurisdiction.
- (c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
- (d) Not supported by competent, material, and substantial evidence on the whole record.
- (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
- (f) Affected by other substantial and material error of law.

MCL 257.323(6).

Noting that the Petitioner's license was revoked consistent with section 303(1)(f)(ii) and section 303(2)(c), this Court's review is limited to a consideration of the administrative record with regard to the six potential bases for relief identified in MCL 257.323(6). Since the Secretary of State has no authority to issue any form of license relief prior to the expiration of the statutory five year period, the refusal to do so can be neither a determination in excess of the Secretary of State's statutory authority nor an arbitrary capricious, abusive or unwarranted exercise of discretion. No constitutional challenge is raised nor is any procedural defect argued.

It is this Court's conclusion that it has jurisdiction over Plaintiff's Petition only as an appeal from a Secretary of State determination. Since the five year period from the date of her conviction for OUIL - 3rd Offense has not yet expired, and since the Secretary of State is without authority to provide any licensing relief within that five year period, this Court is without legal authority to review action of the Secretary of State which was mandated by the legislature. Whether or not the Petitioner's probation was still in effect, the Secretary of

State is mandated to impose a five year license revocation from the date of conviction and this Court has no authority under MCL 257.323 to review revocations that have their origin in felony drunk driving

convictions prior to the expiration of the five year period.¹

For all of the foregoing reasons, the Petition is dismissed as the Secretary of State is without authority to grant license relief prior to September 29, 1996. While this Court has jurisdiction to review appeals of Secretary of State license determinations in felony drunk driving cases, the refusal to provide licensing relief prior to the expiration of five years is a mandatory obligation imposed upon the Secretary of State by the legislature. Compliance with this obligation can hardly be argued as an abuse of discretion or action in excess of the Secretary of State's statutory authority. No costs are awarded.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____

¹The Secretary of State argues that the conviction and sentence serve as an independent prohibition on the ability of the Court to grant driver's license relief in a felony drunk driving case. Certainly, this Court acknowledges that it lacks the authority to modify the sentence of another judge. Dobrowski says nothing more than that. Ibid 222. Dobrowski does not preclude the sentencing judge from modifying his or her sentence in an appropriate post-judgment procedure. Frankly, the holding in this case makes the Secretary of State's argument moot. Until the five year period expires, the Secretary of State has no discretion with regard to driver's license relief and this Court's review is limited to an administrative record and six bases of relief, none of which can be satisfied.