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

STATE OF DELAWARE,	)
	)
v.	) <b>CPU4-08-000899</b>
	)
JOHN HARVEY MOORE, III,	)
Defendant.	)

Submitted: December 13, 2012 Decided: January 31, 2013

On Defendant's Petition for Restoration of Driving Privileges **DENIED** 

John Harvey Moore, III, 111 Woodstock Drive, Chesapeake City, Maryland, 21915.

Karin M. Volker, Esquire, Deputy Attorney General, Department of Justice, 820 N. French Street, 7<sup>th</sup> Floor, Wilmington, Delaware, 19801. Attorney for the State of Delaware.

## ROCANELLI, J.

By Order dated March 29, 2009, John Harvey Moore, III, was declared an habitual offender and his driving privileges were revoked for five years. Neither the petition nor the Court Order specified under which subsection of 21 *Del. C.* § 2802 Mr. Moore was declared an habitual offender.<sup>1</sup> Mr. Moore had been separately convicted of four serious driving offenses within a five-year period: (1) Driving Under the Influence on January 3, 2008; (2) Driving While Suspended or Revoked on December 15, 2005; (3) Driving

<sup>&</sup>lt;sup>1</sup> Under 21 *Del. C.* § 2802(1), an habitual offender is any person who accumulates three or more of certain serious convictions in a five year period, including vehicular manslaughter; using a motor vehicle during a felony; driving or actual physical control of a motor vehicle while intoxicated; driving without a license; and driving during a period of suspension or revocation. Under 21 *Del. C.* § 2802(2), an habitual offender is any person that accumulates ten or more moving violations within a three year period.

While Suspended or Revoked on June 13, 2006; and (4) No Valid License on September 24, 2008. The Court concludes that Mr. Moore was declared an habitual offender pursuant to 21 *Del. C.* § 2802(1) because the offenses occurred within a five-year period and, per the Court Order dated March 29, 2009, Mr. Moore was prohibited from operating a motor vehicle for five years.

On November 14, 2012, pursuant to 21 *Del. C.* § 2809, Mr. Moore petitioned the Court to restore his driving privileges, and asked that the Court do so without a hearing. Three and a half years had elapsed since the Court Order declaring Mr. Moore an habitual offender. The Attorney General disapproved Mr. Moore's petition. In an effort to demonstrate "good cause," Mr. Moore submitted additional documentation. The Court has agreed to consider this matter without a hearing and will decide whether Mr. Moore has met the statutory requirements of 21 *Del. C.* § 2809 for restoration of his driving privileges.

## **DISCUSSION**

The Legislature has declared that the public policy of the Habitual Offender Statute is to ensure the maximum safety for drivers on Delaware roads, to deny driving privileges to those who jeopardize the safety of others by disobeying traffic laws, and to deter criminal acts by others and impose increased deprivation of privileges for repeat offenders.<sup>2</sup> Restoration of driving privileges is controlled by 21 *Del. C.* § 2809. The statute differentiates between three separate scenarios.

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<sup>&</sup>lt;sup>2</sup> 21 Del. C. § 2801.

The first situation is when a petitioner has been declared an habitual offender under § 2802(1) and five years has elapsed since the declaration as an habitual offender. In *Valerius v. State*, the Delaware Supreme Court affirmed the Superior Court's summary dismissal of a petition for restoration of driving privileges when the five-year mandatory period of suspension had not yet expired.<sup>3</sup> Accordingly, since five years has not elapsed since Mr. Moore was declared an habitual offender under § 2802(1), this subsection of § 2809 does not apply.

The second situation occurs when a petitioner is declared an habitual offender under § 2802(1), three years have elapsed since the Court Order declaring the person an habitual offender, and the Attorney General makes a motion to reinstate the driving privileges.<sup>4</sup> In practice, the Attorney General does not petition to restore an habitual offender's driving privileges. Rather, the habitual offender petitions the Court and the Attorney General states approval or disapproval of the petition. If a petition is filed and the Attorney General approves the petition, then the Court may, in its discretion, restore the driving privileges, but only if "financial responsibility requirements are met" and there is "good cause shown." However, this is not the situation before the Court

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<sup>&</sup>lt;sup>3</sup> *Valerius v. State*, 574 A.2d 855, 856 (Del. 1990) (petitioner had been declared an habitual offender under 21 *Del. C.* § 2802(1) and his license had been revoked for a period of five years).

<sup>&</sup>lt;sup>4</sup> 21 *Del. C.* §§ 2809 (1), (4).

<sup>&</sup>lt;sup>5</sup> 21 *Del. C.* § 2809(4) states in pertinent part that , "No license to operate a motor vehicle in this State shall be issued to an habitual offender nor shall a nonresident habitual offender operate a motor vehicle in this State . . . (4)[u]nless the Attorney General moves the Court for restoration of the privilege to operate a motor vehicle in this State of any person declared to be an habitual offender as defined in § 2802(1) of this title after 3 years from the date of the order of the Court declaring the person to be an habitual offender. In the event of such a motion by the Attorney

because, even though three years has elapsed since Mr. Moore was declared an habitual offender, the Attorney General has disapproved Mr. Moore's petition.

The third situation under § 2809 occurs when a petitioner is declared an habitual offender under § 2802(2) and three years has elapsed since the declaration. In this situation, because the mandatory suspension period of three years has expired, the petitioner does not need the approval of the Attorney General. After the expiration of the three-year threshold, the Court may restore petitioner's driving privileges if "financial responsibility requirements are met" and there is "good cause shown." Because Mr. Moore was declared an habitual offender under § 2802(1) with at least three serious driving convictions within five years and was not declared an habitual offender under § 2802(2) with ten or more driving convictions within a three-year period, this situation is not applicable. Accordingly, Mr. Moore must either wait five years or he must have the approval of the Attorney General because only three years has elapsed.

Because Mr. Moore was declared an habitual offender under § 2802(1), the mandatory five-year suspension period may only be circumvented if, after three years of suspension, the Attorney General makes a motion or approves the petition for restoration. Even though more than three years has elapsed since Mr. Moore was declared an habitual offender, the Attorney General has disapproved Mr. Moore's petition for restoration.

General, the Court may in its discretion restore the driving privileges of the person in whole or in part only if the person also meets the obligations set forth in paragraphs (2) and (3) of this section."

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<sup>&</sup>lt;sup>6</sup> 21 *Del. C.* §§ 2809(1) - (3).

Under these circumstances, the Court will not address Mr. Moore's arguments for good cause.

## CONCLUSION

Because five years has not elapsed since Mr. Moore was declared an habitual offender under § 2802(1) and because the Attorney General has disapproved Mr. Moore's petition, the petition to restore driving privileges is hereby DENIED.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli