

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE NUMBER: BXXXX XXXXX 05992¹
OAL DOCKET NUMBER: M.V.H. 05693-23**

NEW JERSEY MOTOR VEHICLE :

COMMISSION :

v. : FINAL DECISION / ORDER

MICHAEL I. BUSH, III :

The Motor Vehicle Commission (“Commission” or “NJMVC”) hereby determines the matter of the proposed administrative suspension of the New Jersey driving privilege of **MICHAEL I. BUSH, III**, respondent, for driving during a period of suspension on two occasions in violation of N.J.S.A. 39:3-40, N.J.S.A. 39:5-30 and N.J.A.C. 13:19-10.8; noted in the two “Scheduled Suspension Notices” transmitted for consideration in this case. Pursuant to N.J.A.C. 13:19-10.8, respondent’s New Jersey driving privilege is subject to suspension for a period of 180 days for each of those proposed suspension notices. Prior to this final agency determination, I have reviewed and considered the Initial Decision rendered by the Administrative Law Judge (“ALJ”) and the letter of exceptions filed on behalf of respondent in this matter. Based upon an independent and de novo review of the record presented, I shall modify the recommendation of the ALJ as indicated below.

First, with respect to one of the two “Scheduled Suspension Notices” transmitted with this case, a correction must be made. The “SUS S 0340” Notice with “Date Prepared:

¹ This is the corrected Agency Case File Number; the insertion in the Initial Decision is incomplete as it does not reflect this respondent’s redacted driver license number format.

10/18/22” indicates a triggering violation/conviction for “Unlicensed Driver” (“L13 V 0310”) with event date of: 01/30/2021. See, Exhibit P-20. This proposed suspension notice was cancelled on the NJMVC driver history system because there was a traffic summons issued for an operating-while-suspended charge, pursuant to N.J.S.A. 39:3-40, and a subsequent Trenton (“L13”) municipal court adjudication with respect to this January 30, 2021 incident. This proposed administrative suspension notice, thus, was inadvertently transmitted with this OAL case matter; as it had been previously cancelled on the database (as of 10/20/22) due to that confirmed court adjudication of the N.J.S.A. 39:3-40 traffic summons². The court adjudication for that January 30, 2021 summons is reflected on the Exhibit P-23 Driver History printout (line 2); under event date: “01-30-21” (posted 10-20-22) “Not Guilty/Amend Drive While Susp” (“L13 U NGAM”). Accordingly, this Final Agency Decision/Order shall modify the Initial Decision to indicate that there is no administrative suspension action ordered with respect to that cancelled “Scheduled Suspension Notice” (Exhibit P-20).

² As noted in the instructions on the “Scheduled Suspension Notice”: “If you were ticketed for operating while suspended as a result of the above incident, please send proof with your hearing request before the suspension date, as such evidence may cancel this notice.” Here, the court’s transmission of the “not guilty”/amended disposition for this municipal court charge was electronically posted to the NJMVC system on October 20, 2022 and resulted in the cancellation of that Notice (Exhibit P-20), which Notice was inadvertently transmitted for consideration in this OAL case. Further noting that the “Conference Report” (page 1 of 3), Exhibit P-25, transmitted to confirm that a prehearing conference was held on January 10, 2023, pursuant to the governing administrative procedural regulations, N.J.A.C. 13:19-1.2, in an attempt to resolve the matter, reflects that there had been a different notice issued with that same Date Prepared: 10/18/22 (noted on the driver history record as event date 10/17/22). That different notice corresponds to a different “triggering” violation on 1/18/19 for the “L13 V 0329”; “No Lic, Reg or Ins ID in Possession” offense. This separate notice was not included in the transmission for this OAL case.

Next, I will turn to the other proposed administrative suspension notice transmitted for consideration in this OAL case -- the "Scheduled Suspension Notice" with Date Prepared: 10/13/22 (Exhibit P-19), which reflects a triggering violation/conviction for "Obstructing Passage of Other Vehicle" ("L13 V 0467"), with event date: 10/25/2019. The documentary evidence in the record establishes and the respondent does not dispute that he was operating a motor vehicle on that October 25, 2019 date. In his "Exceptions", the respondent's attorney raises, as he did in his closing submission to the ALJ, an argument concerning respondent's assertions that he did not have actual notice (was not aware) of the suspension orders that were in effect on that date.

Respondent's argument is summarized by his attorney's statement that "Mr. Bush was not aware of the reported suspensions set forth by the NJ MVC, by way of missed court dates in Trenton Municipal Court" along with reference to testimony that respondent was "incarcerated in and around this time". In his closing submission to the ALJ, his attorney states that respondent "was incarcerated on and off for over two years spreading over a time period from approximately 2016 through 2019"; "for a 17-month period from 2016 to 2018, and once again from May to November of 2019."³

Based on review of the evidence established in this administrative hearing record and in accordance with the controlling case law, this "lack of notice" argument by

³ It is noted that in looking at the timeframes which the attorney references with respect to incarceration -- in particular the "May to November of 2019" period: the evidence in the record shows that respondent was driving repeatedly during that timeframe as reflected by the court convictions in the Certified Abstract of Driver History Record (Exhibit P-1), for traffic offenses committed on June 29, 2019; July 7, 2019; July 25, 2019; August 4, 2019; October 13, 2019; October 25, 2019 and November 29, 2019.

respondent is without merit and is rejected. Legally sufficient notice of the multiple suspension orders in effect as of that date of operation – October 25, 2019 -- is clearly established by the preponderance of the competent and credible evidence in the hearing record by the proofs of mailing of the NJMVC notices and orders to the driver's last address of record as provided by him to the Commission.⁴

There were a total of 15 separate notices and orders mailed to respondent at his official address of record provided to the Commission, informing respondent that his driving privilege was in suspended status for 9 separate specified reasons (with those notices also referencing that he was subject to other outstanding driving suspensions as well); beginning on November 27, 2018 and only having been restored on August 16, 2022. See, Exhibits P-2 through P-14 and P-16, P-17. These NJMVC notices and orders, with corresponding Certifications of Mailing showing they were mailed to respondent's address of record with the Commission, prior to the triggering October 25, 2019 violation date, unquestionably establish that legally sufficient proof of notice of respondent's suspension status was provided under the controlling case law.

This Final Decision shall once again confirm that, under the controlling case of State v. Wenof, 102 N.J. Super. 370, 376 (Law Div. 1968), *overruled on a jurisdictional question* (but not on the notice requirements) by State v. Ferrier, 294 N.J. Super. 198 (App. Div. 1996), *certif. denied* 148 N.J. 461 (1997), actual receipt of the notice is not required to meet the due process notice requirement contained in N.J.S.A. 39:5-30. As

⁴ The respondent's address of record has not been changed; it has remained the same address throughout the pertinent timeframe from November 13, 2018 to the current date. See, Exhibit P-24.

the Wenof court cautioned, “[i]f such requirement [of actual notice] existed the scofflaw would have it in his power to thwart the revocation proceedings.” Ibid. The Wenof decision held that legally sufficient notice is provided when the notice was sent through ordinary mail to the last address of record provided by the driver, as this is “reasonably calculated to reach the intended part[y].” Id. at 375-376. As amply established by the documentary evidence in the record, this is what was done here. Moreover, it is what was done here with regard to each of the 15 suspension notices/orders noted in the above discussion. See, Exhibits P-2 through P-14 and P-16, P-17. Thus, under the controlling case law, the mailing of these notices to the address of record as provided by respondent to the Commission constituted legally sufficient notice of those suspensions.

Moreover, even though there is not a requirement to prove “actual” notice under the controlling case law noted above, this record also clearly refutes respondent’s claim that he did not know/ have actual notice that he was suspended at that time. Indeed, he was given tickets for “operating while suspended” pursuant to N.J.S.A. 39:3-40 by the law enforcement officers on ten separate occasions during the timeframe of the subject suspension period. See, Exhibit P-23 (lines 15-24); reflecting the event dates of those summonses ranging from December 18, 2018 to October 13, 2019. Most notably, respondent was issued the October 13, 2019⁵ “operating while suspended” ticket, just 12 days prior to the October 25, 2019 date for which this NJMVC administrative “operating while suspended” action is proposed. His claims to having not been aware that he was

⁵ The Certified Abstract of Driver History Record, Exhibit P-1, establishes that respondent was convicted of two Careless Driving offenses on that October 13, 2019 date; the “operating while suspended” ticket court disposition was a “not guilty/amended” disposition. See, Exhibit P-23 (line 15).

in suspended status on October 25, 2019 simply do not square with the documentary evidence in this hearing record; and would, nonetheless, not serve to provide a defense in light of the abundant evidence in this hearing record of legally sufficient notice having been provided. Accordingly, I conclude, as the ALJ also had, that the Commission met its burden of proof to establish that respondent committed an operating-while-suspended offense on October 25, 2019.

In turning next to consideration of the appropriate administrative sanction to impose based on a weighing of aggravating and mitigating circumstances, the ALJ ultimately recommended a reduced suspension term noting that “[r]espondent’s entire driving abstract reflects only ten points from 2015 until present, few moving violations, and no violations over two years.” Initial Decision at 6. Further stating that “while I recognize that having his driving privileges suspended for any period of time will have a negative impact upon respondent and perhaps his family, I am not persuaded that imposing ‘some’ suspension of his driving privileges is not appropriate based upon the number of times in the past he has been administratively suspended, failed to appear, and been ticketed as an unlicensed driver.” Ibid.

Evaluating this record on a de novo basis to determine the appropriate remedial sanction that should be imposed in this matter, I must balance respondent’s need for his driving privileges against the public’s interest in ensuring public safety on its roadways. In reviewing the totality of the circumstances of this matter including respondent’s overall driving record and the mitigating factors present, I conclude that the proposed suspension term shall be reduced from the 180-day term indicated on the standard “Scheduled Suspension Notice” (SUS S 0340). However, it is the Commission’s judgment that it is

clear on this record that there is still a need for some period of suspension for the purposes of reforming this respondent's driving behavior. I concur with the ALJ's assessment that some period of suspension is needed as an appropriate remedial sanction, one to drive home to respondent the absolute necessity that he comply with all administrative notices and orders, along with those of the municipal courts, as well as comply with all motor vehicle and traffic laws.

As for the mitigating factors in the particular circumstances of this case, I note that respondent: has shown some recent improvement in driving behavior as he did not commit any traffic violations for the one-year period following his restoration on August 16, 2022 earning an "annual safe driving point credit (-3)"⁶; and in the eight years of driving history reflected in his record, has not had a "points" regulation suspension; and also has not had a "persistent violator" suspension; and respondent did resolve each of the outstanding "failure to appear" matters and each of the outstanding payment-related matters and obtained official restoration of his privileges (noting that the Trenton municipal court did not order any suspensions for any of those subject underlying outstanding traffic summonses when entering its court dispositions.)⁷

Despite the mitigation noted, it remains that driving while suspended is a serious matter – respondent should not have been driving on October 25, 2019, when he had not

⁶ Respondent's current cumulative point total is seven points.

⁷ It is also noted that subsequent Legislative action, L. 2019, c. 276, §20, was taken, which repealed N.J.S.A. 2B-12-31 and thereby eliminated the authority for municipal courts to initiate driver's license suspensions for the "failures to appear" for non-parking violations; and the New Jersey Supreme Court issued its conforming Order (dated December 11, 2020) which relaxed and supplemented N.J. Court Rule 7:8-9(b) ("Driving Privileges; Report to Motor Vehicle Commission"), taking effect as of January 1, 2021.

taken the appropriate steps to keep his driving privileges in good standing. Consequently, in my judgment, based on a de novo review of the record, this driver's behavior is in need of reform and a period of suspension is needed to reinforce his need to comply with the governing motor vehicle laws and regulations, as well as court and Commission notices/orders.

While I am cognizant of the hardship that respondent may suffer as a result of his New Jersey driving privilege being suspended, respondent must nevertheless appreciate the responsibility that he owes to the public under the motor vehicle laws. Motor vehicle license suspensions are primarily intended to protect the safety of the public by temporarily removing offenders from the highways of New Jersey. David v. Strelecki, 51 N.J. 563, 566 (1968); Cresse v. Parsekian, 43 N.J. 326, 328-29 (1964). Moreover, respondent is reminded that the operation of a motor vehicle on New Jersey roads is a privilege, not a right. State v. Nunez, 139 N.J. Super. 28, 30 (Law Div. 1976); State v. Kabayama, 94 N.J. Super. 78, 82-83 (Law Div.), aff'd, 98 N.J. Super. 85 (App. Div. 1967), aff'd, 52 N.J. 507 (1968). A period of suspension of sixty (60) days is both warranted and reasonable in the present case when public safety is balanced against respondent's need to maintain his driving privilege. The Commission notes that respondent's suspension is intended to be rehabilitative rather than punitive in nature. Accordingly, the ALJ's recommended sanction is modified.

Based on the foregoing, it is, therefore, on this 11th day of March 2024, with respect to the notice of proposed suspension with event date: 10/12/22 (SUS S 0340):

ORDERED that the New Jersey driving privilege of **MICHAEL I. BUSH, III** be suspended for a period of sixty (60) days for having driven during a period of suspension on October 25, 2019.

NOTE: The **effective date** of this suspension is set forth in the enclosed copy of the "Order of Suspension."

A handwritten signature in black ink, appearing to read "Latrecia Littles-Floyd".

Latrecia Littles-Floyd

Acting Chair and Chief Administrator

LLF/kw

cc: Robert B. Rogers, Esq. (via fax and mail)

Enclosure: copy of Order of Suspension (suspension effective 3/31/2024)* - this Order also previously mailed separately on 3/11/24 to both the respondent and his attorney)