

DIVISION OF MOTOR VEHICLES,
Petitioner,
v.
HAROLD KATZ,
Respondent.

Decided August 11, 1981

Initial Decision

SYNOPSIS

Licensee contested a one-month suspension of his driving privileges for an accumulation of 15 points as determined by *N.J.S.A.* 39:5-30.3 and *N.J.A.C.* 13:19-10.2. The licensee argued that the present point accumulation statute was an *ex post facto* law subjecting his entire driving record, even that portion prior to the statute's enactment in 1977, to scrutiny.

The administrative law judge rejected licensee's argument finding that the licensee had been given clear notice that his driving record since 1975 would be taken into account and that he had been given an adequate opportunity to be heard.

Accordingly, the judge ordered a one-month suspension of licensee's driving privileges.

OSPENSON, ALJ:

This matter concerns a proposed one-month suspension of the driving privileges of Harold Katz by the Director of the Division of Motor Vehicles for an accumulation of 15 points under the Point Regulation System set forth in *N.J.S.A.* 39:5-30.3 and *N.J.A.C.* 13:19-10.2.

A Notice of Proposed Suspension to that effect was issued to licensee on November 8, 1980 and licensee requested a hearing. The matter was transmitted to the Office of Administrative Law on March 19, 1981 for hearing and determination as a contested case pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

At the hearing the licensee acknowledged receipt of the notice of proposed suspension and the authenticity of a copy of his driving record.

Licensee argued preliminarily that the present point accumulation system in *N.J.S.A.* 39:5-30.3 (as amended by *L. 1977, c. 27*, effective

February 24, 1977) is an unconstitutional *ex post facto* law. The licensee argued that it subjects his entire driving record, even that beyond a three-year period beginning in 1977, to scrutiny by the Director and thus, subjected licensee to greater administrative penalties for a total point accumulation in excess of 12 points both before and after 1977. If 1977 were used as a starting point, licensee argued, his point accumulation since then would be only an inoffensive seven points. If pre-1977 point accumulation is counted, he argued alternatively, then by constitutional fairness he should be accorded three point credits for each prior year he incurred no points against his driving record.

It should be noted, however, that *L. 1977, c. 27*, provides:

The record of points assessed against every driver for violations occurring prior to the effective date of this Act, shall be reduced by six points, provided his record shall not have been assessed any points during the year immediately preceding the effective date of this Act. If said driver has been assessed less than six points, his record of points shall be expunged.

One notes from the licensee's driving record, that he was assessed four points for conviction of speeding in municipal court on August 1, 1976, a time less than six months before the effective date of the amendatory legislation on February 24, 1977. Thus, though licensee might otherwise have been entitled to partial expungement of his 1977 total point accumulation, the most recent point assessment in 1976, before 1977, disqualified him therefrom.

In *State v. Phillips*, 154 *N.J. Super.* 112 (*Law Div.* 1977), *aff'd*, 169 *N.J. Super.* 452 (*App. Div.* 1979), the court upheld, against claims of violation of the *ex post fact* provisions of the Federal and State constitutions, the subsequent offender provisions of *N.J.S.A.* 39:4-50, by reason of convictions under the statute prior to amendment by *L. 1977, c. 29*. Subsequent offender provisions such as in the amendatory statute, said the court, did not undertake to punish again for prior offenses. The prior offense merely provided a background to be considered in sentencing for a subsequent offense. The gravity of the punishment is increased by persistence of a defendant in unlawful conduct that brings him into a class established by law as deserving and requiring a more severe punishment and restraint than he would otherwise receive. *Phillips, supra*, at 119-20. *Cf.*, *Williams v. Sills*, 55 *N.J.* 178, 186 (1970) (financial responsibility enactments are not bills of attainder); *Bechler v. Parsekian*, 36 *N.J.* 242, 254 (1961) (Division's

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licensee reexamination policies satisfy due process and equal protection clauses of the constitution if, in administration, the Division acts fairly, without invidious discrimination and in accordance with notice and fair procedures).

And so, by a parity of reasoning, the administration of the amended point regulation system withstands constitutional attack here. The licensee was clearly notified that his driving record since 1975 would be taken into consideration. He was given notice of the hearing and the opportunity to be heard. He acquired no vested rights to expungement of point accumulations from his driving record before 1977. He did not qualify for partial expungement in view of the August 1976 conviction. He was, on this record, treated no differently from others in his class and therefore was not treated invidiously. He was singled out for proposed administrative sanction not for pre-1977 point accumulations, but for his persistence in violations that saw his accumulation before and since 1977 exceed 12 points and indeed reach the level of 15 points in September 1980, even after he was accorded a three-point reduction in August of that year.

In his testimony, licensee said he operates two residential health care facilities, one in East Orange and one in Newark. He needs his car to attend to these functions and is on call both day and night. There is no public transportation, he said, between his residence and his two places of business, which are facilities, he said, licensed by the State of New Jersey.

In respect of a speeding violation licensee incurred in November 1978 in Florida, he said he was victim of a speed trap to catch out-of-state motorists. He said the same situation existed when he was convicted in Tuxedo, New York in June 1977. In both instances, he said, he pleaded guilty because of inconvenience in defending the charges and because he was not made aware that convictions out-of-state would involve assessment of points against his driving record in New Jersey. Had he known of that consequence, he assured the court, he would have defended both charges. I do not credit such assertions. *See, N.J.S.A. 39:5D-1 et seq.*

Licensee's record suggests that he may be prone to speeding (there are seven speeding violations on his driving record) and as such, represents a danger not only to himself but to others on the highway. Under the circumstances, therefore, I feel that a suspensory period of one month is both reasonable, rehabilitative and necessary for protection of the public.

Accordingly, based on the testimony adduced and the records in

evidence before me, I **FIND** that the suspension proposed by the Director of the Division of Motor Vehicles should be and is hereby **SUSTAINED**. For the reasons stated hereinabove, I **REJECT** licensee's arguments attacking the constitutional sufficiency of *N.J.S.A.* 39:5-30.3 and *N.J.A.C.* 13:19-10.2 *et seq.*

**After reviewing this Initial Decision the
Division of Motor Vehicles on
September 21, 1981 issued the following Final Decision:**

The Division of Motor Vehicles hereby determines the matter concerning the proposed suspension of the driving privileges of Harold Katz, who committed a point-system violation. Prior to this final determination, I have reviewed the administrative law judge's initial decision and the exceptions filed by the licensee. Based upon the record presented, I affirm the administrative law judge's initial decision.

In affirming the period of suspension imposed by the administrative law judge, I have considered respondent's contentions in his exceptions regarding attendance in the Division's Driver Improvement School Program in lieu of license suspension and his need for his license, and I find them to be without merit. I note that he was already attended school in 1977. I have reviewed respondent's remaining exceptions, and I also find them equally without merit.

It is, therefore, on this 21st day of September, 1981, **ORDERED** that the driving privileges of Harold Katz be and the same are hereby suspended for a period of one month.