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Division of Motor Vehicles v. Dignes  
Cite as 5 *N.J.A.R.* 182

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**DIVISION OF MOTOR VEHICLES,**  
Petitioner,  
v.  
**SCOTT L. DIGNES,**  
Respondent.

Decided May 27, 1982

**Initial Decision**

**SYNOPSIS**

The Division of Motor Vehicles sought to suspend the respondent's New Jersey Driver License for 60 days, pursuant to the Interstate Driver License Compact, *N.J.S.A.* 39:50-1, because he had been convicted in New York State for driving there while under the influence of intoxicating liquor.

The administrative law judge assigned to the case found that the penalty imposed upon the licensee in New York was a conditional discharge with mandatory attendance at a drinking-driving program. At the same time the minimum mandatory period of suspension in New Jersey for a first offense of operating a motor vehicle while under the influence of liquor was a 60 day license suspension. The administrative law judge rejected the respondent's argument that he had paid the penalty imposed by New York and that New Jersey should not impose a greater penalty.

The judge noted that New Jersey courts have consistently declared that drinking-driving offenses involve extraordinary danger of injury and should receive strict penalties. In addition, the statute was clear in providing for a choice between the suspension penalty imposed by the foreign state and the suspension mandated by the home state. In this case, no such choice was available because there was no suspension in the foreign state. The judge also concluded that on the basis of the statute, the law of the home state should be applied by the home state to citizens who commit violations in other states.

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**SAMUELS, ALJ:**

This matter concerns a proposed 60 day suspension of respondent's driving privileges based upon enforcement by the Division of Motor Vehicles of the Driver License Compact, *N.J.S.A.* 39:5D-1 *et seq.* That

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statute is the New Jersey enactment of a reciprocal arrangement between participating states following convictions for certain motor vehicle related offenses or violations.

On August 12, 1981, the New Jersey Division of Motor Vehicles notified the respondent (a New Jersey resident) that his New Jersey driver's license would be suspended for 60 days pursuant to the compact (*N.J.S.A.* 39:5D-4(a)), because he had been convicted in New York State for driving there while under the influence of intoxicating liquor. New York is a party state to the compact. *See, New York Vehicle and Traffic Law. §516.*

Upon receipt of Mr. Dignes's request for a hearing, the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

The respondent, Scott L. Dignes, testified in his own behalf. He stated that he was arrested in Troy, New York, on February 22, 1981 for driving while his ability was impaired by alcohol, a violation of §1192-1 of the *New York Vehicle and Traffic Law*. A judgment of conviction was entered on June 5, 1981. The penalty imposed upon him by the Police Court of the City of Troy, New York, was a Conditional Discharge and he was ordered to attend a drinking-driving program. No license suspension was imposed. In order to comply with the educational requirement, Mr. Dignes completed a New Jersey Bureau of Alcohol Countermeasures Program in September 1981. New York reported the violation to New Jersey under the compact. The Division of Motor Vehicles proposed the 60 day license suspension because at that time that was the minimum mandatory period of suspension in New Jersey for a first offense of operating a motor vehicle while under the influence of liquor. *N.J.S.A.* 39:4-50.

All of the foregoing is found to be **FACT**.

The respondent argued that he paid the penalty imposed by New York (Conditional Discharge) and that New Jersey should not impose a greater penalty under the reciprocity statute.

Mr. Dignes was given the opportunity to address the legal issue involved (application by New Jersey of the pertinent provisions of the compact statute (*N.J.S.A.* 39:5D-4(a) (2)) by means of a posthearing submission. On May 19, 1982 an attorney, Andrew W. Kleppe, Esq., filed a letter memorandum on behalf of the respondent. He argued that since *N.J.S.A.* 39:5D-4(a) optionally permits the New Jersey Court to apply the penalty of the foreign state or that of New Jersey, the lesser New York penalty should be assessed here. The respondent submitted that the New York approach of using a discretionary Con-

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ditional Discharge instead of a mandatory suspension was well thought out and considerate of the circumstances of each individual case. Counsel also stated that it would be against the spirit of the compact and basically unfair to allow the harsher, non-discretionary, New Jersey suspension to be applied.

*N.J.S.A.* 39:5D-4. Effect of Conviction

- (a) The licensing authority in the home State, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home State, shall apply the penalties of the home State or of the State in which the violation occurred, in the case of convictions for:
- (2) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

At first glance it seems that, in penalizing the offender in his home state (New Jersey) under the compact, the court has the option or discretion to apply the New Jersey penalties or the New York penalties. On the other hand, the statute seems to contradict such a permitted option by saying that the home State "shall give the same effect to the conduct. . . as it would if such conduct had occurred in the home state."

The respondent, naturally, would prefer that New Jersey give him a Conditional Discharge, as New York did, instead of the mandatory period of suspension required by the New Jersey drunk-driving statute.

A Conditional Discharge can be granted in New Jersey to certain first offenders in drug cases. After fulfillment of a term of supervisory treatments, the proceedings are dismissed without any determination of guilt, and it is not deemed to be a conviction. *N.J.S.A.* 24:21-27. A similar program, called Pretrial Intervention, is extended to certain persons charged with criminal offenses (mostly first offenders). This also involves a period of supervisory treatment followed by dismissal without prosecution. *N.J.S.A.* 2C:43-12 *et seq.*

There is no provision for any form of Conditional Discharge in the New Jersey laws relating to driving while intoxicated. *N.J.S.A.* 39:4-50. On the contrary, the public policy of this State has continually emphasized the punitive and deterrent need to remove the intoxicated driver from the road, in addition to the imposition of educational and

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monetary penalties. *See, State v. Phillips*, 154 *N.J. Super.* 112, 118 (Law Div. 1977), *aff'd*, 169 *N.J. Super.* 425 (App. Div. 1979).

In *Atkinson v. Parsekian*, 37 *N.J.* 143, 155 (1962) the Supreme Court stated:

When the Director exercises his administrative authority under *N.J.S.A.* 39:5-30 he determines that a law of the highway has been violated and that the highway would be a safer place for the public if the violator were removed as a driver for some period of time.

Further evidence of the strict New Jersey attitude towards the drunken driver can be gleaned from the recent amendment of the statute, *N.J.S.A.* 39:4-50, which increased the minimum mandatory period of license suspension for convicted first offenders from 60 days to six months. The amendment also retained the multi-tiered penalty approach used in previous versions. The minimum mandatory fine has been increased, and a violator is also required to perform community service for 30 days. *N.J.S.A.* 39:4-50, *P.L.* 1981, Ch. 537, approved January 12, 1982.

The New Jersey courts have consistently declared that the operation of a motor vehicle while under the influence of intoxicating liquor involves extraordinary danger of injury to the driver or other members of the public or damage to their property. *State v. Gillespi*, 100 *N.J. Super.* 71 (App. Div. 1968). Stricter penalties have always been favored, rather than the more forgiving attitude of some other states.

The foregoing clearly leads to a conclusion that—if an option is to be exercised on a discretionary basis as to whether to apply the New York Conditional Discharge or the New Jersey suspension—the public policy of New Jersey clearly favors the stricter penalty. *See, Sutherland Statutory Construction*, 4th Ed., §45.09.

In *Camden and Amboy R.R. v. Briggs*, 22 *N.J.L.* 623, 644 (E. & A. 1850) the court stated that statutes “intended for the public benefit are to be taken most strongly against the persons . . . claiming rights or power under them, and most favorably for the public.”

Notwithstanding the foregoing, a closer analysis of the compact statute, *N.J.S.A.* 39:5D-4(a), compels the same conclusion for other reasons: the words “for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle” define the use for which this section of the statute is intended. It deals only with the subject of suspension, revocation or limitation of the license. It does not deal with monetary fines, driver-improvement courses, com-

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munity service or conditional discharge. It stands to reason that, even if there is an option available to the court, as to which penalty to use, that option involves a choice between the suspension penalty imposed by the foreign state and the suspension mandated by the home state. In this case, no such choice is available because there was no suspension in the foreign state. The New Jersey suspension provision is the only one in existence.

Furthermore, in attempting to resolve the apparent contradiction between the mandate of the statute, which provides for the home state to "give the same effect to the conduct. . . as it would if such conduct had occurred in the home State" and the "option" referred to above, an interpretation of the expressed intent of the whole statute and its essential purpose compels a finding that the law of the home state should be applied by the home state to its citizens who commit violations in other states. *See, Sutherland, supra*, §46.03 and 54.01.

This view is supported by a review of the statutes of the 28 other states that are parties to the Driver License Compact. The option to "apply the penalties of the home or of the State in which the violation occurred" is absent from all of them. *See e.g., Ala. Code* §32-6-31, Article IV; *New York Vehicle and Traffic Law*, §516, Article 4; *Va. Code* §46.1-167.8, Article IV.

It should also be noted that the New York offense of driving while ability is impaired by alcohol, *New York Vehicle and Traffic Law*, §1192-1, is an offense or violation substantially similar in nature to operation of a motor vehicle while under the influence of intoxicating liquor, pursuant to *N.J.S.A.* 39:4-50. Therefore, full force and effect can be given to the Driver License Compact in this case. *See, N.J.S.A.* 39:5D-4(c).

Based upon the foregoing, it is **CONCLUDED** that, because of his conviction in New York State, *N.J.S.A.* 39:5D.4(a) (2) should be invoked against the respondent. The same effect should be given to his conduct as if it had occurred in New Jersey, and the appropriate license suspension penalty of New Jersey should be applied.

It is therefore **ORDERED** that the New Jersey driving privileges of Scott L. Dignes be suspended for 60 days. (This is consistent with the petitioner's proposed term of suspension and the minimum mandatory suspension penalty set forth in *N.J.S.A.* 39:4-50 at the time the offense was committed.)

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**After reviewing this Initial Decision,  
the Division of Motor Vehicles on May 27, 1982 issued  
the following Final Decision:**

The Division of Motor Vehicles hereby determines the matter concerning the proposed suspension of the driving privileges of Scott L. Dignes, as a result of his conviction in the State of New York, an interstate compact member state, for operating a motor vehicle while impaired by the consumption of alcohol, pursuant to the authority contained in *N.J.S.A.* 39:5D-4(a) (2). 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.

I have reviewed respondent's exceptions and I find that the issues raised therein were amply dealt with in the administrative law judge's initial decision. I also find that these exceptions are devoid of merit, and I reject the same.

It is, therefore, on this 15 day of *July*, 1982, **ORDERED** that the driving privileges of Scott L. Dignes be and the same are hereby suspended for a period of 60 days.