

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

<b>ROBERT EARL APPLING,</b> <b>Petitioner,</b>	:	
	:	<b>Docket No.</b>
	:	<b>OSAH-DDS-LPD-1232100-38-Brown</b>
<b>v.</b>	:	
	:	<b>Driver's License No. [REDACTED]</b>
<b>DEPARTMENT OF DRIVER SERVICES,</b>	:	
<b>Respondent.</b>	:	

**FINAL DECISION**

**I. Introduction**

Petitioner appeals Respondent's issuance of an administrative revocation of Petitioner's Limited Driving Permit (LDP) pursuant to O.C.G.A. § 40-5-64(h). This hearing was held at the Office of State Administrative Hearings in Atlanta, Georgia on May 29, 2012. Present at this hearing were Petitioner, Mr. Robert Earl Appling, *pro se*, and Respondent, Department of Driver Services, represented by Vikki Judd, Attorney. For the reasons indicated below, Respondent's action is **AFFIRMED**.

**II. Findings of Fact**

1.

Petitioner was arrested for driving under the influence (DUI) in Hall County on October 25, 2009. On April 4, 2011, the arresting officer was not present at Petitioner's subsequent Administrative License Suspension (ALS) hearing, and the suspension of his driver's license was therefore rescinded (until the time of his DUI criminal trial). Consequently, Petitioner was able to drive at the conclusion of the ALS. (Test. Pet'r; Resp't).

2.

Subsequently, Petitioner was convicted of DUI on February 3, 2011. As a consequence of his criminal conviction, Petitioner's driver's license was suspended, pursuant to O.C.G.A. § 40-5-63. (Test. Resp't).

3.

On April 5, 2011, Petitioner applied for and received a limited driving permit (LDP) in accordance with O.C.G.A. § 40-5-64. Petitioner's signature is found on the signature line establishing applicant affirmation. The application cites "DUI First" as type of suspension. (Ex. R-3).

4.

Petitioner's Limited Driving Permit was approved for going "To and from work, school, medical." The Standards for Approval of the LDP were based on the Petitioner's affirmation that failure to issue the LDP would cause "extreme hardship." (Ex. R-3).

5.

On May 5, 2011, Petitioner was cited for speeding (60 mph in a 45mph zone) in Coweta County in accordance with O.C.G.A. § 40-6-181. Petitioner did not contest the speeding violation, and in fact, pled Nolo Contendere in Coweta State Court on April 2, 2012. (Test. Pet'r; Ex. R-1).

6.

Petitioner contests the revocation of his driver's license due to dismissal of his Administrative License Suspension hearing on April 4, 2011. Petitioner also contests the constitutionality of the revocation of his limited driving permit alleging double jeopardy violations. Lastly, Petitioner contests that his plea of nolo contendere to speeding is not an admission of guilt and thus not subject to a licensure revocation. (Test. Pet'r.).

### **III. Conclusions of Law**

1.

"[A]ny person who has not been previously convicted or adjudicated delinquent for a violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, may apply for a limited driving permit when and only when that person's driver's license has been suspended." (O.C.G.A. § 40-5-64(a)(1)).

2.

Respondent is authorized to revoke Petitioner's LDP upon a "conviction of violating any state law or local ordinance relating to the movement of vehicles or any permittee who is convicted of violating the conditions endorsed on his or her permit shall have his or her permit revoked by the department." (O.C.G.A. § 40-5-64(g)(1)).

3.

Petitioner was cited for speeding in Coweta County on May 5, 2011 (Citation: 00000109430). Petitioner was driving 60 M.P.H. in a zone marked 45 M.P.H. and pled Nolo Contendere to the charge on April 2, 2012. (Test. Pet'r; Ex. R-1).

4.

Petitioner alleges a violation of his constitutional rights citing "double jeopardy." Petitioner cites *Nolen v. State*, 218 Ga. App. 819, 463 S.E.2d 504 (1995) to support his argument that double jeopardy attached when he was found guilty of DUI after the driver's license suspension had been rescinded at his ALS hearing. However, in *Nolen* the Georgia Court of Appeals held that "administrative driver's license suspension was neither punishment nor prosecution for purposes of double jeopardy." (*Id.*).

5.

"The right [to drive on the roads of this state] is not absolute, but is a privilege given to all qualified persons upon compliance with the requirements and, while it cannot be revoked without reason, it can be constitutionally revoked or suspended for any cause having to do with public safety." (*Nelson v. State*, 87 Ga. App. 644, 648, 75 S.E.2d 39, 42-43 (1953)).

6.

Petitioner also argued that his plea of Nolo Contendere in his speeding violation case is not a "conviction" and therefore he has not been "convicted of violating any state law or local ordinance relating to the movement of vehicles," and consequently, his LDP should not be revoked. In addition, according to O.C.G.A. § 17-7-95(c), his plea of nolo contendere cannot be used against him in any other court or proceeding as an admission of guilt.

7.

Petitioner's reliance on O.C.G.A. § 17-7-95 is misplaced, as O.C.G.A. § 17-7-95 is part of the criminal code in Georgia, regarding criminal procedure, and specifically, the plea of nolo contendere in noncapital felony cases. The revocation of Petitioner's LDP is not a noncapital felony case. Respondent is seeking to revoke Petitioner's LDP based on the Georgia statute regarding Motor Vehicles and Traffic, and specifically, Driver's Licenses.

8.

In this case, Respondent bases its revocation of Petitioner's LDP on O.C.G.A. § 40-5-64(g)(1)(A) which says that "any permittee who is convicted of violating any state law or local ordinance relating to the movement of vehicles or any permittee who is convicted of violating the conditions endorsed on his or her permit shall have his or her permit revoked by the department."

9.

The word "Conviction" is defined in O.C.G.A. § 40-5-1(6) as follows: "Conviction" means a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a traffic violation charge, regardless of whether the sentence is suspended, probated, or rebated."

10.

Petitioner paid a fine of \$173.00 on April 3, 2012 for the speeding violation, and therefore has a "conviction" according to O.C.G.A. § 40-5-64(g)(1)(A). Respondent has properly, therefore, revoked Petitioner's Limited Driving Permit," as Petitioner was convicted of violating a state law relating to the movement of vehicles. (See, Ex. R-1)

11.

Based on the foregoing, the Administrative Law Judge concludes that Respondent is authorized to revoke Petitioner's LDP in accordance with O.C.G.A. § 40-5-64(g)(1)(A).

#### **IV. Decision**

Based on the evidence presented at the May 29, 2012, hearing, **IT IS HEREBY ORDERED** that the revocation of Petitioner's Limited Driving Permit is **AFFIRMED**.

This 18th day of June, 2012.

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**BARBARA BROWN**  
**ADMINISTRATIVE LAW JUDGE**