

SUPREME COURT OF FLORIDA

Lescher v. Florida Department of Highway Safety and Motor Vehicles

985 So. 2d 1078 (Fla. 2008) · No. No. SC07-32 · Decided July 3, 2008

SUMMARY

The Supreme Court of Florida held that eliminating hardship-license eligibility for individuals whose driver's licenses were permanently revoked after four DUI convictions did not violate the prohibition against ex post facto laws. Applying the Hudson v. United States factors, the court concluded that the license-revocation and hardship-license provisions were civil and regulatory rather than criminal punishment. The court answered the certified question in the negative and approved the Fourth District Court of Appeal's decision.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Cantero, J.; Wells, J.; Pariente, J.; Lewis, J.; Bell, J.; Quince, C.J.; Anstead, J.
JURISDICTION	Florida
DECIDED	July 3, 2008
DOCKET	No. SC07-32
DISPOSITION	approved
PROCEDURAL POSTURE	Petition for review of a Fourth District Court of Appeal decision denying certiorari and finding no ex post facto violation; the Fourth District certified a question of great public importance concerning the retroactive application of the statutory elimination of hardship driver's licenses.
STANDARD OF REVIEW	The court applied the Hudson v. United States statutory-construction and seven-factor framework to determine whether the challenged provisions were civil regulatory measures or criminal punishment for ex post facto purposes.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; binding precedent in Florida.

PARTIES

James Lescher v. Florida Department of Highway Safety and Motor Vehicles

TOPICS

ex post facto constitutional law statutory interpretation administrative law appellate jurisdiction

PRACTICE AREAS

constitutional law administrative law motor vehicle licensing appellate procedure

QUESTIONS PRESENTED

1. Whether the amendment eliminating hardship driver's licenses for persons whose licenses were permanently revoked after four DUI convictions violates the prohibition against ex post facto laws when applied to a person who could have applied for a hardship license before the amendment became effective.
2. Whether permanent driver's-license revocation and the unavailability of a hardship license under sections 322.28(2)(e) and 322.271(4), Florida Statutes, constitute criminal punishment rather than civil regulatory measures.

HOLDINGS

1. The ex post facto prohibition applies only to criminal or penal provisions; it does not invalidate a retrospective change that operates within a civil regulatory licensing scheme.
2. Permanent revocation of a driver's license after four DUI convictions and the elimination of eligibility for a hardship license are civil regulatory measures, not criminal punishment.

KEY QUOTATIONS

"It is apparent that in chapter 322 the Legislature intended not to punish but to protect the public through a regulatory regime governing driver's licenses." (at 1082)

"We therefore conclude, as did the Fourth District, that "the amendment eliminating the hardship license, when applied to petitioner, is not unconstitutional as an ex post facto law."" (at 1086)

FACTUAL BACKGROUND

Lescher was convicted of DUI four times, in 1979, 1983, 1991, and 2000, resulting in permanent revocation of his driver's license under section 322.28(2)(e), Florida Statutes. Under the law previously in effect, drivers with four DUI convictions could petition for a hardship license after five years, but a statutory amendment eliminated that eligibility. Lescher petitioned for a hardship license in 2005, and the Department denied the petition because the statute then in effect made him ineligible.

PROCEDURAL HISTORY

After the Department denied Lescher's petition for a hardship driver's license, the circuit court denied his petition for writ of certiorari. The Fourth District Court of Appeal denied relief, found no ex post facto violation, and certified a question of great public importance. The Supreme Court of Florida granted review and answered the certified question in the negative.

DISPOSITION

approved

CASES CITED

- Hudson v. United States, 522 U.S. 93 (1997)
- Florida Department of Highway Safety & Motor Vehicles v. Critchfield, 842 So. 2d 782 (Fla. 2003)
- Lescher v. Department of Highway Safety & Motor Vehicles, 946 So. 2d 1140 (Fla. 4th DCA 2006)
- Lescher v. Department of Highway Safety & Motor Vehicles, 949 So. 2d 198 (Fla. 2007)
- Collins v. Youngblood, 497 U.S. 37 (1990)
- California Department of Corrections v. Morales, 514 U.S. 499 (1995)
- Goad v. Florida Department of Corrections, 845 So. 2d 880 (Fla. 2003)
- United States v. Ward, 448 U.S. 242 (1980)
- Flemming v. Nestor, 363 U.S. 603 (1960)
- Allen v. Illinois, 478 U.S. 364 (1986)
- Smith v. Doe, 538 U.S. 84 (2003)
- United States v. Halper, 490 U.S. 435 (1989)
- Brewer v. Kimel, 256 F.3d 222 (4th Cir. 2001)
- City of Miami v. Aronovitz, 114 So. 2d 784 (Fla. 1959)
- Smith v. City of Gainesville, 93 So. 2d 105 (Fla. 1957)
- Lite v. State, 617 So. 2d 1058 (Fla. 1993)
- Zarsky v. State, 300 So. 2d 261 (Fla. 1974)
- Thornhill v. Kirkman, 62 So. 2d 740 (Fla. 1953)
- State v. Bowling, 712 So. 2d 798 (Fla. 2d DCA 1998)
- Rowe v. Agency for Health Care Administration, 714 So. 2d 1108 (Fla. 5th DCA 1998)
- Borrego v. Agency for Health Care Administration, 675 So. 2d 666 (Fla. 1st DCA 1996)
- United States v. Ursery, 518 U.S. 267 (1996)
- United States v. Lovett, 328 U.S. 303 (1946) (Frankfurter, J., concurring)
- Department of Highway Safety & Motor Vehicles v. Bender, 497 So. 2d 1332 (Fla. 2d DCA 1986)
- Department of Highway Safety & Motor Vehicles v. Gaskins, 891 So. 2d 643 (Fla. 2d DCA 2005)
- Department of Highway Safety & Motor Vehicles v. Critchfield, 805 So. 2d 1034 (Fla. 5th DCA 2002), *aff'd*, 842 So. 2d 782 (Fla. 2003)
- Weaver v. Graham, 450 U.S. 24 (1981)

- Gwong v. Singletary, 683 So. 2d 109 (Fla. 1996)
- Waldrup v. Dugger, 562 So. 2d 687 (Fla. 1990)

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