

NO. 23746

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

GWENDOLYN SMITH, Petitioner-Appellant, v.  
CITY AND COUNTY OF HONOLULU, Respondent-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 98-3567)

MEMORANDUM OPINION

(By: Burns, C.J., Circuit Judge Milks,  
in place of Watanabe, J., Recused, and  
Circuit Judge Grauldy, in place of Foley, J., Recused)

On August 28, 1995, a woman applied for the renewal of her Hawai'i driver's license that had been issued to her on May 1, 1991. Her application was not approved. She did not appeal. Her Hawai'i driver's license expired on September 29, 1995. On July 10, 1997, she applied for a new Hawai'i driver's license. Her request was denied. She appealed. After a hearing, the Hearings Officer affirmed the denial. She appealed. The circuit court (1) affirmed the Hearings Officer's decision, (2) denied the woman's first Hawai'i Rules of Civil Procedure (HRCP) Rules 59(a) and 59(b) and Rule 60(b) motion for reconsideration and relief, and (3) denied the woman's second HRCP Rules 59 and 60(b) motion for reconsideration and relief. In this appeal, the woman appeals (1), (2), and (3). However, the woman's appeal is unsuccessful because it is timely only as

to (3) and the motion involved in (3) was not authorized by the HRCF.

#### PROCEDURE

Petitioner-Appellant Gwendolyn Walker Smith (Smith or Petitioner) appeals from the circuit court's<sup>1</sup> August 17, 2000 "Order Denying Motion for Reconsideration on Motion to Set Aside Judgment/Request for Hearing, Filed October 18, 1999, Filed July 13, 2000"<sup>2</sup> (August 17, 2000 Order).

A reading of the opening brief and the reply brief reveals that Smith aims her appeal, in part, at the nonrenewal of her driver's license in 1995. Clearly, that was not the issue in the circuit court and, therefore, is not the issue in this appeal.

A reading of the opening brief and the reply brief reveals that Smith also aims her appeal at the circuit court's September 23, 1999 Judgment (Judgment) in favor of Respondent-Appellee Director of Budget and Fiscal Services, City and County of Honolulu (City), affirming the Hearings Officer's July 10, 1998 Findings of Fact, Conclusions of Law and Decision and Order. Unfortunately for Smith, as shall be explained, her September 15,

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<sup>1</sup> The judge in this case was Circuit Court Judge Bambi Eden Weil, now known as Eden Elizabeth Hifo. During July 2000, District Family Judge Allene Suemori substituted for Judge Hifo.

<sup>2</sup> "October 18, 1999" refers to the date the Motion to Set Aside Judgment/Request for Hearing was filed. "July 13, 2000" refers to the date the Motion for Reconsideration on Motion to Set Aside Judgment/Request for Hearing was filed.

2000 Notice of Appeal does not reach back that far except via HRCP Rule 60(b) (2000).

Smith's response to the Judgment was her delivery to the Fifth Division of the Circuit Court on October 4, 1999 of a Motion to Set Aside Judgment/Request for Hearing (October 4/18, 1999 Motion for Reconsideration) "pursuant to [HRCP] Rule 60(b), and Rule 59(a) and (b)[.]" Although not filed until October 18, 1999,<sup>3</sup> we conclude that this October 4/18, 1999 Motion for Reconsideration must be treated as having been filed on October 4, 1999, because that is the day it was received by the court. Therefore, this motion was timely filed under HRCP Rule 59(b) (2000) and, pursuant to Rule 4(a)(4) of the Hawai'i Rules of Appellate Procedure (2000), it postponed the running of the allowable time within which to file a valid notice of appeal. This motion was heard on July 3, 2000, and was finally decided by the court's July 25, 2000 "Order Denying Petitioner Gwendolyn Walker Smith's Motion to Set Aside Judgment/Request for Hearing Filed October 18, 1999" (July 25, 2000 Order).

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<sup>3</sup> The October 18, 1999 Motion to Set Aside Judgment/Request for Hearing is not signed by Petitioner-Appellant Gwendolyn Smith. It is signed by the court and it states as follows:

Comes now Petitioner Gwendolyn Smith with a Motion to Set Aside Judgment/Request for Hearing pursuant to the Hawaii Rules Of Civil Procedure, Rule 60(b), and Rule 59(a) and (b), in the above-captioned matter, because 1) the attorney representing me in this matter was incompetent due to the failure of an intimate relationship, and 2) because of said incompetence the complete facts of the matter were not presented before the Court.

Smith did not file a timely notice of appeal of the July 25, 2000 Order. On July 13, 2000, in anticipation of the subsequently filed July 25, 2000 Order, Smith filed a Motion for Reconsideration on Motion to Set Aside Judgment/Request for Hearing (July 13, 2000 Motion for Reconsideration). Smith cited HRCP "Rules 59 and 60(b)" as having authorized the filing of this July 13, 2000 Motion for Reconsideration. We conclude, pursuant to Professional Sponsoring Fund, Inc. v. Rao, 5 Haw. App. 382, 694 P.2d 885 (1985), that neither HRCP Rule 59 nor 60(b) authorized the filing "pursuant to the standards of [HRCP] Rules 59 and 60(b)" of such a motion for reconsideration of the denial of a prior motion that had been filed "pursuant to [HRCP] Rule 60(b), and Rule 59(a) and (b)," as Smith suggests. The August 17, 2000 Order denied the unauthorized July 13, 2000 Motion for Reconsideration. Smith filed a notice of appeal on September 15, 2000. This September 15, 2000 Notice of Appeal was filed too late to appeal the Judgment and/or the July 25, 2000 Order. In other words, this is an appeal of the August 17, 2000 Order denying Smith's unauthorized July 13, 2000 Motion for Reconsideration of the July 25, 2000 Order and the Judgment.

#### RELEVANT STATUTES

The Hawaii Revised Statutes (HRS) state, in relevant part, as follows:

**§ 286-104 What persons shall not be licensed.** The examiner of drivers shall not issue any license hereunder:

- (1) To any person whose license has been suspended by a court of competent jurisdiction during the suspension period; nor to any person whose license has been revoked until the expiration of one year after the date of the revocation, or until the expiration of the period of revocation specified by law, whichever is greater; . . . .

. . . .

- (4) To any person when the examiner of drivers has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways;

. . . .

. . . .

**§ 286-109 General provision governing the issuance of licenses.** . . .

. . . .

(c) Statutes of limitations and other provisions of this chapter notwithstanding, no driver's license or instruction permit shall be issued or renewed under this section, where the examiner of drivers is notified by the district judge, traffic violations bureaus of the district courts, or the judge of the circuit court that the applicant has failed to respond to a traffic citation or summons for the violation of any traffic laws of a county, this chapter or chapter 286G [Driver Education and Training Fund], 287 [Motor Vehicle Safety Responsibility Act], 290 [Abandoned Vehicles], 291 [Traffic Violations], or 291C [Statewide Traffic Code], and the same remains delinquent and outstanding, or the applicant, having timely responded initially, has as of the time of the application, failed to comply in full with all orders of the court.

. . . .

**§ 286-120 Authority of examiner of drivers to cancel licences.** The examiner of drivers may cancel any driver's license if the examiner determines that the licensee was not entitled to it, failed to give the required or correct information in the licensee's application, or committed fraud in making the licensee's application or in obtaining the license.

Upon cancellation, the licensee shall surrender the licensee's license to the examiner of drivers.

. . . .

§ 286C-1 **Enactment of compact.** The Driver License Compact is hereby enacted into law and entered into with all other jurisdictions legally joining herein in the form substantially as follows:

**DRIVER LICENSE COMPACT**

ARTICLE I. FINDINGS AND DECLARATION OF POLICY

. . . . .

- (b) It is the policy of each of the party states to:
  - (1) Promote compliance with the laws, ordinances and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.
  - (2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

. . . . .

ARTICLE V. APPLICATIONS FOR NEW LICENSES

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

- (1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.
- (2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

The Hawai'i Administrative Rules, Title 19, Department of Transportation, Chapter 122 states, in relevant part, as follows:

§ 19-122-1 **Issuance of Hawaii driver's license.** (a) No Hawaii driver's license shall be issued unless the applicant:

. . . .

(14) Being licensed by another jurisdiction in the category of motor vehicle applied for, provides that jurisdiction's driver clearance dated within six months of the date of application . . . . A driver's license clearance from another jurisdiction may be obtained by contacting the National Law Enforcement Telecommunications System (NLETS).<sup>4</sup>

(b) The examiner of drivers may require that further physical and mental examinations be conducted upon the applicant as the examiner finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways.

. . . .

§ 19-122-4 **Temporary driving permit.** (a) A temporary driving permit, when issued, shall be an interim license and shall entitle its holder to all privileges and responsibilities of possessing a Hawaii driver's license. A temporary driving permit shall be issued only to:

(1) A holder of a driver's instruction permit who passes the practical test or tests, surrenders all other valid driver's licenses and receives the out-of-state driver clearance dated within six months of the date of application if previously licensed by another state, unless the out-of-state driver clearance is obtained through NLETS.

(Footnote added.)

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<sup>4</sup> There is no statutory authority permitting rules requiring the applicant to obtain a "clearance" from another jurisdiction that goes beyond the "clearance" described in Hawaii Revised Statutes (HRS) §§ 286-109 and 286C-1 Article V (2000).

BACKGROUND

On July 10, 1997, Smith applied for a driver's license.

On September 10, 1997, the City received, by facsimile, a letter from the Massachusetts Registry of Motor Vehicles stating, in relevant part, as follows:

License issue date: 01/24/1986  
License expiration date: 09/29/1989

The records of the Registry of Motor Vehicles indicate that [Smith's] right to operate in Massachusetts has been revoked. The revocation is due, in part, to violations reported to the Registry of Motor Vehicles in Massachusetts from the Department of Motor Vehicles in Maine via N.D.R.

Furthermore, the records of the Registry of Motor Vehicles show [Smith] to be suspended/revoked in Maine under the name of Wendy Gross. Same date of birth, same social security number. In addition to the N.D.R. hits from Maine[,] [Smith] also has two court defaults in Massachusetts that contribute to her revocation. These defaults are . . . default date 03/24/1988. And . . . default date 11/07/1989.

On September 10, 1997, the City sent two letters to Smith. The letter from its Chief Licensing Examiner and Inspector stated, in relevant part, as follows:

This is to notify you that your application for a driver's license has been denied under the provisions of the Driver License Compact, Article I, paragraph (b) (2) and Article V.

. . . .

The denial of your Hawaii driver's license was based on the results of an out-of-state search which revealed a not eligible status from Massachusetts, and is in accordance with the Driver License Compact, Article I, paragraph (b) (2), and Article V.

During the application process, you were also informed that:

- 1) Massachusetts DMV recommended that you call Maine DMV, and get a letter of clearance from Maine. There is a license suspension there under DL#7146162, Wendy Gross, Date of birth: 9-26-56.
- 2) You contact Massachusetts DMV at 617-351-4500 (Customer Service) to obtain a clearance letter from Massachusetts.



- 3) We need to see your social security card to verify your number . . . . On 9-28-95, you did admit to having been suspended in Massachusetts although the SSN was transposed.
- 4) Pursuant to Hawaii Revised Statutes (HRS) 286-109, you will need to clear any outstanding traffic violations with the Traffic Violations Bureau. . . . (A check on 9-23-97 reveals an outstanding violation dated 7-13-93).

The above conditions are precedent to obtain a Hawaii driver's license.

The administrative hearing was held on September 24, 1997. Without citing any authority for the pronouncement, the Hearings Officer advised Smith's counsel that Smith had the burden of proof. Smith's counsel did not object to various documents coming into evidence subject to cross-examination and a period of time to respond. Smith's counsel also stipulated into evidence the fact that on May 1, 1991, Smith initially received a license in Hawai'i and on August 28, 1995, had applied for a renewal of that license but was denied because of outstanding violations in Massachusetts and Hawai'i. It was noted that the City had not done out-of-state searches prior to September 1, 1993.

After hearing evidence and argument, the Hearings Officer continued the hearing. On October 15, 1997, the City submitted additional evidence that Smith's failure to appear in two cases in Massachusetts resulted in the revocation of Smith's license in Massachusetts. One case involved a citation on March 2, 1988, for speeding 55 miles per hour (mph) in a 35-mph zone. The other case involved a citation on February 17, 1988,

for failing, on February 17, 1988, to stop for a school bus. The City also submitted evidence that as of October 15, 1997, Smith had at least eighteen unresolved traffic citations in the City and County of Honolulu.

On July 10, 1998, the Hearings Officer entered the following:

FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
DECISION AND ORDER

The above-entitled matter came on for hearing on the 24th day of September 1997 pursuant to Chapter 286 and Section 91-9, Hawaii Revised Statutes (hereinafter "HRS"), as amended, and Section 30.23, et. seq., of the Rules and Regulations of the Director of Finance. The Petitioner was present and represented by her attorney, Gary Levinson. The Director of Finance was represented by Alan Miyamura and Radford Cameros. Also present was Cynthia Nojima, Deputy Corporation Counsel, Department of the Corporation Counsel.

FINDINGS OF FACT

1. Petitioner is also known as Gwendolyne Walker, Gwendolyn Walker, Gwendolyn Walker "M" Smith, Gwendolyn G. Walker, Gwendolyn Grosze, Gwendolyn Grosze Walker, Gwendolyn Groze Smith, Gwenn Smith, Gwen Smith, and Wendy Gross.
2. Petitioner applied for and was issued a State of Hawaii driver's license on May 1, 1991, which license expired on September 29, 1995. On her application, Petitioner indicated "No" to the question, "Have you previously held a driver's license in Hawaii, another State or Country?" although she previously held a driver's license issued by the Commonwealth of Massachusetts.
3. Section 286-120, HRS, permits the examiner of drivers to cancel a driver's license if information provided by the applicant is incorrect, incomplete, false or fraudulent as if the applicant were not entitled to a license.
4. The examiner of drivers states that in 1991, the electronic data base to access driver license information from other states was not in operation.
5. In September 1993, Hawaii installed a computerized system for tracking traffic violations on a nation-wide basis, which is referred to as "PF 61 ". In August 1996, the system was replaced by the Problem Driver Pointer System.

6. Petitioner applied to renew the Hawaii Driver's license on August 28, 1995. Said application was not approved due to the PF 61 system indicating that she had one or more outstanding traffic violations in another state and due to the Traffic Violations Bureau data base indicating that she had one or more outstanding violations in the State of Hawaii. Petitioner did not appeal this denial.

7. Part XXX of the Rules and Regulations of the Director of Finance states that an applicant has 30 days from the date the examiner of drivers denies a permit to file a notice of appeal for a hearing.

8. Petitioner applied for an instruction permit on July 10, 1997. Said application was not approved due to the computerized Problem Driver Pointer System indicating that she had one or more outstanding traffic violations in another state and due to the State of Hawaii Traffic Violations Bureau's data base indicating that she had one or more outstanding traffic violations.

9. Petitioner filed a Notice of Appeal dated September 4, 1997.

10. Chapter 286C, HRS (hereinafter "Compact"), is a reciprocal agreement with other United States jurisdictions that issue driver licenses. Article I states that it is the policy of each of the participating states to (1) promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles, and (2) make the reciprocal recognition of licenses to drive and eligibility therefore more just and equitable by considering the overall compliance with motor vehicle laws, ordinances, and administrative rules and regulations as a condition precedent to the issuance of any driver's license.

11. Article V of the Compact requires parties to the Compact to determine whether an applicant has ever been issued a license to drive in another state. It further states that a licensing authority shall not issue a license if the other state has revoked its license except that if one year has expired since the revocation, the person may apply for a new license if permitted by law. It additionally states that the licensing authority may refuse to issue a license if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

12. The Commonwealth of Massachusetts (hereinafter "Massachusetts") revoked Petitioner's Massachusetts driver's license and considers Petitioner as currently in default for failure to appear in several Massachusetts courts over certain motor vehicle offenses described below. Massachusetts has formally requested that Hawaii recognize and honor the revoked status of Petitioner.

13. Petitioner states that the Compact does not include a statute of limitations and is therefore unconstitutional.

14. Petitioner states that the Massachusetts violations should be disregarded since the violations occurred 10 to 15 years ago and she has safely driven in Hawaii for years.

15. Petitioner states that one of the three citations in Massachusetts involved her traveling 42 miles an hour in a 35 mile an hour zone at about 5:00 a.m.. The second citation involved her pulling up to a school bus at a red light and passing it after observing that the bus was not discharging passengers. Petitioner states that the citation was the result of her boyfriend asking his friends to cite her as retribution for leaving him. The third citation involved failing to stop at a red light. Petitioner states that incident occurred at 12:30 a.m. at the end of a hill with an approximately 90 degree incline. She claims that she continued driving as her vehicle's condition was such that she was concerned that the vehicle would not restart if she stopped.

16. Petitioner claims that she did not appear in Massachusetts court as, at the time, she did not feel that the judges would listen to her situation.

17. A warrant for Petitioner's arrest was issued by the Massachusetts court after Petitioner failed to appear in court in response to a summons issued for the school bus citation.

18. Petitioner argues that the Compact does not apply since she was not convicted of a violation, having left Massachusetts without appearing in court for any of the above citations.

19. Section 286-107(a), HRS, states that if a driver's license is not applied for within 90 days after the expiration of the license, the applicant for renewal shall be treated as an applicant for a new license.

20. Petitioner's application for an instruction permit on July 10, 1997, is an application for a new driver's license and not a renewal of a license since her Hawaii driver's license expired on September 29, 1996 [sic].

21. Section 286-109, HRS, states that statutes of limitations notwithstanding, no driver's license or instruction permit shall be issued where there is notification that the applicant has failed to respond to a traffic citation or summons for the violation of any traffic laws of a county, Chapters 286, 286G, 287, 290, 291, or 291C, and the same remains delinquent and outstanding, or the applicant, having timely responded initially, has as of the time of the application, failed to comply in full with all orders of the court. Such notification is in the Traffic Violations Bureau data base.

22. When Petitioner applied for an instruction permit on July 10, 1997, the Traffic Violation Bureau's data base indicated that Petitioner had one or more outstanding Hawaii violations.

23. Petitioner admits that she has driven in Hawaii without a license and without no-fault insurance. Petitioner has been cited in Hawaii for driving without a license and for driving without no-fault insurance.

24. Petitioner has outstanding citations in Hawaii issued between the expiration of her Hawaii driver's license on September 29, 1995, and her July 10, 1997, application for an instruction permit. The citations include driving without a driver's license on numerous occasions, driving without a valid safety check, driving without no-fault insurance, speeding on more than one occasion, failure to pay vehicle taxes, and failure to wear a seat belt.

#### CONCLUSIONS OF LAW

1. All jurisdictional prerequisites have been satisfied and the hearings officer has jurisdiction of the parties and the subject matter herein.

2. Since Petitioner did not timely appeal the denial of the renewal of her Hawaii driver's license, she may no longer appeal the denial of the renewal of her license.

3. Since this appeal is of the denial of Petitioner's instruction permit preparatory to obtaining a new license, Article V of the Compact applies.

4. Article V of the Compact requires that parties to the Compact determine whether the applicant has ever been issued a license to drive in another state and that the licensing authority shall not issue a license if the other state has suspended or revoked its license, except that if one year has expired since the revocation, the person may apply for a new license if permitted by law. Although application is permitted by law, the licensing authority may refuse to issue a license if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

5. The suspensions and revocations on which non-issuance of a license may be based under Articles I and V of the Compact are not limited to convictions enumerated in Article IV of the Compact.

6. Sections 19-5-122-1, and -4, Hawaii Administrative Rules (hereinafter "HAR"), provide that no driver's license or temporary driver's permit shall be issued or renewed by the examiner of drivers unless the applicant receives a driver's clearance from other states within six months of the date of application if previously licensed by another state.

7. The absence of a date by which traffic violations are no longer valid does not, in and of itself, render the Compact invalid or unconstitutional. For example, Section 286-109, HRS, provides that statutes of limitation notwithstanding, no driver's license or instruction permit shall be issued or renewed if the examiner of drivers is notified that the applicant has failed to respond to a traffic citation or summons for the violation of any

traffic laws of a county, Chapters 286, 286G, 287, 290, 291 or 291C, and the same remains delinquent and outstanding, or the applicant, having timely responded initially, has as of the time of the application, failed to comply in full with all orders of the court.

8. Even if Petitioner is permitted to apply for a driver's license, the licensing authority maintains the discretion to refuse to issue a license if, after investigation, the licensing authority determines that it would not be safe to grant to such a person the privilege of driving a motor vehicle on the public highways.

9. Pursuant to Article V of the Compact, Petitioner may not be issued an instruction permit or a new Hawaii driver's license until she clears her outstanding citations suspensions and revocations with other states and, in particular, Massachusetts.

10. Pursuant to Sections 19-5-122-1, and -4, HAR, Petitioner may not be issued a driver's license or temporary driver's permit until she receives a driver's clearance from other states and, in particular, Massachusetts, within six months of the date of application.

11. Pursuant to Section 286-109, HRS, Petitioner may not be issued a driver's license or instruction permit until she clears her outstanding citations in the State of Hawaii as indicated by the Traffic Violations Bureau.

12. There is insufficient evidence to overrule the decision of the examiner of drivers to deny Petitioner's application for instruction permit given the number and nature of outstanding citations in Hawaii and other states.

#### DECISION AND ORDER

IT IS, THEREFORE, the Decision and Order of this Board [sic] that the Petitioner failed to provide a preponderance of evidence that the decision of the examiner of drivers is improper or invalid. The decision is hereby affirmed.

On August 10, 1998, Smith appealed the Hearings Officer's decision to the circuit court. Some of the standards governing such a review by the circuit court are stated in Korean Buddhist Dae Won Sa Temple v. Sullivan, 87 Hawai'i 217, 953 P.2d 1315 (1998).

On May 27, 1999, the circuit court entered the following:

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

The above-entitled matter came on for hearing on April 12, 1999, at 11:15 a.m. before the Honorable B. Eden Weil, Judge of the above-entitled Court, pursuant to Hawaii Revised Statutes (HRS) Section 91-14 (1993) and Hawaii Rules of Civil Procedure (HRCP) Rule 72. Petitioner GWENDOLYN WALKER SMITH (Petitioner) was present at the hearing and was represented by her attorney, Paul A. Lynch, Esq. Respondent DIRECTOR OF BUDGET AND FISCAL SERVICES, CITY AND COUNTY OF HONOLULU (City), was represented by his attorneys, Deputies Corporation Counsel Cynthia M. Nojima and Reid M. Yamashiro. Alan Miyamura, the Examiner of Drivers, City and County of Honolulu, was also present at the hearing.

The Court having considered the evidence in the record, the arguments of counsel, and the written briefs submitted by the parties, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Petitioner applied for and was issued a State of Hawaii driver's license on May 1, 1991. The issuance of the Hawaii driver's license was based on the answers provided in the application, and there was no check of Petitioner's out-of-state driving records.

2. Petitioner applied to renew her Hawaii driver's license on August 28, 1995. Petitioner's application to renew her Hawaii driver's license was denied. Petitioner did not appeal from the denial of her August 28, 1995 application to renew her Hawaii driver's license.

3. Petitioner's Hawaii driver's license expired on September 29, 1995.

4. Between September 29, 1995 and July 10, 1997, Petitioner drove in Hawaii and received traffic citations even though she did not possess a Hawaii driver's license.

5. On July 10, 1997, Petitioner applied for a new Hawaii driver's license. Petitioner's application was denied because the computerized Problem Driver Pointer System (PDPS) indicated that Petitioner had one or more outstanding traffic violations in another state and because a search of the State of Hawaii Traffic Violation Bureau (TVB) database indicated that Petitioner had one or more outstanding traffic violations in the State of Hawaii.

6. Petitioner filed a timely Notice of Appeal from the denial of her application for a new Hawaii driver's license on September 4, 1997, and requested a hearing.

7. On September 10, 1997, the City sent a letter to Petitioner confirming the denial of Petitioner's application for a new Hawaii driver's license and setting a hearing for Petitioner's appeal on September 23, 1997.

8. The appeal hearing was held on September 23, 1997. The hearings officer continued the hearing to get updated information.

9. The updated information was not further provided by Petitioner, but was provided by the City. The City provided the hearings officer with information from the Commonwealth of Massachusetts and information from the Hawaii Department of Motor Vehicles.

10. The information from Massachusetts indicated that Petitioner had her Massachusetts driver's license revoked in 1988 and 1989.

11. The information from the Hawaii Department of Motor Vehicles indicated that Petitioner had outstanding citations in Hawaii for driving without a driver's license, driving without no-fault insurance, driving without a valid safety check, speeding, failure to pay vehicle taxes, and failure to wear a seat belt.

12. At the hearing, Petitioner admitted that she drives in Hawaii without a Hawaii driver's license and without no-fault insurance.

13. The hearings officer issued a findings of fact, conclusions of law and decision and order on July 10, 1998, affirming the decision to deny Petitioner's application for a new Hawaii driver's license.

14. Petitioner timely appealed from the hearings officer's findings of fact, conclusions of law and decision and order by filing a Notice of Appeal in the circuit court on August 10, 1998.

#### CONCLUSIONS OF LAW

1. The applicable law in this case is the Driver License Compact (Compact), referred to in HRS Chapter 286C.

2. Articles III and IV of the Compact concern existing driver's licenses and provide that convictions reported from other states may be given the same effect as if the convictions had occurred in Hawaii. Articles III and IV do not apply in this case because Petitioner did not possess a valid Hawaii driver's license when she applied for a new Hawaii driver's license.

3. Article V of the Compact establishes that an applicant may not apply for a new driver's license if an applicant's driver's license has been suspended or revoked in another state in whole or in part, unless the revocation is more than one year old at the time of the application. Article V applies to this case because Petitioner was applying for a new Hawaii driver's license.

4. Article V allowed Petitioner to apply for a new Hawaii driver's license even though she had her Massachusetts driver's license revoked because Petitioner's Massachusetts driver's license was revoked more than one year before the time she applied for a new Hawaii driver's license; however, Article V does not automatically confer a driver's license to an applicant, it only allows an applicant to apply for a driver's license.



5. Possessing a Hawaii driver's license is a privilege and not a right. Because it is a privilege, the City may establish certain articulated conditions that must be satisfied before it issues an applicant a Hawaii driver's license.

6. One of the conditions is that if an applicant for a Hawaii driver's license has outstanding violations or a revocation or a suspension of a driver's license in another state, unless and until these matters are addressed and a clearance is obtained from that state, the City may deny an application for a new Hawaii driver's license.

7. Another condition for obtaining a Hawaii driver's license is that an applicant be considered a safe driver. See Article V of the Compact, HRS § 286C-1. This determination is based in part on the basis of a point system under the PDPS system.

8. At the time of the hearing and at the time of the hearings officer's findings of facts, conclusions of law and decision and order, there was a hit recorded on both the PDPS system based on Petitioner's Massachusetts driver's license revocation and the TVB database.

9. HRS Section 286-109 provides specific bases for determining whether a Hawaii driver's license shall be issued or renewed. The Hawaii traffic citations issued to Petitioner did not fall within the terms of HRS Section 286-109 because they were still pending at the time of the application and had not been resolved.

10. That notwithstanding, outstanding Hawaii traffic citations may constitute the basis for the denial of a driver's license. Outstanding and not yet disposed of traffic citations constitute a good basis in fact and law for denial of an application for a Hawaii driver's license because they are indicative that it would not be safe to grant to an applicant the privilege of driving a motor vehicle on the public highways. The burden is on the applicant to clear up these matters by either advancing the dates, so that the matters can be dealt with before the licensing renewal period comes up or before the making of an application for a new driver's license.

11. This incorporates, as a matter of law, the argument made on behalf of the City that the presumption of innocence is not applicable in an administrative proceeding for driver's licenses.

12. The Court finds that the City may deny Petitioner's new Hawaii driver's license application because it would not be safe to grant to Petitioner the privilege of driving a motor vehicle on Hawaii public highways, and relies upon the evidence in the record on appeal, specifically: (1) Petitioner has not cleared up the revocation of her Massachusetts driver's license and has not received a clearance from Massachusetts; (2) Petitioner's testimony at the hearing where Petitioner admitted that she drives in Hawaii illegally because she drives without a Hawaii driver's license and without no-fault insurance; and (3) Petitioner's outstanding Hawaii traffic citations for driving without a

driver's license, driving without no-fault insurance, driving without a valid safety check, speeding, failure to pay vehicle taxes, and failure to wear a seat belt.

DECISION AND ORDER

The Court rules that there was no error in the findings of fact and that there was no basis for recovery as a matter of law in the hearings officer's findings of fact, conclusions of law and decision and order.

In accordance with the foregoing, it is hereby ordered, adjudged and decreed that the Court AFFIRMS the hearings officer's findings of fact, conclusions of law and decision and order, entered July 10, 1998.

The Judgment followed. Smith responded to the Judgment with her October 4/18, 1999 Motion for Reconsideration alleging that because of the incompetence of her attorney, "the complete facts of the matter were not presented before the Court." This motion was heard and orally denied on July 3, 2000, and denied by the July 25, 2000 Order.

In the July 13, 2000 Motion for Reconsideration, Smith complained that at the July 3, 2000 hearing of her October 4/18, 1999 Motion for Reconsideration, she was cut short before being allowed to present "specific examples of the incompetent representation alleged . . . , as well as pertinent facts and relevant issues of law . . . not before the Court by reason of said incompetent representation at the initial hearing." The August 17, 2000 Order denied this motion. It appears that Smith is unaware that there is no right to effective assistance of counsel in a civil case where counsel is not required. Nicholson v. Rushen, 767 F.2d 1426, 1427 (9th Cir. 1985) (per curiam).

## POINTS ON APPEAL

In this appeal, Smith contends that the court erred:

1. . . . in ruling that the City had acted legally in its refusal to issue a renewal under the applicable provisions of the interstate drivers license compact.
2. . . . in ruling that the City had acted legally in its failure to immediately advise [Smith] of [Smith's] right to a hearing upon its refusal to issue a license renewal under mandatory provisions of Hawaii state law.
3. . . . in ruling that the City had acted legally by reclassify[ing] the matter at issue for the administrative hearing's consideration as one of a new license denial rather than a . . . license renewal denial.
4. . . . in ruling that the City had acted legally in its failure to provide, as of the denial dates of both the purported new application for a drivers license and the earlier application for renewal, any substantial and/or nonhearsay evidence at all as to forming the basis for the license denial[.]
5. . . . in ruling that the City had acted legally in its abuse of discretion to give the weight of due-process-issued convictions to unlitigated police officer-generated citations in their determination of Appellant's status as a safe or unsafe driver.
6. . . . in entertaining consideration of evidence not submitted at the time the administrative hearing was actually conducted.
7. . . . in upholding the City's incorrect presumption that the burden of proof at any time in their decision to deny or revoke or suspend [Smith] rested upon [Smith].
8. . . . in ruling admissible the City's unauthenticated, uncertified, tampered with or otherwise hearsay evidence.
9. . . . in ruling that the City had acted legally in applying the provisions of the drivers license compact to their refusal to issue a new license.
10. . . . in ruling that the City had acted with due discretion in giving equal or greater weight to petty offenses of obviously stale-dated provenance, when far more serious offenses are given unambiguous statutes of revocation limitations, and treating those stale-dated offenses as equally indicative of whether or not [Smith] could be currently . . . considered a safe driver.
11. . . . in ruling that the City acted legally in its abuse of discretion in enjoining indefinite and unfixed standards as to what could constitute grounds for license denial.(286C5(2))

12. . . . in ruling that the City acted correctly in its dismissal of the fact that once issued by the state in question, the reissuance of [Smith's] drivers license becomes a matter of a constitutionally-protected property right in contrast to one repeatedly characterized by the City in their pleadings as an arbitrary, discretionary, state police-power administered, due-process-exempt privilege.

13. . . . erred in entertaining at least on one on-the-record instance (T1.27) to provide [Smith] with the due process presumption of innocence over guilt.

14. . . . erred in upholding of [Smith's] corpus delicti rule-violating administrative hearing testimony admitted as part of the City's evidence in their final determination.

15. . . . erred in denying the Motion for Reconsideration which was supported on both counts by evidence indicating a contrary ruling out to be made.

#### QUESTIONS ON APPEAL

Smith contends that her appeal presents the following questions:

1. Did the fact that [Smith] had driven safely and lawfully during the tenure of her possession of Hawaii drivers license entitle her to a renewal license upon its expiration?

2. Did the fact of [Smith's] numerous citations yet next-to-zero convictions (or defaults) indicate anything relevant to [Smith's] ability to drive safely or [Smith's] overall compliance with the law beyond a tenacious, persistent problem of police harassment and targeting?

3. Did the City comply with H.R.S., the H.A.R. and issues of constitutional law in the procedure characterized as "taking no action" upon [Smith's] license?

4. If, as the City claimed at its administrative hearing, it was neither suspending nor revoking [Smith's] license, and it indeed as the Chief Examiner is on the record as saying, "took no action against her as far as her license is concerned" what exactly *did* the City do with regard to [Smith's] license, and was that act legitimate?

5. In its failing to specifically [sic] precisely what constitutes what will be safe for driving as well as failing to specifically delimit a cap for a license revocation period for nonfelonious offenses of the sort [Smith] was herein alleged to have committed, was the City 1) unconstitutionally usurping legislative power in a 2) abuse of discretion?

6. Once issued, and not at any point throughout said issuance cancelled, does the possession of a Hawaii drivers license comprise a constitutionally-protected property right

subject to a higher level of judicial scrutiny in any administrative or higher court hearing of a decision to deny it that had been provided?

7. Does information (or for that matter disinformation of the like entered into the computer by clerks at the DMV), or unexplicated computer "hits" constitute sufficient, authentic evidence for the purposes of denial determination? Do uncertified, tampered-with photocopies with superimposed handwriting and unverified allegations, meet requirement of admissable [sic] evidence, either at the level of an administrative review hearing or that of the lower court's review, which referenced it in upholding the City's position?

(Record citations omitted.)

#### DISCUSSION

As noted above, this is an appeal of the August 17, 2000 Order denying Smith's unauthorized July 13, 2000 Motion for Reconsideration seeking to set aside the July 25, 2000 Order and the Judgment. The July 25, 2000 Order and the Judgment affirm the denial of Smith's July 10, 1997 application for a new Hawai'i driver's license. Consequently, all of Smith's comments and arguments pertaining to the unappealed denial of her application to renew her driver's license in 1995 are not relevant.

In its answering brief, the City states, in relevant part, as follows:

The determination of whether an applicant is a safe driver is based in part on the basis of a point system under the computerized Problem Driver Pointer System (hereinafter "PDPS").

When an applicant applies for a new driver's license in Hawaii, the City runs a PDPS search. If this search reveals a "hit" in another party state, it indicates that the applicant has an outstanding traffic violation in another state; however, the PDPS search does not reveal information regarding the traffic violation, it only "points" the applicant to a state in which the applicant has an outstanding traffic violation. The Examiner of Drivers usually denies the application based on a "hit" in another party state, and the applicant must obtain a letter of clearance from the other party state showing that the outstanding traffic violation has been cleared before a new application can be accepted.

The Findings of Fact (FOF) of the Hearings Officer and the FOF of the circuit court both use the phrase "outstanding traffic violation" when referring to (a) any kind of alleged traffic violation that has not been resolved and (b) all prior resolutions of any kind of traffic violation that are adverse to the driver. The Hearings Officer's FOF no. 8 says that Petitioner's "application was not approved due to the computerized Problem Driver Pointer System [(PDPS)] indicating that she had one or more outstanding traffic violations in another state[.]" The circuit court's FOF no. 5 says that "petitioner's application was denied because the computerized [PDPS] indicated that Petitioner had one or more outstanding traffic violations in another state[.]" In other words, a "hit" on the computerized PDPS includes (a) any kind of alleged traffic violation that has not been resolved and (b) all prior resolutions of any kind of traffic violation that are adverse to the driver.

It is clear that the Hearings Officer and the circuit court concluded that the City's practice was authorized by law. We conclude that, with respect to "hits" from other jurisdictions and Hawai'i, the City's practice is broader than authorized by law. Our conclusion is based on the error in the following statement in the City's answering brief: "If this search reveals a 'hit' in another party state, it indicates that the applicant

has an outstanding traffic violation in another state." In truth, a 'hit' in another party state may be no more than an alleged traffic violation or an outdated traffic violation or revocation.

HRS § 286-104(1) authorizes a denial of the application for a driver's license (a) while the applicant's license is suspended in another jurisdiction, or (b) during the year after the applicant's license has been revoked in another jurisdiction or during the period of revocation specified by law, whichever is greater. The Driver License Compact, HRS Chapter 286C, contains a similar provision.

With respect to violations of Hawai'i laws, HRS § 286-109 authorizes a denial of the application for a driver's license

where the examiner of drivers is notified . . . that the applicant has failed to respond to a traffic citation or summons for the violation of any traffic laws . . . , and the same remains delinquent and outstanding, or the applicant, having timely responded initially, has as of the time of the application, failed to comply in full with all orders of the court.

One or more "hits" in another party state and/or Hawai'i may or may not satisfy one or more of the HRS § 286-104, HRS § 286-109, or HRS § 286C-1, Article V requirements noted above and may or may not authorize a denial of the application for a driver's license. With respect to a "hit" that is a prior revocation of a driver's license, there may be a time limitation.

Alternatively, the Driver License Compact, HRS § 286C-1, Article V(2), authorizes a denial of the application for a driver's license "if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways."

The circuit court concluded that the express statutory limitations on the licensing authority's ability to use "hits" could be ignored when the licensing authority used the "hits" as a basis for determining, pursuant to Article V, subsection (2) of the Driver License Compact, "that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways." In pertinent part, the circuit court concluded:

9. HRS Section 286-109 provides specific bases for determining whether a Hawaii driver's license shall be issued or renewed. The Hawaii traffic citations issued to Petitioner did not fall within the terms of HRS Section 286-109 because they were still pending at the time of the application and had not been resolved.

10. That notwithstanding, outstanding Hawaii traffic citations may constitute the basis for the denial of a driver's license. Outstanding and not yet disposed of traffic citations constitute a good basis in fact and law for denial of an application for a Hawaii driver's license because they are indicative that it would not be safe to grant to an applicant the privilege of driving a motor vehicle on the public highways. The burden is on the applicant to clear up these matters by either advancing the dates, so that the matters can be dealt with before the licensing renewal period comes up or before the making of an application for a new driver's license.

11. This incorporates, as a matter of law, the argument made on behalf of the City that the presumption of innocence is not applicable in an administrative proceeding for driver's licenses.



12. The Court finds that the City may deny Petitioner's new Hawaii driver's license application because it would not be safe to grant to Petitioner the privilege of driving a motor vehicle on Hawaii public highways, and relies upon the evidence in the record on appeal, specifically: (1) Petitioner has not cleared up the revocation of her Massachusetts driver's license and has not received a clearance from Massachusetts; (2) Petitioner's testimony at the hearing where Petitioner admitted that she drives in Hawaii illegally because she drives without a Hawaii driver's license and without no-fault insurance; and (3) Petitioner's outstanding Hawaii traffic citations for driving without a driver's license, driving without no-fault insurance, driving without a valid safety check, speeding, failure to pay vehicle taxes, and failure to wear a seat belt.

The standard of appellate review applicable to these conclusions of law is the right/wrong standard. We conclude that these conclusions are wrong.

We conclude that the licensing authority may not use "hits" when making a "safe driver" determination that it cannot otherwise use when deciding whether to grant or deny an application for a driver's license or renewal thereof. More specifically, we conclude that Conclusions of Law (CsOL) 10, 11, and 12 by the circuit court are wrong for the reasons set forth below:

CsOL 10 and 11, which states

10. . . .outstanding Hawaii traffic citations may constitute the basis for the denial of a driver's license. Outstanding and not yet disposed of traffic citations constitute a good basis in fact and law for denial of an application for a Hawaii driver's license because they are indicative that it would not be safe to grant to an applicant the privilege of driving a motor vehicle on the public highways. The burden is on the applicant to clear up these matters by either advancing the dates, so that the matters can be dealt with before the licensing renewal period comes up or before the making of an application for a new driver's license.

11. This incorporates, as a matter of law, the argument made on behalf of the City that the presumption of innocence is not applicable in an administrative proceeding for driver's licenses.

are wrong because the applicable statutes are structured in such a way that the presumption of innocence is applicable in an administrative proceeding for a driver's license. They specify situations when the examiner shall not issue or renew a license. By itself, the mere existence of one or more outstanding Hawai'i traffic citations does not constitute a basis for the denial of a driver's license because it is not indicative that it would not be safe to grant to an applicant the privilege of driving a motor vehicle on the public highways. The burden is not on the applicant to clear up these matters. The burden is upon the examiner to prove that they constitute grounds for refusing to issue a license.

COL 12 that

[t]he Court finds that the City may deny Petitioner's new Hawaii driver's license application because it would not be safe to grant to Petitioner the privilege of driving a motor vehicle on Hawaii public highways, and relies upon the evidence in the record on appeal, specifically: (1) Petitioner has not cleared up the revocation of her Massachusetts driver's license and has not received a clearance from Massachusetts; (2) Petitioner's testimony at the hearing where Petitioner admitted that she drives in Hawaii illegally because she drives without a Hawaii driver's license and without no-fault insurance; and (3) Petitioner's outstanding Hawaii traffic citations for driving without a driver's license, driving without no-fault insurance, driving without a valid safety check, speeding, failure to pay vehicle taxes, and failure to wear a seat belt.

is wrong because (1) the licensing authority has not established that the relevant events in Massachusetts and Maine in the 1980s generate its authority specified in HRS § 286-104 or HRS § 286C-1

Article V,<sup>5</sup> (2) the fact that she drives without a license or without no-fault insurance is not evidence that she is not a safe driver, and (3) the licensing authority has not established that the outstanding Hawai'i traffic citations generate its authority specified in HRS § 286-109<sup>6</sup> or § 286C-1 Article V(2).

In this case, however, the dispositive question is whether the circuit court erred when its August 17, 2000 Order denied Smith's July 13, 2000 Motion for Reconsideration seeking to set aside the July 25, 2000 Order denying Smith's October 4/18, 1999 Motion for Reconsideration seeking to set aside the Judgment affirming the Hearings Officer's denial of Smith's application for a new Hawai'i driver's license. In light

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<sup>5</sup> The Hearings Officer's Finding of Fact no. 12 states as follows:

The Commonwealth of Massachusetts (hereinafter "Massachusetts") revoked Petitioner's Massachusetts driver's license and considers Petitioner as currently in default for failure to appear in several Massachusetts courts over certain motor vehicle offenses described below. Massachusetts has formally requested that Hawaii recognize and honor the revoked status of Petitioner.

In our view, this finding is too vague to satisfy the requirements of HRS § 286-104 or HRS § 286C-1 Article V. Massachusetts must (1) state that Petitioner's Massachusetts driver's license was revoked and cite the relevant law, (2) state the period of revocation specified by law and cite the relevant law, and (3) state that the period of revocation specified by law has not expired.

<sup>6</sup> HRS § 286-109(c) authorizes the refusal to issue a license when the applicant has failed to respond to a traffic citation or summons for the violation of any traffic laws . . . and the same remains delinquent and outstanding, or the applicant, having timely responded initially, has as of the time of the application, failed to comply in full with all orders of the court.

The mere existence of an unresolved traffic citation is insufficient.

of the fact that Smith's July 13, 2000 Motion for Reconsideration was unauthorized, we conclude that it should have been dismissed.

CONCLUSION

Accordingly, we vacate the circuit court's August 17, 2000 "Order Denying Motion for Reconsideration on Motion to Set Aside Judgment/Request for Hearing, Filed October 18, 1999, Filed July 13, 2000," and remand for the entry of an order dismissing the July 13, 2000 Motion for Reconsideration.

DATED: Honolulu, Hawai'i, June 28, 2002.

On the briefs:

Gwendolyn Smith,  
Petitioner-Appellant, pro se.

Chief Judge

Reid M. Yamashiro,  
Deputy Corporation Counsel,  
City and County of Honolulu,  
for Respondent-Appellee.

Acting Associate Judge

Acting Associate Judge