

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

GUY E. HUNNEWELL, JR.,)
)
 Petitioner)
)
v.) Civil No. 98-0251-B
)
KENNEBEC COUNTY SHERIFF,)
)
 Respondent)

AMENDED RECOMMENDED DECISION

Petitioner seeks a Writ of Habeas Corpus pursuant to 28 U.S.C. section 2254 following his conviction in Kennebec County Superior Court for operating a motor vehicle after his license had been suspended in violation of 29 M.R.S.A. section 2412-A. The Petition raises due process questions relative to the manner in which his license was suspended. Petitioner raised these issues before the Maine Supreme Judicial Court [”LAW COURT”], and his appeal was denied on December 14, 1998. *Maine v. Hunnewell*, 721 A.2d 979 (Me. 1998).

Our authority in evaluating a Petition for Writ of Habeas Corpus when the state court has addressed the issues is limited. The statute provides:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim —

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). There is no material dispute in this case regarding the facts as stated in the Law Court decision, which are presumed by this Court to be correct. 28

U.S.C. § 2254(e). The factual statement reads in its entirety:

Hunnewell was charged with operating an unregistered vehicle in the fall of 1996 and given a Uniform Summons and Complaint to appear at the District Court (Springvale) on January 6, 1997. Having inadvertently failed to appear in court on that date, in February he wrote to the clerk's office asking how to rectify the situation. The clerk informed Hunnewell in writing that his license was under suspension until he either pled not guilty or pled guilty and paid the \$122 fine. Hunnewell mailed the \$122 fine to the court. The clerk then notified the Secretary of State that Hunnewell was eligible to have his license reinstated.

Hunnewell was stopped by a police officer in Sidney on the evening of February 22, 1997 due to a problem with the lights on his vehicle. Because Hunnewell had not paid the reinstatement fee, his license remained under suspension. The officer informed Hunnewell that his license was under suspension and issued him a Uniform Summons and Complaint for operating a motor vehicle after his license had been suspended. When Hunnewell returned home that evening, he discovered a notice from the Secretary of State in his mailbox informing him that his license had been suspended and would remain suspended until he paid the reinstatement fee.

Hunnewell, 721 A.2d at 979-80.

Hunnewell argued before the Law Court, as he does here, that the notice to him of his license suspension was constitutionally defective in that it deprived him of due

process. The Law Court concluded, without citation to authority in support of its position, that Petitioner's due process rights were not violated because it was his own conduct that resulted in the license suspension (the failure to appear) and further, that he received adequate notice by virtue of the statute making driving after such a suspension a Class E criminal offense. *Hunnewell*, 721 A.2d at 980.

This Court evaluates that conclusion in a two-step analysis:

First, the habeas court asks whether the Supreme Court has prescribed a rule that governs the petitioner's claim. If so, the habeas court gauges whether the state court decision is 'contrary to' the governing rule. In the absence of a governing rule, the 'contrary to' clause drops from the equation and the habeas court takes the second step. At this stage, the habeas court determines whether the state court's use of (or failure to use) existing law in deciding the petitioner's claim involved an 'unreasonable application' of Supreme Court precedent.

O'Brien v. Dubois, 145 F.3d 16, 25 (1st Cir. 1998).

In this case, there is a clearly defined rule that governs Petitioner's claim. Specifically, "it is fundamental that except in emergency situations (and [obtaining security from an uninsured motorist following an accident] is not one), due process requires that when a State seeks to terminate an interest such as that here involved [license suspension], it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective." *Bell v. Burson*, 402 U.S. 535, 542 (1971) (quoting *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 313 (1950)) (other citations omitted).

Petitioner's argument in this case does not implicate the State's failure to provide a hearing. Rather, he argues that proper notice of the license suspension would have prevented his having to resort to an imperfect means of investigating the steps necessary to have his license reinstated.

It is clear that the statute itself does not constitute prior notice. The Court could not conclude as a matter of law that statutory notice is constitutionally sufficient. "[W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the [person] might reasonably adopt to accomplish it." *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 315 (1950). The statute in this case does not provide for pretermination notice and opportunity to be heard, and it is the lack of pretermination notice that Petitioner challenges.

The Court also concludes that the Uniform Summons and Complaint under which Petitioner was to appear on January 6, 1999 did not provide adequate notice under the due process clause.¹ The back of the Summons contains a check-box-style

¹ On this issue, the Court hereby GRANTS Respondent's Motion to Enlarge the Record by the inclusion of a copy of the form Uniform Summons and Complaint presently in use throughout the State of Maine. As Respondent notes, the form contains a warning at the bottom in capital letters explaining the possibility of suspension without further notice and the need to pay a reinstatement fee in the event of such suspension. Petitioner's actual Uniform Summons and Complaint, included within the State court record transmitted by Respondent together with its initial response to the Petition, contains no such warning.

list of all the possible outcomes of the charge indicated on the other side. The first section involves the defendant's failure to appear to answer the charge, and provides that one outcome might be that his license or right to apply for a license could be suspended.

The first reason the Court cannot call the check box "notice" as a matter of law is that it does not clearly indicate that the license *will be* suspended, as the statute provides, but only that it *might be* suspended. Second, the pertinent information within the check box is severely abbreviated as: "Lic./Rt. to Opr/Rt. to Obt. or App. for Lic. Susp'd."

There is no authority for the proposition that notice in this form survives a due process challenge. Those cases suggesting these types of notices might suffice as "notice" for purposes of due process (none have so held), were dealing with actual *warnings*, rather than check boxes for recording future court action. *Rhode Island v. Szarek*, 433 A.2d 193, 198 & n.7 (R.I. 1981) ("warning that failure to pay for ticket or a summons will result in a suspension of the violator's driving privileges is printed on the back of each summons issued in the state"); *Oregon v. Stoup*, 620 P.2d 1359, 1367 (Ore. 1980) (statutory scheme provided for notice and hearing, in addition to statutory requirement that all summonses contain language that a failure to appear may result in suspension); *New York v. Hyman*, 366 N.Y.S.2d 989, 993 (N.Y. Crim. Ct. 1975)

(defendant had notice of the consequences of a guilty plea by virtue of a warning printed on the back of the summons in red type in a size equal to at least 12 pt. type). All of these cases were resolved in state courts, and none of them cite Federal law in support of their holdings.

The Maine Law Court recently concluded that there was no due process violation when the state's "implied consent" form failed to contain a warning that two prior blood-alcohol test refusals could enhance a subsequent operating under the influence charge. *Maine v. Cote*, 1999 WL 553716 (Me. July 30, 1999). The Law Court noted that the nature of the private interest at stake was "tenuous" in light of the fact that there would only be unwarned consequences in the event of future criminal conduct. As the court stated: "failing to warn Cote of the potential consequences of refusing to submit to a chemical test will certainly not increase the risk that he will be convicted of OUI in the future." *Id.* at *3. That case adds nothing to our analysis, however, because the loss of license here is automatic upon the failure to appear.² This

² This Law Court case is not particularly relevant to our analysis. The Law Court used the due process analysis set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which generally requires a balancing between the liberty interest at stake and the state's interest in its current procedure. *Maine v. Cote*, 1999 WL 553716 at *3 (Me. July 30, 1999). In this case, the Court concludes there was no notice at all, and therefore no procedure to review. In addition, the Court disagrees with the statement in *Cote* that "the failure to warn a defendant of every possible consequence of his decision does not rise to the level of a due process violation when the defendant is sufficiently warned that his refusal will have significant consequences." *Id.* at *4. To the contrary, regardless of whether a defendant is warned of many negative consequences, if he or she is not warned of the deprivation of a protected liberty or property interest, in the absence of an emergency situation excusing the failure to warn, due process has been denied. *Bell v. Burson*, 402 U.S. 535, 542 (1971).

Court is satisfied that the Law Court's ruling that Petitioner received adequate notice in this case is contrary to clearly established Federal law.

To the extent Petitioner is also asserting that he was denied due process because he received incorrect information from the clerk of court regarding the method for reinstating his license, however, the Court does not agree. The First Circuit Court of Appeals has been presented with another case involving incorrect information given by a state actor, and found that it did amount to a deprivation of due process. *Roberts v. Maine*, 48 F.3d 1287 (1st Cir. 1995). In *Roberts*, however, petitioner was denied the opportunity to telephone his attorney, who, the court noted, could have corrected the misleading information provided by the police officer. *Id.* at 1293. Obviously, it is also possible that the attorney could have given equally misleading information, but the due process clause would still have been satisfied. In this Court's view, the crucial factor in *Roberts* was not the fact that petitioner received incorrect information, but that he was required to rely solely upon the information provided by the state actor. In this case, Petitioner could have chosen any number of methods by which to research his obligations following the license suspension. That he happened to ask a state actor does not mean the state has thereby deprived him of his due process rights.

Conclusion

Because Petitioner was provided with no pretermination notice that his license would be suspended for his failure to appear on the charge of operating an unregistered motor vehicle, I hereby recommend the Petition for Writ of Habeas Corpus be GRANTED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on March 3, 2000.