

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

GUY E. HUNNEWELL, JR.,)	
)	
Petitioner)	
)	
v.)	Civil 98-0251-B
)	
KENNEBEC COUNTY SHERIFF,)	
)	
Respondent)	

ORDER MODIFYING THE RECOMMENDED DECISION OF THE MAGISTRATE JUDGE

BRODY, District Judge

On October 1, 1999, the United States Magistrate Judge filed his Recommended Decision with the Court. Petitioner Hunnewell and Respondent, the State of Maine, both filed Objections to the Recommended Decision. Having reviewed and considered the Magistrate Judge’s Recommended Decision, together with the entire record, the Court has made a de novo determination of all matters adjudicated by the Magistrate Judge’s Recommended Decision. In accordance with this de novo review, the Court modifies the Magistrate Judge’s decision as follows:

1. The Court modifies the factual record, as laid out by the Law Court and adopted, in its entirety, in the Recommended Decision at page 2, to delete the word “fine” from the description of the \$122. This modification is in accordance with the clear and convincing evidence that the clerk did not refer to the \$122 as a “fine” and Petitioner Hunnewell did not think that the \$122 represented a simple “fine” for his initial offense of driving an unregistered motor vehicle. See 28 U.S.C. § 2254(e) (explaining that petitioner has “the burden of rebutting the presumption of correctness by clear and convincing evidence”).

2. On page 4, the Court modifies that the final full sentence to read: “The Court also concludes the Uniform Summons and Complaint under which Petitioner was to appear on January 6, 1997, did not provide adequate notice under the due process clause.”

3. To the extent the State objects to the Recommended Decision because the Uniform Summons and Complaint received by the Petitioner actually included a warning that as a result of failure to appear, one's license “may be suspended without further notice and a reinstatement fee

may have to be paid,” the Court finds that such a conditional warning does not change the result. Under either the Summons included in the original record from state court or the blank Summons offered by the State, the Petitioner did not receive adequate notice that his license would be automatically suspended as a result of his failure to appear and that, once suspended, the license could not be reinstated without payment of both a fine to the court and a separate reinstatement fee to the Secretary of State.

4. The Court deletes the portion of the opinion contained in footnote 2 because it concurs with the Magistrate Judge that the Law Court’s analysis in Maine v. Cote, 736 A.2d 262 (Me. 1999), is not relevant to the due process question raised in this habeas petition and thus finds that further discussion of the Law Court's analysis in Cote is unwarranted.

5. Finally, the Court declines to adopt the Recommended Decision’s analysis and application of Roberts v. Maine, 48 F.3d 1287 (1st Cir. 1995), beginning on page 7. Thus, the Court modifies that portion of the Recommended Decision to read as follows:

While the facts presented by this habeas petition and the case of Roberts v. Maine, 48 F.3d 1287 (1st Cir. 1995), are undeniably different, the Court believes that, like Roberts, the circumstances surrounding Petitioner Hunnewell’s conviction for driving with a suspended license “present a unique situation in which the State of Maine failed to meet the requirements of fundamental fairness.” Roberts, 48 F.3d at 1291. Specifically, the letter from the court clerk, dated February 13, 1997, gave Hunnewell misleading information by suggesting that Hunnewell's license would be suspended until he pleaded guilty and paid \$122. This misleading information, relied on by Hunnewell, combined with two other factors to create a situation in which Hunnewell did not receive the notice necessary to constitute due process. First, there was an insufficient warning on the face of the summons. Second, there was an undue delay by the State both in processing the suspension and notifying Petitioner Hunnewell of his license suspension for failure to appear.

The State's delay is documented in the record. On January 6, 1997, the suspension of Hunnewell's license was ordered by the Judge of the Springfield District Court. This order was not processed by the Court clerk until February 14, 1997, and then not processed by the Maine's Motor Vehicle Division until February 19, 1997. Because the notification of license suspension is not triggered until this dual processing is complete, notification of the suspension was not sent

until sometime after February 19, 1997, and delivered by mail to the Petitioner's address on February 22, 1997. This represents a delay of over 44 days.¹

Applying the test for Due Process violations laid out in Mathews v. Eldridge, 242 U.S. 319 (1976), to these facts, the Court must weigh:

- (1) Hunnewell's interest in freedom from five days of incarceration, the sentence imposed for his conviction of driving with a suspended license on February 22, 1997,
- (2) the risk of erroneous deprivation due to Maine's existing procedure for notification of suspension and the probable utility of additional or substitute safeguards, and
- (3) Maine's interest in adhering to the current notification procedure, including the fiscal and administrative burdens that additional procedures might entail.

See Roberts, 48 F.3d at 1292-94 (quoting Mathews v. Eldridge, 424 U.S. 319, 335 (1976), and applying the factors).

Weighing all of these Mathews factors, the Court concludes that Hunnewell's substantial interest in avoiding incarceration outweighs Maine's interest in adhering to its current system of notification. Additionally, the burden imposed on the State by requiring additional safeguards could be satisfied in a number of ways. First, the State could include a clear warning on the face of the summons that suspension for failure to appear is automatic and continues until a separate reinstatement fee is paid to the Secretary of State. Second, the notification could be mailed to the suspended license holder earlier by either speeding up or changing the current process of suspending licenses. Third, the State might change the reinstatement process so that the reinstatement fee and court-imposed fine are paid simultaneously, thereby foregoing the need for notification of a separate reinstatement fee.

Implementation of any of these alternatives would decrease the risk of erroneous deprivation with little additional burden on the State. Additionally, none of these procedural safeguards impede Maine's interest in immediately suspending the license of a driver who fails to appear in court to answer a summons or in penalizing people who drive with suspended licenses.

¹ During this delay, Petitioner Hunnewell paid \$122 on February 19, 1997. With this payment to the Springfield District Court, Hunnewell believed he had resolved both his ticket for driving an unregistered vehicle and his failure to appear in court to answer the Summons, which triggered the license suspension.

These procedures simply make it more likely that a licensed driver is notified of a suspension and of the steps the driver must take to end the suspension and legally drive again.

Regardless of what notification procedures Maine chooses to implement in the future, it is clear that the notification provided to Petitioner Hunnewell was insufficient and untimely. When combined with the misleading information provided by the court clerk, the facts surrounding the Petitioner's conviction for driving with a suspended license demonstrate state action which deprive Petitioner of his liberty without due process. To the extent the Law Court ruled that under these circumstances Hunnewell's due process rights were not violated, the Court finds that Federal law as interpreted by the Supreme Court in Bell v. Burson, 402 U.S. 535 (1971) and Mathews v. Eldridge, 424 U.S. 319 (1976), requires a different result. See 28 U.S.C. § 2254(d)(1); O'Brien v. Dubois, 145 F.3d 16, 24 (1st Cir. 1998).

Other than the above modifications, the Court finds that the objections of both parties are without merit and are adequately addressed in the Recommended Decision. Therefore, the Court concurs with the recommendations of the United States Magistrate Judge for the reasons set forth in his Recommended Decision and determines that no further proceeding is necessary.

3. It is therefore ORDERED that the Recommended Decision of the Magistrate Judge is AFFIRMED.
4. It is further ORDERED that Petitioner's Petition for Writ of Habeas Corpus is GRANTED.

MORTON A. BRODY
United States District Judge

Dated this 2nd day of February, 2000.