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6-7-2007

DEPARTMENT OF SAFETY vs. One 1991 Buick  
Skylark VIN: 1G4NV54N5MM251505 Claimed  
by: Terry Gauntt, Seized from: Terry Gauntt,  
Seizure Date: 6/30/07

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## **FINDINGS OF FACT**

1. On June 30, 2007, the Claimant was driving the subject vehicle on the public roads of the State. He was on his way to work.

2. The Claimant's license was revoked at that time. It had originally been revoked in 2004 for DUI in 2001. Claimant had been eligible for restoration of his license since 2005. He had not been able to have his license restored because the reinstatement fee for his license was \$318.00, a sum he did not have.

## **CONCLUSIONS OF LAW**

1. The State bears the burden of proof in this matter by a preponderance of the evidence.

2. Tenn. Code Ann. § 55-50-504(a) provides, in pertinent part:

A person who drives a motor vehicle .... when the person's privilege to do so is cancelled, suspended, or revoked commits a Class B misdemeanor.

3. Tenn. Code Ann. § 55-50-504(h)(1) provides:

The vehicle used in the commission of a person's violation of § 55-50-504, when the original suspension or revocation was made for a violation of § 55-10-401, or a statute in another state prohibiting driving under the influence of an intoxicant, is subject to seizure and forfeiture in accordance with the procedure established in title 40, chapter 33, part 2.

4. Tenn. Code Ann. § 55-10-401 provides, in pertinent part:

It is unlawful for any person to drive... under the influence of any intoxicant.

5. There is no question that Claimant was driving when his license was revoked for DUI. Likewise, there is no question that the Claimant was eligible to have

his license restored. Further, it appears that the only reason he did not have it restored was a lack of funds.

6. In circumstances where an individual's license was originally revoked for DUI and the individual failed to restore her driving privileges after the revocation period had run, the Court of Appeals has held that driving after a revocation but before a license is reissued or renewed is driving when a person's privilege to do so is cancelled, suspended, or revoked within the meaning of Tenn. Code Ann. § 55-50-504(a)(1). Further, "[w]hen the original revocation was due to a conviction for DUI, the driving privilege remains revoked 'because of' that conviction." Hawks v. Greene, 2001 1613889, \*5 (Tenn. Ct. App. 2001). Taylor, supra, \*4. In both cases, the Court noted that expiration of the revocation period merely makes the driver eligible for reinstatement of his driving privileges.

8. Eighth Amendment issues are involved in this matter, and should be addressed. When the individual's interest in the matter at issue, in this case his car, so outweighs the State's interest, the collection of a \$318.00 reinstatement fee, forfeiture constitutes a disproportional, excessive fine, forbidden by the Eighth Amendment. Hawks, supra.

11. It is, therefore, ORDERED that the 1991 Buick Skylark be RETURNED TO THE CLAIMANT.

This Initial Order entered and effective this 18th day of October, 2007.

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Marion P. Wall  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 18th day of October, 2007.

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Thomas G. Stovall, Director  
Administrative Procedures Division