



8-20-2009

DEPARTMENT OF SAFETY vs. One 1985
Cadillac Deville, VIN No.:
1G6CD6982F4278058, Seized from: Kristophel
Jones, Date of Seizure: December 19, 2008,
Claimant: Kristophel Jones

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BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY

IN THE MATTER OF:)
)
DEPARTMENT OF SAFETY)
)
v.) DOCKET NO. 19.05-104195J
) DOS Case No. H9683
One 1985 Cadillac Deville)
VIN No.: 1G6CD6982F4278058)
Seized from: Kristophel Jones)
Date of Seizure: December 19, 2008)
Claimant: Kristophel Jones)

INITIAL ORDER

This administrative proceeding was heard on August 20, 2009, in Memphis, Tennessee, before John Hicks, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Andre Thomas, Staff Attorney for the Department of Safety, represented the State. Claimant Kristophel Jones appeared *pro se*.

The subject of this hearing was the proposed forfeiture of the subject 1985 Cadillac Deville for its alleged operation by Claimant Kristophel Jones whose driving privileges had been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant ("DUI"). After consideration of the record, it is DETERMINED that the subject 1985 Cadillac Deville should be RETURNED to Claimant Kristophel Jones. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On December 19, 2008, Trooper Paul S. Moore of the Tennessee Highway Patrol stopped Claimant Kristophel Jones at a DUI check point..
2. When stopped, on December 19, 2008, Claimant Kristophel Jones was driving the subject 1985 Cadillac Deville.
3. Claimant Kristophel Jones is the titled owner of the subject 1985 Cadillac Deville. Trooper Paul S. Moore determined that Claimant Kristophel Jones' driver's license was revoked pursuant to a 2002 DUI conviction in Fayette County, Tennessee.
4. The subject 1985 Cadillac Deville was seized.
5. Claimant Kristophel Jones was in the process of having his driver's license reinstated when stopped on December 19, 2008.
6. Claimant Kristophel Jones efforts to have his driver's license were in vain because of errors in the court records and the court's failure to act to correct the errors.
7. Claimant Kristophel Jones' driver's license was reinstated prior to the hearing in this matter.

CONCLUSIONS OF LAW

1. T.C.A. § 55-50-504(a)(1) and (h)(1) provides if a revocation was ordered pursuant to a DUI conviction, any vehicle driven by the offender during the period of revocation is subject to seizure and forfeiture and that if the revocation was ordered due

to a DUI conviction, any vehicle driven by the offender during the period of revocation is subject to seizure and forfeiture.

2. Although Tennessee's forfeiture statute is a civil action with a remedial purpose, it is at least in part punitive, and is therefore subject to the limitations of the excessive fines clauses and cruel and unusual punishment clauses of the federal and state constitutions. Stuart v. State Dept. of Safety, 963 S.W.2d 28 (Tenn. 1998). It is left to the courts to determine whether a particular forfeiture violates the constitution under the individual facts of the case, even where the legislature has granted general authority for such forfeitures. Hawks v. Tennessee Dept. of Safety, 2001 WL 1613889, (Tenn. Ct. App. 2001).

3. It is CONCLUDED that based on the above paragraphs the seized 1985 Cadillac Deville should be returned to Claimant.

2. It is CONCLUDED the seized 1985 Cadillac Deville should not be forfeited to the seizing agency because the State records were in error and the State failed to act in a timely manner to correct the errors. Errors in the State's records and the State's failure to act in a timely manner to correct the errors prevented Claimant's opportunity and Claimant's right to have his driver's license reinstated.

3. It is CONCLUDED the seized 1985 Cadillac Deville should be returned to Claimant based his efforts to have his driver's license reinstated and based on the impossibility of having his driver's license reinstated because of errors in State records.

4. It is ORDERED that the 1985 Cadillac Deville SHALL BE RETURNED to Claimant Kristophel Jones.

This Initial Order entered and effective this 31st day of August, 2009.

John Hicks
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 31st day of August, 2009.

Thomas G. Stovall, Director
Administrative Procedures Division