

REQUEST FOR ACTION

Administrative Appeal Hearings

(SOS License Actions occurring on or after October 1, 1999 - new repeat offender legislation effective October 1, 1999, limits the basis of appeal to circuit court to a legal issue only in all but four types of appeals.)

MICHIGAN DEPARTMENT OF STATE, DRIVER ASSESSMENT AND APPEAL DIVISION

CIRCUIT COURT UNIT, P.O. BOX 30196, LANSING, MI 48909-7696

Go to <http://www.Michigan.gov/sos> and click on "Driver License & State ID" then click on "Losing Your Privilege to Drive"

TO: Assistant Prosecuting Attorney/Assistant Attorney General

Petitioner's Name:

We have reviewed this case file and ask that on behalf of the Secretary of State you **ensure the enclosed certified master driving record is entered in the record** and take action in accordance with the box checked below:

1. Pursuant to MCL 257.323(3) the circuit court may affirm, modify or set aside only the following license actions:

- a) Application Denial for Medical Reasons [MCL 257.303(1)(d)].
- b) Driver Assessment Suspension or restriction (not a revocation) [MCL 257.310d, MCL 257.320].
- c) First Implied Consent Suspension [MCL 257.625f].
- d) Mandatory Additional Action for Driving While License Suspended (not a revocation), etc. [MCL 257.904(10) or (11)].

2. Pursuant to MCL 257.323(1), petitioner did not appeal to the court within 63 days or 182 days with good cause. The tape of the DAAD hearing is no longer available, per promulgated rule, (Danny Lee Roberts v Secretary of State, Court of Appeals File No. 205616 (1999)) unpublished.

3. Pursuant to MCL 257.323(4), the court must confine its consideration to a review of the record prepared pursuant to sections 322 or 625f or the driving record created pursuant to section 204a for a statutory legal issue and **shall not grant restricted driving privileges** (Rodriguez v SOS, 215 Mich App 481 (1996)). The court shall set aside the Secretary of State's determination only if the petitioner's substantial rights have been prejudiced because the determination is any of the following:

- a) In violation of the Constitution of the United States, of the state constitution of 1963, or of statute.
- b) In excess of the statutory authority or jurisdiction of the secretary of state.
- c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
- d) Not supported by competent, material, and substantial evidence on the whole record.
- e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
- f) Affected by other substantial and material error of law.

PLEASE ASK THE COURT TO DISMISS THIS CASE.

4. Transcript Information regarding this case (if applicable):

- a) No transcript has been requested.
- b) Transcript Enclosed.
- c) Transcript to follow.
- d) Did not give 50 days notice pursuant to MCL 257.323(2).

PLEASE ASK THE COURT TO ADJOURN THIS MATTER.

5. Other:

6. See attachments Rodriguez and Roth

A revocation/denial continues until it is approved by DAAD. The through date indicates when the driver is eligible for a hearing to rebut the habitual presumption.