

August 9, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
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Seattle, Washington 98104
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SUMMARY ORDER

SUBJECT: King County For-Hire Licensing file no. **Owens**

GIOVANNI OWENS

For-Hire Driver Enforcement Appeal

Appellant: **Giovanni Owens**

[REDACTED]
Kent, WA 98031
[REDACTED]

King County: King County For-Hire Licensing
represented by **Tyson Taylor**
King County For-Hire Licensing
500 Fourth Avenue Room 403
Seattle, WA 98104
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Overview

King County For-Hire Licensing (Licensing) denied Giovanni Owens' application for a dual County/Seattle for hire driver's permit. Mr. Owens appealed both the County and the Seattle portions of the denials, but submitted his appeals late. Licensing moved to dismiss his appeal related to the County portion of the dual permit. We held a motion hearing and now dismiss his appeal. However, because Licensing based its denial on an incorrect statutory interpretation, Licensing needs to reconsider Mr. Owens' dual permit application under the correct legal standard and reissue a decision.

Appeal Timeliness

Licensing’s May 1 denial order stated that an appeal regarding the Seattle portion of the permit was due May 13 and an appeal regarding the County portion of the permit was due May 28. Licensing sent the joint denial by certified mail, return receipt requested, to Mr. Owens’ then (and current) address. Postal Service tracking shows it attempted delivery on May 3 and, finding no authorized recipient available, left a notice.¹ Mr. Owens’ appeal statements to Seattle and to us were dated June 11. Seattle’s hearing officer denied his appeal as untimely.

We held a hearing on Licensing’s motion to dismiss. KCC 6.01.130.B required that Licensing serve its May 1 denial:

upon the person either personally or by mailing a copy of the notice and order by certified mail, postage prepaid, return receipt requested to the person at the person’s address as it appears on the license, registration or permit. Service by certified mail in the manner provided in this section shall be effective on the date of mailing.

Licensing correctly served its decision. We accept Mr. Owens’ testimony that he did not have actual notice until after the appeal periods had run, but if the Council “had intended to require evidence of actual delivery, it could have said so expressly.” *In re Marriage of McLean*, 132 Wn.2d 301, 306-309, 937 P.2d 602 (1997). We deny his appeal as untimely.

Application Review Standard

At our motion hearing, we probed the rationale behind Licensing’s denial. We conclude that, in evaluating Mr. Owens’ application, Licensing misapplied the legal standard.

According to its May 1 order, Licensing’s sole stated ground for denial was Mr. Owens’ 2015 conviction for solicitation to commit possession of cocaine. Licensing denied the County portion of the dual permit under KCC 6.64.600.B.1, which allows discretionary (“may deny”) rejection where the applicant:

Has had, within five years of the date of application, a criminal conviction or a bail forfeiture involving a crime pertaining to prostitution, gambling, physical violence or other crimes *reasonably related to the applicant's honesty and integrity, including, but not limited to, fraud, larceny, burglary or extortion* or reasonably related to the person’s ability to operate as a for-hire driver.

Licensing denied the Seattle portion of the dual permit under SMC 6.310.430.B.1, which similarly allows discretionary (“may deny”) rejection where the applicant:

Has had a bail forfeiture, conviction or other final adverse finding involving crimes pertaining to prostitution, gambling, physical violence, or other crimes

¹ Tracking No. 7017338000048144295. Licensing orally asserted that the hardcopy of the returned envelope shows the Postal Service also left notices on May 13 and May 16. However, Licensing did not submit that information into the record. If Licensing moves to dismiss a future appeal as untimely, Licensing should submit a PDF of the envelope and other tracking information along with its motion.

directly related to the applicant's honesty and integrity, including but not limited to hit-and-run, fraud, larceny, burglary, extortion and/or directly related to the driver's ability to operate a taxicab, including without limitation driving under the influence of alcohol or controlled substances, provided that such bail forfeiture or conviction was within five (5) years of the date of application.

At hearing, Licensing explained that it considered Mr. Owens' crime reasonably related to his honesty and integrity. Putting aside a philosophical discussion of the relationship between drug use and straightforwardness or corruptibility, the subsections quoted above limit the orbit of "honesty and integrity."

"[G]eneral terms appearing in any statute in connection with specific terms are to be given meaning and effect only to the extent that the general terms suggest items similar to those designated by the specific terms." *Condit v. Lewis Refrigeration Co.*, 101 Wn.2d 106, 111, 676 P.2d 466 (1984) (emphasis added). The County drafters clarified that crimes reasonably related to an applicant's honesty and integrity include "fraud, larceny, burglary or extortion." KCC 6.64.600.B.1. Unless Mr. Owens obtained (or was trying to obtain) the cocaine by shaking down a dealer or stealing someone's stash, his crime was not in the same ballpark as fraud, larceny, burglary, or extortion. The drafters did not intend for attempted drug possession to be treated as an honesty- or integrity-related crime.

The drafters' intent is even clearer under Seattle's version. Seattle included hit-and-run alongside fraud, larceny, burglary, and extortion as examples of crimes directly related to the applicant's honesty and integrity.² Conversely, Seattle listed driving under the influence of a controlled substance as an example of a crime directly related to the driver's ability to operate a for-hire vehicle, not as an example of a crime directly related to the applicant's honesty and integrity. Thus, even if Mr. Owens had obtained cocaine, consumed it, and drove under its influence, his application would be deniable, but *not* because it was a crime directly related to his honesty and integrity (as that code employs those terms).

Licensing countered that Mr. Owens had 22 warrants going back to 1991. However, KCC 6.64.600 and SMC 6.310.430 require some sort of final culpability determination. *See, e.g.*, KCC 6.64.600.B.2 ("found through a criminal conviction, bail forfeiture, judgment in a civil suit or decision in an administrative proceeding, or has been proven by a preponderance of the evidence") and SMC 6.310.430.A.3 ("a bail forfeiture, conviction or other final adverse finding"). A warrant is not a final adverse determination.

Moreover, while there are subsections in KCC 6.64.600 and SMC 6.310.430 that do not specify a review window, the County and Seattle drafters were explicit that only those determinations made in the five years leading up to an application legally count for purposes of KCC 6.64.600.B.1 and SMC 6.310.430.B.1. Unless an adverse final finding was made after April 4, 2014 (five years before Mr. Owens' application), it is not part of the KCC 6.64.600.B.1 or SMC 6.310.430.B.1 inquiry.

² Including hit-and-run as an example of crimes directly related to the applicant's honesty and integrity makes perfect sense. The running after the hit, not the hit itself, is the element bringing that crime into the honesty and integrity orbit.

That Licensing analyzed Mr. Owens' application under an incorrect reading of the code does not mean that the ultimate result—application denial—is necessarily incorrect. KCC 6.64.600.B.1 and SMC 6.310.430.B.1 both have a catchall for crimes “related to the person’s ability to operate as a for-hire driver.” Seattle’s standard is stricter—Licensing would need to prove that Mr. Owens’ 2015 solicitation to possess cocaine is a crime “directly” related to his ability to operate as a for-hire driver. Conversely, the County’s standard is “reasonably” related.

The County standard seems inconsistent with state law, which allows a city or county to deny a permit where the felony “directly relates” to the specific occupation for which the permit is sought. RCW 9.97.020(2). We save that discussion for another day, but Licensing needs to start its review in the right place, and not from the assumption that cocaine possession qualifies, under either code in question, as a crime related to honesty and integrity.

Even if Licensing determines that cocaine possession is sufficiently related to Mr. Owens, ability to operate as a for-hire driver, or fits into some other provision in subsection B. of KCC 6.64.600 or SMC 6.310.430, that only means that his conviction is in the box where denial is an *option*. Denial is still discretionary (“may deny”), meaning factors must be weighed and balanced and judgment exercised. KCC 6.64.600.B.1 and SMC 6.310.430.B.1. Two factors loom large here.

Although studies show that different racial groups use and sell illegal drugs at remarkably similar rates, African-Americans are incarcerated for drug crimes at a grossly disproportionate rate.³ Across the country, black men like Mr. Owens are imprisoned on drug charges at a rate thirteen times higher than white men.⁴ One might think that disparity would be less bleak in our “progressive” neck of the woods, but:

Seattle has one of the highest rates of racial disparity in drug arrests in the United States. Although only 8% of Seattle’s population is black, 67% of those who are arrested for delivery of a serious drug (narcotics other than marijuana) in Seattle are black. However, a rigorous, data-driven 2008 analysis of drug use, delivery, and law enforcement patterns in Seattle indicates that this racial disparity in arrest rates does not reflect the reality of the local drug economy. Nor is it a function of public health, public safety, or civilian complaints.

According to Seattle Police Department (SPD) arrest figures, the total black drug arrest rate was more than thirteen times higher than the white drug arrest rate in 2006. Blacks were more than twenty-one times more likely to be arrested for selling serious drugs than whites in 2005 to 2006, despite the fact that multiple sources suggest that whites are the majority of sellers and users of serious drugs in Seattle. This rate of disparity is surpassed by only one of the other thirty-eight comparably sized cities in the nation for which data are available.⁵

³ MICHELLE ALEXANDER, *THE NEW JIM CROW* 98–99 (rev. ed. 2011).

⁴ *Id.* at 99.

⁵ Task Force on Race and the Criminal Justice System, *Preliminary Report on Race and Washington’s Criminal Justice System*, 87 WASH. L. REV. 1, 29–30 (2012).

Moreover, the disparate impact of disparate criminal conviction rates continues long after the initial sanction is satisfied.

Black ex-offenders are the most severely disadvantaged applicants in the modern job market. While all job applicants—regardless of race—are harmed by a criminal record, the harm is not equally felt. Not only are African-Americans far more likely to be labeled criminals, they are also more strongly affected by the stigma of a criminal record. Black men convicted of felonies are the least likely to receive job offers of any demographic group...⁶

That distinction is important, given that:

it is the policy of the state of Washington to encourage and contribute to the rehabilitation of felons and to assist them in the assumption of the responsibilities of citizenship, and the opportunity to secure employment or to pursue, practice or engage in a meaningful and profitable trade, occupation, vocation, profession or business is an essential ingredient to rehabilitation and the assumption of the responsibilities of citizenship.

RCW 9.96A.010.

Conclusion

None of the above discussion prejudices the merits here. We held a motion hearing, not a full hearing with extensive testimony and submittal of a full record. Our only firm conclusions are:

- (a) Mr. Owens' appeal of Licensing's May 1 denial was untimely;
- (b) attempted drug possession is not, absent something more, directly or even reasonably related to the applicant's honesty and integrity, as those terms are employed in KCC 6.64.600.B.1 and SMC 6.310.430.B.1; and
- (c) Licensing needs to re-analyze Mr. Owens' April 2019 application for a dual for-hire driver's permit and re-issue a decision by **September 9, 2019**.

In the interim, Mr. Owens should instruct his family or anyone else at the residence to carefully monitor for any Postal Service notices.

ORDERED August 9, 2019.



David Spohr
Hearing Examiner

⁶ THE NEW JIM CROW at 151.

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County’s final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *September 9, 2019*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

DS/jo

August 9, 2019

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CERTIFICATE OF SERVICE

SUBJECT: King County For-Hire Licensing file no. **Owens**

GIOVANNI OWENS
For-Hire Driver Enforcement Appeal

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **SUMMARY ORDER** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED August 9, 2019.



Jessica Oscoy
Legislative Secretary

Cantu, Eddie

King County For-Hire Licensing

Kham, Joanna

Finance and Admin Svcs, Consumer Protection Div

MacLeod, Cherie

Finance and Admin Svcs, Consumer Protection Div

Megow, John

Finance and Admin Svcs, Consumer Protection Div

Owens, Giovanni

Hardcopy

Shapiro, Ken

Finance and Admin Svcs, Consumer Protection Div

Taylor, Tyson

King County For-Hire Licensing