

1973 WL 26578 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 12, 1973

***1 In re: Rodney Fitzgibbon Driver License 1762800**

Honorable Emory P. Austin
Director
Motor Vehicle Division
South Carolina State Highway Department
Post Office Drawer 1498
Columbia, South Carolina 29216

Dear Mr. Austin:

You have inquired as to the legal position of the Department in this case insofar as the suspension of the subject driver license is concerned.

According to records submitted, the defendant was arrested on July 23, 1972. The trial magistrate certified to you that the defendant was tried in absentia and found guilty on the same day. Presumably, the fine was paid on the same day by application of cash bond to the satisfaction of the fine.

Under the Batesburg rule laid down by the State Supreme Court, once the fine has been paid or the sentence served, the trial magistrate has no further authority to do anything in the matter. The only exception is a State statute that preserves the defendant's right to appeal for five days.

Although it does appear to me that trial should not have been set on the date of arrest, the defendant had five days thereafter in which to note his appeal and ask for reversal of his conviction on grounds that he did not have sufficient time in which to prepare his defense. His failure to do so ended the case as a matter of law.

It is the opinion of this Office that it is mandatory upon the Department to suspend the driver license of the defendant for the period of time set forth in the statute, and that the Department would be acting ultra vires in lifting the suspension in the circumstances recited.

Yours very truly,

Joseph C. Coleman
Deputy Atbrney General

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