# Court of Appeals: MVA can use expunged records

by Steve Lash

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An expungement of the public record of drunken-driving convictions after 10 years does not prevent the Maryland Motor Vehicle Administration from retaining a "confidential" record of those convictions for licensing purposes, Maryland's top court said Monday.

The Court of Appeals' decision upheld the MVA's denial, without a hearing, of Thomas P. Headen's application to renew his driver's license in 2006.

The Court of Appeals said MVA's retention of the records as "confidential" shields them from public view but permits governmental agencies to have access to them in reviewing license applications.

An attorney for the MVA said the decision "should be welcomed by the public" because it ensures the agency that licenses drivers will have access to a motorist's checkered past.

"The fact that they retain those records [as confidential] is important in drunk-driving enforcement," said Assistant Attorney General Leight D. Collins.

Retention "ensures that the worst recidivist offenders will be identified and hopefully dealt with accordingly," Collins added.

But Leonard R. Stamm, who represented Headen, said Monday's decision harms motorists like his client who cannot expunge long-ago convictions, despite having a clean driving record for the past 15 years.

"Headen is a victim of the anti-drunk driving hysteria that basically says 'once a drunk driver always a drunk driver,'" Stamm said.

Maryland transportation law "implies that you can expunge your DUI convictions" after 10 years, added Stamm, of Goldstein & Stamm P.A. in Greenbelt. "The MVA never did anything specifically to declare those convictions confidential until he asked to have them expunged."

Between 1976 and 1982, Stamm's client had been convicted three times in Maryland for driving under the influence. Headen also pleaded guilty to drunk driving in 1993 but was sentenced to probation before judgment.

Headen then obtained a Florida license. That license was revoked in 1995 after he was convicted in Florida of driving while intoxicated.

Maryland granted Headen a new license after a hearing in 2002, Stamm said.

In November 2006, though, the MVA rejected his renewal application without a hearing. The agency relied on a provision of the Transportation Article that permits the agency to deny a license to anyone whose driving privileges have been suspended, revoked, refused or canceled in another state.

Headen then sought expungement of his public record under Section 16-117.1 of the Transportation Article, which permits an expungement request after 10 years of clean driving, Stamm said.

Several other traffic offenses were, in fact, expunged, according to the Court of Appeals' opinion, but not the DUI convictions and guilty plea.

Stamm argued in vain before the high court that MVA should have expunged Headen's record of DUI convictions and plea, as provided by the statute.

But the high court, upholding Charles County Circuit Judge Amy J. Bragunier's February 2009 decision, said the law gives MVA discretion to retain records of driving-related convictions as "confidential," even after accepting a driver's request to expunge his "public" driving record.

While the law allows for expungement of the public driving record, it also gives the MVA discretion "to classify as 'confidential' any record … that ought to be exempt from expungement," Judge Mary Ellen Barbera wrote.

"Put differently, the General Assembly … has delegated to the MVA the determination of which records (in Petitioner's case, drunken-driving convictions) are sufficiently serious that they should remain part of the licensee's driving record, albeit confidential, and thus not subject to expungement."

While Monday's decision was unanimous regarding record retention, the high court split 4 to 3 in upholding the validity of MVA's denial of the license application without a hearing.

Stamm had argued that Headen was entitled to a hearing before MVA rejected his 2006 renewal request.

But the divided court ruled that Section 16-103.1 of the Transportation Article permits MVA to deny a license application "as a matter of law" to anyone whose driving privileges have been removed in another state.

"Merely because Petitioner defeated the system in his 2002 hearing does not mean that he has the absolute right to a license in 2006 and beyond," Barbera wrote. "Stated differently, the MVA is not forever bound by one erroneous ruling and may act appropriately under law in response to each new licensure application."

Joining Barbera in upholding the absence of a hearing were Chief Judge Robert M. Bell and Judges Lynne A. Battaglia and Sally D. Adkins.

Retired Judge John C. Eldridge dissented, saying Headen was entitled to an administrative hearing on his license application. Judges Clayton Greene Jr. and Joseph F. Murphy Jr. joined the dissent by Eldridge, who sat in on the case by special assignment.

**WHAT THE COURT HELD**

Case:

Headen v. Motor Vehicle Administration, CA No. 42, Sept. Term 2009. Reported. Opinion by Barbera, J. Dissent by Eldridge, J. (retired, specially assigned) Filed March 28, 2011.

Issue:

Did the Motor Vehicle administration validly refuse to expunge drunk-driving convictions from the motorist's record? Did MVA validly deny without a hearing the granting of a license to someone whose driving privileges have been revoked in another state?

Holding:

Yes; MVA has statutory discretion to classify convictions as "confidential" records that it need not expunge. MVA can as a matter of law deny a driver's license to someone whose driving privileges have been canceled by another state.

Counsel:

Leonard R. Stamm for petitioner; Leight D. Collins for respondent.