

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

ATTORNEY GENERAL
OF WASHINGTON
SEP 03 2016
GOVERNMENT COMPLIANCE
& ENFORCEMENT

In the matter of:

Daniel J. Dussaud,

Appellant.

Docket No. 04-2016-GMB-00005

INITIAL ORDER

Agency: Washington State Gambling
Commission
Program: Washington State Gambling
Commission
Agency No. 04-2016-GMB-00005

1. ISSUES PRESENTED

1. Issue No. 1. Does Mr. Dussaud's pending prosecution for the crimes of Rape of a Child in the Third Degree and Furnishing Liquor to a Minor disqualify him from holding a Public Card Room Employee gambling license?
2. Issue No. 2. Is the Commission Director's action of revoking Mr. Dussaud's gambling license based on valid reasons?

2. ORDER SUMMARY

1. Issue No. 1. Mr. Dussaud's pending charge for the felony offense of Rape of a Child in the Third Degree is an offense involving physical harm and a crime of moral turpitude. The pending prosecution disqualifies Mr. Dussaud from holding a gambling license.
2. Issue No. 2. The Commission Director's revocation action is properly based on the pending prosecution and on Mr. Dussaud's failure to establish by clear and convincing evidence his qualifications of licensure. Mr. Dussaud's failure to report to the Commission that he was facing criminal charges is not a valid basis for license revocation.

3. HEARING

1. Hearing Date: July 27, 2016
2. Administrative Law Judge: Lorraine Lee
3. Appellant: Daniel J. Dussaud did not appear.

4. Agency: Washington State Gambling Commission
- 4.1. Representative: Gregory J. Rosen, Senior Counsel
- 4.2. Witnesses: Julie Sullivan, Special Agent, Gambling Commission
5. Exhibits: The Commission's Exhibits 1 through 10 were admitted.
6. Special Agent Julie Sullivan was sworn in before she testified.

4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdictional Facts

1. The Commission Director signed a Summary Suspension Order on March 16, 2016. He also signed a Notice of Administrative Charges and Opportunity for Adjudicative Proceeding ("NAC") directed to Mr. Dussaud on March 16, 2016.
2. Mr. Dussaud received personal service of the Summary Suspension Order and the NAC at his place of employment, the Rip City Casino, on March 17, 2016.
3. Mr. Dussaud filed a Request for Administrative Hearing, which the Commission received on April 5, 2016. He did not request a Stay Hearing.
4. This matter was initially scheduled for hearing on June 28, 2016.
5. The Commission sent a new Notice of Hearing scheduling the hearing for July 27, 2016, 9:00 AM. This notice was mailed to Mr. Dussaud at the address of 303 SW 5th Ave, Kelso, WA 98626.
6. On July 27, 2016, I convened the hearing at 9:30 AM. Mr. Dussaud did not appear, and no one appeared on his behalf. The Gambling Commission moved to hold Mr. Dussaud in default and Senior Counsel Rosen proceeded to present the Commission's case.

The Commission Revoked Mr. Dussaud's License

1. Daniel Dussaud has had a gambling license since 2002, working at several house-banked card rooms and tribal facilities. (Exhibit 1.)

2. On December 31, 2015, Mr. Dussaud completed his license renewal application on-line. On his application, Mr. Dussaud indicated he had not been charged with crimes in the past 12 months. (Exhibits 1 and 10).
3. On January 4, 2016, Special Agent Sullivan was assigned Mr. Dussaud's file to review his qualifications to hold a gambling license. (Exhibit 1)
4. On February 8, 2016, criminal charges were filed against Mr. Dussaud in Cowlitz County Superior Court. By the Information filed, the Prosecuting Attorney charged Mr. Dussaud with two offenses: Rape of a Child in the Third Degree (Count I) and Furnishing Liquor to A Minor (Count II). (Exhibits 2, 4 and 9).
5. The charged offenses were based on the probable cause statement filed by Detective David Voelker that, on or about May 3, 2015, several minors went to a party at Mr. Dussaud's home before they went to the Kelso High School prom dance. That evening, Mr. Dussaud had sexual intercourse at his home with a 15-year-old girl who was not his wife, and Mr. Dussaud was 39 years old. Mr. Dussaud supplied liquor to this girl and other minors. (Exhibit 3).
 - 6.1 On May 19, 2015, Mr. Dussaud was interviewed by Detective David Voelker at the Kelso Police Department. (Exhibit 3).
 - 6.2 In the voluntary interview with Detective Voelker and after a *Miranda* advisement, Mr. Dussaud admitted that he had sexual intercourse with the 15-year-old girl in his home. He also admitted to buying whiskey and vodka for the teens. (Exhibit 3).
6. On February 29, 2016, Mr. Dussaud was served by the sheriff with the criminal charges filed in Cowlitz County Superior Court. (Exhibits 4 and 9).
7. On March 8, 2016, Mr. Dussaud had a preliminary appearance in Cowlitz County Superior Court on these charges. On the same day, the court issued an "Order for Sexual Assault Protection." (Exhibits 4 and 9).
8. Special Agent Julie Sullivan examined the Washington State Court System's Judicial Information System (JIS) records as part of her review of Mr. Dussaud's license renewal application. In reviewing these court records, she discovered the criminal charges filed against Mr. Dussaud. (Exhibits 1 and 5)
9. By letter dated March 8, 2016, Agent Sullivan informed Mr. Dussaud that she would be recommending revocation of his license based on the pending criminal charges. (Exhibit 6).

9.1 Agent Sullivan also stated in her letter that "If revocation charges are issued, you will be given an opportunity to have a hearing before an administrative law judge." (Exhibit 6).

10. On March 16, 2016, the Commission Director issued a Summary Suspension Order, based on the criminal charges and on Mr. Dussaud's failure to inform the Commission that these charges were pending against him. The Director concluded that Mr. Dussaud's actions constituted immediate danger to public safety and welfare. The summary suspension went into effect immediately. (Exhibit 8).
11. The Commission Director also issued, on March 16, 2016, the Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding (NAC), on the same bases as stated in the Summary Suspension Order.
12. On March 17, 2016, 6:02 PM, at the Rip City Casino, Mr. Dussaud received personal service of the NAC, the Summary Suspension Order, and the forms to request a hearing on the NAC and to request a stay hearing on the summary suspension action. (Declaration of Personal Service).
13. On March 21, 2016, Mr. Dussaud was arraigned in Cowlitz County Superior Court on the two charges of Rape of A Child in the Third Degree and Furnishing Liquor to A Minor. On the same day, court issued a "No Contact Order" and an Order for Sexual Assault Protection." (Exhibits 4 and 9)
14. On April 5, 2016, the Commission received Mr. Dussaud's "Request for Administrative Hearing and Interpreter" indicating his desire to "discuss settlement options and keep the right to a hearing." He signed this document on March 21, 2016.

14.1 On this document, Mr. Dussaud indicated his current address as "303 SW 5th Avenue, Kelso, WA 98626."

5. CONCLUSIONS OF LAW

Based on the facts above, I make the following conclusions:

Jurisdiction

1. The Office of Administrative Hearings has jurisdiction to hear and initially decide this matter in an adjudicative proceeding. RCW 9.46.140; RCW 34.05.413; RCW 34.12.030(1); and WAC 230-17-025. Mr. Dussaud timely filed his request for an administrative hearing on the Commission Director's revocation of his gambling license. He did not request a stay hearing on the Summary Suspension Order.

Mr. Dussaud is in Default

1. "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding...the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order."
2. Mr. Dussaud was properly served with the Notice of Hearing set for July 27, 2016, at 9:00 AM. He failed to attend and participate in the administrative hearing. Consequently, Mr. Dussaud is in default under RCW 34.05.440.

Statutes, Rules and Analysis

1. The public policy of the state of Washington on gambling is to keep the criminal element out of gambling activities. It is also to promote the social welfare of the people of Washington by limiting the nature and scope of gambling activities and by strict regulation and control. RCW 9.46.010.
2. The strict regulation and control of gambling activities include stringent requirements on gambling license applicants and licensees. Such requirements include providing certain information to the Commission by the licensee; failure to do so is grounds for suspension or revocation of the license. RCW 9.46.075.
3. RCW 9.46.075 provides that a gambling license can be revoked if the licensee is subject to current prosecution or pending charges for any offense that involves "physical harm to individuals or involving moral turpitude." RCW 9.46.075(4), (9).
4. The Commission's regulation WAC 230-06-085 addresses the circumstance of pending criminal prosecution, requiring the licensee to report to the Commission "in writing within thirty days all criminal actions filed against the licensee." WAC 230-06-085(1).
5. Under WAC 230.03.085, a gambling license can be suspended or revoked if the licensee has "demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level[.]" WAC 230.03.085(3).
6. A gambling licensee has the "affirmative responsibility to establish by clear and convincing evidence the necessary qualifications for licensure." RCW 9.46.153(1). Failure to do so is grounds for license revocation. RCW 9.46.075(8).

7. The Commission based its revocation of Mr. Dussaud's gambling license on the provisions of RCW 9.46.075(1), (7), (8), (9), RCW 9.46.153(1), WAC 230-06-085(1), and WAC 230-03-085 (7), (8)(a).

Pending Criminal Charges

1. When questioned by Detective Voelke, Mr. Dussaud admitted he had sexual intercourse with the 15-year-old girl at his house. He was subsequently charged with Rape of A Child in the Third Degree is a Class C felony under Washington state law. RCW 9A.44.079(1). This is an offense involving physical harm to another person. See *State v. Mathews*, 60 Wn. App. 761, 766 (1991); *State v. Garcia*, 20 Wn. App. 401, 403-404 (1978). It is also an offense involving moral turpitude. *Rodriguez-Herrera v. I.N.S.*, 52 F.3d 238, 240 (9th Cir. 1995); see also *Franklin v. I.N.S.*, 73 F.2d 571, 588 (8th Cir. 1995) (“[courts have consistently held that statutory rape is a crime involving moral turpitude.”); U.S. Department of State Foreign Affairs Manual 9 FAM 302.3-2(B)(2), (U) Crimes of Moral Turpitude (“statutory rape is also deemed to involve moral turpitude”) (Exhibit 7).
2. Mr. Dussaud also admitted to Detective Voelke that he had purchased whisky and vodka for the teens at his house. This criminal conduct was a willful disregard of the state statute, RCW 66.44.270(1) prohibiting the supply of liquor to minors. Such willful disregard was a violation of WAC 230-03-085(3) and, thus, was another basis for license revocation.

Failure to Report

1. Mr. Dussaud's failure to inform the Commission of his pending prosecution is not a valid basis for license revocation. Special Agent Sullivan's review of his license renewal application resulted in her discovery of the pending charges in Cowlitz County Superior Court. February 29 is the date of Mr. Dussaud's knowledge of the fact that criminal charges had been filed against him because that was the date of service by the sheriff. Under WAC 230-06-085(1), Mr. Dussaud had thirty days to notify the Commission. When Special Agent Sullivan discovered the pending charges based on her own investigation, the Commission was well within its authority to initiate summary suspension and revocation actions. However, Mr. Dussaud had a 30-day period to report that he was facing criminal charges, which had not yet expired when the Commission Director issued the NAC to revoke his license.

1.1 Agent Sullivan considered February 8 (the date of the filing of the Information) as Day One in calculating the 30-day reporting period under WAC 230-06-085. Exhibit 1. The date of the filing of the criminal charges is when the prosecution commenced, it does not however mean the charged defendant had knowledge of the criminal charges.

1.2 The superior court case summary shows that February 29 was the date of the sheriff's return of service of the charges on Mr. Dussaud. There is no indication from the admitted exhibits or testimonial evidence that Mr. Dussaud had actual knowledge, prior to February 29, of the criminal charges. Therefore, Mr. Dussaud had until March 30 to report to the Commission that he was facing prosecution.

1.3 To interpret and apply WAC 230-06-085(1) to this situation would render meaningless the "thirty-day" time period for licensee notification of the Commission. Consequently, Mr. Dussaud's failure to report the pending criminal charges cannot be a reason for license revocation under these circumstances.

2. The Commission Director also based license revocation on subsection (7) of WAC 230-03-085, which provides that a license could be suspended or revoked when the licensee

Fails to provide us with any information required under commission rules within the time required, or, if the rule establishes no time limit, within thirty days after receiving a written request from us[.]

WAC 230-03-085(7). The Commission's revocation action also relied on RCW 9.46.075(7). Under this provision, license revocation can be based on the failure to disclose a "material fact." Assuming that the pending prosecution was a material fact which had to be disclosed, Mr. Dussaud had 30 days to report this fact to the Commission. Reading this requirement together with the 30-day requirement under WAC 230-06-085(1), Mr. Dussaud's period for reporting had not yet expired. For the same reasoning set forth in section 1 above, there was no violation of the reporting requirement under WAC 230-03-085(7).

Qualifications of Licensure

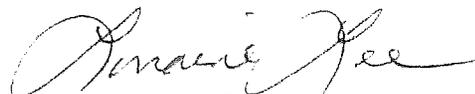
1. Under RCW 9.46.075(8) and RCW 9.46.153(1), a gambling licensee has the burden of proving by clear and convincing evidence that he has the qualifications of licensure.

2. Mr. Dussaud's pending prosecution for Rape of a Child in the Third Degree, a felony offense, disqualifies him from holding a gambling license. RCW 9.46.07(4),(9). Additionally, his statement to Detective Voelke admitting to his supply of liquor to the teens at his home evidenced willful disregard of state law. WAC 230.03.085(3). By his absence and lack of participation in these administrative proceedings, Mr. Dussaud has failed to prove by clear and convincing evidence the necessary qualifications of licensure. RCW 9.46.075(8).

6. INITIAL ORDER

The Washington State Gambling Commission's decision to revoke Mr. Dussaud's license is **AFFIRMED**.

Dated: 9-2-2016.



Lorraine Lee
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

PETITION FOR REVIEW

Any party to this proceeding may file a Petition for Review of this initial order. The written petition for review must be mailed to the Washington State Gambling Commission at:

Washington State Gambling Commission
PO Box 42400
Olympia, WA 98504

The petition for review must be received by the Commission within twenty (20) days from the date this initial order was mailed to the parties. A copy of the petition for review must be sent to all parties of record. The petition for review must specify the portions of the initial order with which the party disagrees, and must refer to the evidence in the record which supports the party's position. The other party's reply must be received at the address above, and served on all parties of record, within thirty (30) days from the date the petition for review was mailed.

Any party may file a cross appeal. Parties must file cross appeals with the Washington State Gambling Commission within ten days of the date the petition for review was filed with the Washington State Gambling Commission. Copies of the petition or cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed.

CERTIFICATE OF SERVICE FOR DOCKET NO. 04-2016-GMB-00005

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

<p>Daniel J. Dussaud 303 SW 5th Ave. Kelso, WA 98626 <i>Appellant</i></p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Gregory Rosen, AAG Office of the Attorney General PO Box 40100 Olympia, WA 98504 <i>Agency Representative</i></p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Friday, September 02, 2016

OFFICE OF ADMINISTRATIVE HEARINGS


Melanie Barnhill
Legal Assistant

ATTORNEY GENERAL
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