

70642-0

70642-0

No. 70642-0-I

**COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE**

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**STATE OF WASHINGTON, Respondent,**

**v.**

**MILES D. MORRISON, Appellant.**

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**BRIEF OF RESPONDENT**

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**DAVID S. McEACHRAN,  
Whatcom County Prosecuting Attorney  
By HILARY A. THOMAS  
Appellate Deputy Prosecutor  
Attorney for Respondent  
WSBA #22007 / ADMIN. #91075**

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2014 JUN 18 AM 11:03

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COURT OF APPEALS DIV 1  
STATE OF WASHINGTON

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**A. ASSIGNMENTS OF ERROR**

None.

**B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR**

1. Whether there was sufficient evidence for a rational trier of fact to find that the defendant committed driving while license suspended in the first degree beyond a reasonable doubt where the evidence showed that the defendant was driving while an order of revocation was in effect for his being an habitual traffic offender, although the revocation letter issued on May 12, 1993 stated that the defendant's driving privileges were revoked for five years, and where the documentation showed that the notice had been sent to the last address of record for the defendant.

**C. FACTS**

**1. Procedural facts**

Appellant Miles Morrison was charged by information on Dec. 13, 2012 with the offenses of Unlawful Possession of a Controlled Substance, To Wit – Methamphetamine, in violation of RCW 69.50.4013(1), a class C felony, and Driving While License Suspended in the First Degree, in violation of RCW 46.20.342(1)(a) for his acts on or about Dec. 11, 2012. CP 2-3. After the court held a CrR 3.5 hearing, Morrison was found guilty by a jury of both counts. CP 25, 31-34, 37. Morrison was sentenced to a mid-standard range sentence of 12 months on the drug conviction and to a mandatory 180 days on the driving while license suspended in the first degree. CP 38; SRP 6.

## 2. Substantive Facts

On Dec. 11, 2012 Dep. Walcker observed Morrison driving a scooter in a closed portion of roadway near a bridge that had been struck in Whatcom County.<sup>1</sup> TRP 27, 28<sup>2</sup>. Morrison was wearing a bike helmet instead of an approved DOT helmet and the tabs for his scooter had expired. TRP 27. When the deputy stopped the scooter, he recognized Morrison and asked for his license and registration. TRP 27-28. Morrison told the deputy he didn't have a license, but gave him his name. When the deputy ran it, Morrison's license status came back as revoked in the first degree. TRP 28. The deputy arrested Morrison for driving while license revoked in the first degree and read him his rights. TRP 29. During a search incident to arrest, a glass pipe with methamphetamine residue was found inside one of the coats Morrison was wearing. TRP 30, 31, 45, 123-26.

Morrison told the deputy at the scene that his license was not suspended in the first degree, but suspended in the third degree. TRP 38. The deputy checked the status again and it still came back as revoked in the first degree. TRP 38.

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<sup>1</sup> As Morrison does not contest his drug conviction on appeal, the State is only including those facts relevant to the driving while license suspended charge.

<sup>2</sup> TRP refers to the verbatim report of proceedings for two volumes from June 4<sup>th</sup> and 5<sup>th</sup>, 2013. SRP refers to the report of proceedings for sentencing that occurred on July 9, 2013.

At trial a custodian of Department of Licensing (“DOL”) records testified as to Morrison’s driving status in December 2012. TRP 89-91. She testified that Morrison’s driving status was revoked in the first degree and that he had been determined to be a habitual traffic offender (“HTO”) on February 12, 1994. TRP 92-93. She explained that a license had been issued to Morrison in October 1990 but that his license had been revoked before the expiration date for the license and that he hadn’t had a license since then. TRP 93-94. She also explained that once he had been determined to be HTO, that designation could potentially be in effect forever and that in December 2012 Morrison was still HTO and his driving status was still revoked in the first degree, and in fact it still was as of the trial date. TRP 94-95, 104, 107. She further explained that in order to remove the status of revoked in the first degree, Morrison would have to have a hearing and he hadn’t had one, so the revocation status and HTO determination remained in effect. TRP 95, 106, 114-15. She also noted that Morrison’s HTO status had been extended by his additional driving offenses. TRP 106.

The custodian also explained that DOL has an obligation to provide notice to a driver if the agency takes action against a person’s license, but that the driver has an obligation to keep DOL informed as to

where they live. TRP 116. She testified that DOL uses the most current address to notify a driver. TRP 117.

A certified copy of Morrison's driving record was admitted as Ex. 6. TRP 91, 98. That document indicated that his "Driver License Status" was: "Revoked," "DWLS/R 1<sup>st</sup> Degree" and "Habitual Traffic Offender (hearing required)". Ex. 6 at 2 (see Appendix A). It included a copy of the original "Order of Revocation" that was sent to Morrison by certified mail. Ex. 6 at 4. The letter stated in part:

YOUR DRIVING PRIVILEGE IS REVOKED FOR 5 YEARS AS AN HABITUAL TRAFFIC OFFENDER. ...  
A HEARING FORM IS ENCLOSED.  
TO REINSTATE YOUR DRIVING PRIVILEGE REFER TO PARAGRAPHS A, B, E ON THE ENCLOSED REINSTATEMENT SHEET. DO NOT DRIVE UNTIL YOU HAVE BEEN NOTIFIED OF REINSTATEMENT BY THIS DEPARTMENT.  
... I CAUSED TO BE PLACED IN A U.S. POSTAL SERVICE MAIL BOX, A TRUE AND ACCURATE COPY OF THIS DOCUMENT TO THE PERSON NAMED HEREIN AT THE ADDRESS SHOWN, WHICH IS THE LAST ADDRESS OF RECORD ...

Ex. 6 at 4. A "Habitual Offender Hearing Request" form was included with the letter. Ex. 6 at 5.

Morrison testified at trial that Dep. Walcker had told him he was suspended in the first degree and that he had told the deputy that he was only suspended third degree. TRP 135. He confirmed that he was the Morrison at "3937 Bay Road, Ferndale, WA 98248" that was listed on the

first page of the DOL document. TRP 145, 148; Ex. 6. He admitted he had previously lived at 5567 Maple Way in Blaine, the address to which the Order of Revocation had been sent. TRP 149; Ex. 6 at 4. He testified that the deputy was on his radio when he ran Morrison's license and told Morrison that he was revoked. TRP 161. Morrison continued to believe that he was only suspended in the third degree. TRP 162.

**D. ARGUMENT**

- 1. There was sufficient evidence for a rational trier of fact to conclude beyond a reasonable doubt that Morrison had committed Driving While License Suspended in the First Degree because his driving privileges had been revoked after a HTO determination and he had not had his license reinstated.**

Morrison contends that there was insufficient evidence to prove that he committed Driving While License Suspended in the First Degree because the State didn't show that the order complied with due process in that the order stated he was revoked for 5 years and it wasn't shown that he received the notice or that it was sent to a valid address. There was sufficient evidence beyond a reasonable doubt to show that Morrison was driving while his license was suspended and that it had been revoked due to a determination that he was a habitual traffic offender. By law, an order of revocation remains in effect until such time that the driver's license privileges are reinstated. Morrison never attempted to contest the

revocation or reinstate his license. As to notice, whether an order is compliant with due process is not a determination for the jury. Moreover, the record demonstrates that the revocation order complied with due process because the notice was sent to the last address of record and Morrison was provided an opportunity to have a hearing to address the revocation.

Under a sufficiency of the evidence analysis, the test is “whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). In applying this test, “all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* at 339. Such a challenge admits the truth of the State’s evidence and all reasonable inferences therefrom. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence is as reliable as direct evidence. State v. Cross, 156 Wn. App. 568, 581, 234 P.3d 288 (2010). The appellate court defers to the trier of fact on issues of credibility of witnesses and persuasiveness of evidence. State v. Carver, 113 Wn.2d 591, 604, 781 P.2d 1308, 789 P.2d 306 (1989).

In order to prove the charge of Driving While License Suspended in the First Degree, the State must prove that the defendant drove a motor

vehicle while an order of revocation was in effect, and the defendant had been found to be a habitual offender. RCW 46.20.342(1), (2) (2012); *see also*, State v. Smith, 155 Wn.2d 496, 502-03, 120 P.3d 559 (2005) (state must prove that defendant was “under an order of revocation as an habitual offender” at the time of offense). An order of revocation remains in effect until the driver’s license privileges are restored by DOL, even after the expiration of the 5 years. State v. Danner, 79 Wn. App. 144, 147-48, 900 P.2d 1126 (1995); *see also*, RCW 46.65.070, RCW 46.65.100. “[A] violation after the mandatory revocation period has run, but before the driver has complied with reinstatement requirements, would continue to be a first degree violation.” Danner, 79 Wn. App. at 153. Thus, a driver whose license privileges were revoked as a habitual offender continues to have his privileges revoked in the first degree until such time that the revocation period has expired, the driver petitions for reinstatement of his license, *and* DOL has reinstated the license. *Id.*

While the revocation of a defendant’s license must comply with due process, due process only requires notice and an opportunity to be heard in this context. State v. Storhoff, 133 Wn.2d 523, 527, 946 P.2d 783 (1997). Notice must be “reasonably calculated to inform the affected party of the pending action and of the opportunity to object.” City of Redmond v. Arroyo-Murillo, 149 Wn.2d 607, 612, 70 P.3d 947 (2003)

(quoting State v. Dolson, 138 Wn.2d 773, 777, 982 P.2d 100 (1999)).

RCW 46.65.065 provides that notice must be sent to the driver's address of record. RCW 46.65.065(1). In order to establish a violation of due process, *the defendant* must at least assert that DOL notices were incorrect and thus deprived them of notice and an opportunity to be heard. Storhoff, 133 Wn.2d at 528 (emphasis added). "In the absence of actual prejudice ... incorrect DOL notices do not invalidate the revocation of the Defendants' licenses, or otherwise preclude their prosecution for driving while license revoked." Id. at 532. While the State has the burden to prove that the revocation complied with due process *once the legal issue is raised by the defendant*, this is not an element of the offense that must be presented to the jury. See, State v. Miller, 156 Wn.2d 23, 123 P.3d 827 (2005) (validity of no contact order is question of law within province of court to determine, not element of the offense for jury determination); State v. Carmen, 118 Wn. App. 655, 663 n.2, 77 P.3d 368 (2003), *rev. den.* 151 Wn.2d 1039 (2004) (due process validity of no contact order was a legal determination for court, not jury). In Storhoff, the issue was raised by the defendants via motions to dismiss. Storhoff, 133 Wn.2d at 526.

The to-convict instructions for Driving While License Suspended in the First Degree stated in order to find Morrison guilty, the jury had to find beyond a reasonable doubt:

- (1) That on or about December 11, 2012, the defendant drove a motor vehicle;
- (2) That at the time of driving an order of revocation was in effect;
- (3) That the order of revocation was based on a finding by the Department of Licensing that the defendant was a habitual traffic offender; and
- (4) That the driving occurred in the State of Washington, County of Whatcom.

Supp CP \_\_, Sub Nom. \_\_ (Inst. No. 11). At trial Morrison didn't contest that he had been driving that day in Whatcom County, that his license was suspended on that day, or that his license had been revoked for being an habitual traffic offender. He just contested that status of his suspension, asserting that his license was suspended in the third, not first, degree. After the state rested, defense counsel moved for dismissal of the driving while license suspended charge because the order of revocation stated he was revoked for five years, but the court found that Morrison had been determined to be a habitual traffic offender and that was still his status. TRP 129-31. In closing, defense counsel again argued that the revocation should have expired after five years. TRP 208.

While Morrison does not contest that the trial court erred in denying his "half-time" motion to dismiss, he contends that the evidence was insufficient to convict him. Morrison ignores the law that once a driver's license has been revoked in the first degree because of a habitual traffic offender determination, that driver's license remains in that status

until his driving privileges are actually reinstated. The State met its burden to show that an order of revocation was still in effect and that the revocation was based on DOL's determination that Morrison was a habitual traffic offender.

Moreover, while Morrison did not contest the sufficiency of the notice at trial or in his half-time motion to dismiss, the notice was compliant with due process because it was sent to the last address of record for Morrison at the time it was sent. Morrison noted that he had lived at that address at one time and didn't assert that he hadn't received the notice. The notice also informed Morrison of his right to contest the revocation. The record demonstrates that the order of revocation complied with due process.

**E. CONCLUSION**

The State respectfully requests this Court to deny Morrison's appeal and affirm his conviction for Driving While License Suspended in the First Degree.

Respectfully submitted this 17<sup>th</sup> day of June, 2014.

  
HILARY A THOMAS, WSBA #22007  
Appellate Deputy Prosecutor  
Attorney for Respondent  
Admin. No. 91075

CERTIFICATE

I certify that on this date I placed in the U.S. mail with proper postage thereon, or otherwise caused to be delivered, a true and correct copy of the foregoing document to this Court, and appellant's counsel of record, addressed as follows:

Mr. Christopher Gibson  
Nielsen Broman & Kock PLLC  
1908 East Madison Street  
Seattle, WA 98122

 6/17/2014  
Legal Assistant Date

# APPENDIX A



STATE OF WASHINGTON  
 DEPARTMENT OF LICENSING  
 P. O. Box 9030 • Olympia, Washington 98507-9030

June 3, 2013

tnt

The information in this report pertains to the driving record of:

Lic. #: MORRIMD293MT  
 Name: MORRISON, MILES DAVIS  
 3937 BAY RD  
 FERNDALE WA 98248

Birthdate: July 30, 1971  
 Eyes: BLU Sex: M  
 Hgt: 5 ft 09 in Wgt: 175 lbs  
 License Issued: October 17, 1990  
 License Expires: July 30, 1993

After a diligent search, our official record indicates that the status on December 11, 2012, was:

**Personal Driver License Status:**

**Commercial Driver License Status:**

- Revoked

**The following also applied:**

**PDL Attachments:**

**CDL Attachments:**

- Notice of PDL Revocation, June 11, 1993
- Hearing Request
- Unable to locate proof of delivery

**Attachments:**

- Abstract of Driving Record



Having been appointed by the Director of the Department of Licensing as legal custodian of driving records of the State of Washington I certify under penalty of perjury that such records are official, and are maintained within the Department of Licensing.

*Bruce V. Kelly*

Custodian of Records  
 Place: Olympia, Washington  
 Date: June 03, 2013

We are committed to providing equal access to our services.  
 If you need accommodation, please call 360-902-3900 or TTY 360-664-0116.

Driving Record - MORRIMD293MT

Abstract of Complete Driving Record  
This information is current as of 6/3/2013 1:20:56 PM

Driver information	
PIC	MORRI-MD-293MT
Name	Morrison, Miles Davis
Gender	Male
DOB	7/30/1971

ID card status	
Issued	8/18/2011
Expires	7/30/2016
Original issue date	6/7/1991
Driver license status	
Status	Revoked DWLS/R 1st Degree Habitual Traffic Offender (hearing required)
Issued	10/17/1990
Expired	7/30/1993
Type	Driver license issued
Original issue date	2/20/1990

Reinstatement	
<b>Requirements</b>	<b>Fees</b>
Retest - written and drive	\$150 Reissue
Financial responsibility (SR-22) until 6/11/2092	
Child support	Additional testing/license fees may apply
Resolve FTAs	
Additional requirements may apply	

Failure to Appear (unresolved tickets)					
Violation date	Violation #	Description	Court name	Court type	Court phone
9/14/2010	C00060376	No valid license -infraction	Skagit Co.	District	360-336-9319
9/14/2010	XY0449620	Speeding	Skagit Co.	District	360-336-9319
7/6/2010	XY0314112	No valid license -infraction	Skagit Co.	District	360-336-9319
7/6/2010	XY0314111	Speeding	Skagit Co.	District	360-336-9319
1/3/2005	AI0058006	Missing/obscure/altered license plate	Whatcom Co.	District	360-676-6770

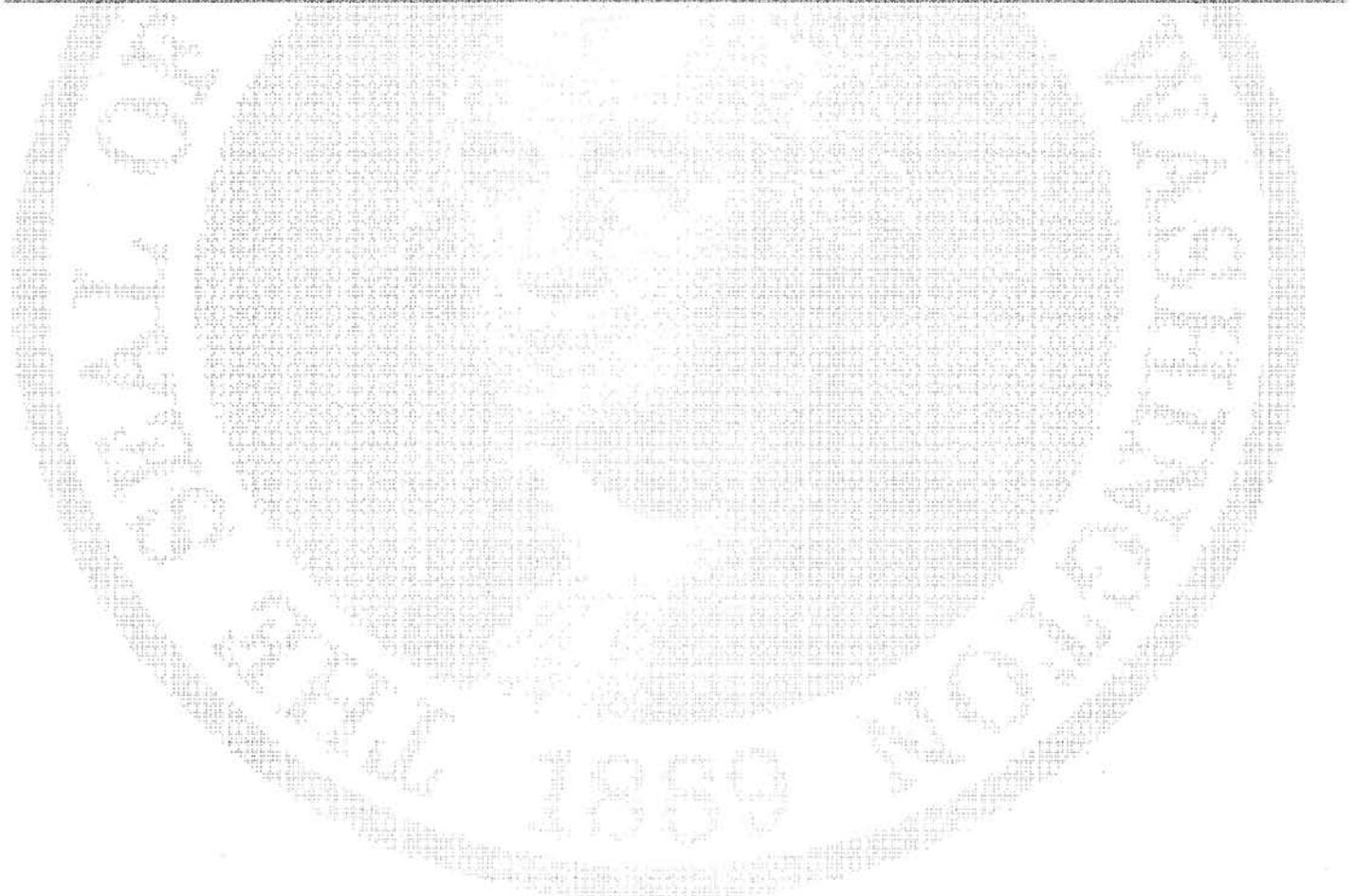
Tickets									
Violation date	Violation #	Description	Court finding	Court name	Court type	BAC	Licensing state	Exempt veh	Veh type
3/4/2011	AC44861	Driving while license suspended or revoked in the 3rd degree	Conviction 4/26/2011	Whatcom Co.	District				
9/14/2010	C60376	No valid license -infraction	Conviction 12/17/2010	Skagit Co.	District				
9/14/2010	XY0449620	Driving without liability insurance	Conviction 10/15/2010	Skagit Co.	District				
9/14/2010	XY0449620	Illegal overtaking or passing	Conviction 10/15/2010	Skagit Co.	District				
7/6/2010	XY0314111	Speeding 26-30 MPH over	Conviction 8/16/2010	Skagit Co.	District				
7/6/2010	XY0314112	No valid license -infraction	Conviction 8/16/2010	Skagit Co.	District				
6/24/2010	AC39608	Driving while license suspended or revoked in the 3rd degree	Conviction 7/9/2010	Whatcom Co.	District				
2/12/1994	007479404	Driving under the influence	Conviction 3/31/1994	Whatcom Co.	District				
8/7/1992	921009784	Driving under the influence	Conviction 3/25/1993	Whatcom Co.	Superior				
11/16/1990	000085531	Driving under the influence	Conviction 8/20/1992	Whatcom Co.	District				
11/13/1990	000021467	Driving under the influence	Conviction 11/30/1990	Ferndale	Municipal				

Driving Record - MORRIMD293MT

Abstract of Complete Driving Record  
 This information is current as of 6/3/2013 1:20:56 PM

Drive record history

Action date	Reason	Action taken	Eligibility date	Release date	Violation date	Violation #	DUI/BAC detail	Licensing state
9/16/2011	Failure to make required payment of fine and costs	Suspended	9/16/2011	7/28/2021		C00060376		
12/3/2010	Failure to make required payment of fine and costs	Suspended	12/3/2010	10/15/2020		XY0449620		
11/5/2010	Failure to make required payment of fine and costs	Suspended	11/5/2010	8/16/2020		XY0314112		
11/5/2010	Failure to make required payment of fine and costs	Suspended	11/5/2010	8/16/2020		XY0314111		
5/24/2009	Child support enforcement suspension	Suspended	5/24/2009	5/24/2019				
3/30/1994	Refused breath/blood test	Revoked	3/29/1996	6/11/2001	2/12/1994		.00 .03	
1/26/1994	Refused breath/blood test	Revoked	1/26/1996	6/11/2001	12/9/1993		.00 .02	
6/11/1993	Habitual traffic offender	Revoked	6/11/1995	6/11/2092				
3/13/1991	Deferred prosecution	Probation		3/13/1996				





3CHO  
1125 Washington St., SE • Olympia, WA 98504-8001

MAY 12, 1993  
ORDER OF REVOCATION

FILE COPY

#3  
MORRISON, MILES DAVIS  
5567 MAPLE WAY  
BLAINE

WA 98230

LICENSE NO: MORRIMD293MT

BIRTHDATE: 07-30-71

ON 06-11-1993 YOU MUST STOP DRIVING A MOTOR VEHICLE IN THIS STATE. IF YOU HAVE A WASHINGTON STATE DRIVER'S LICENSE IN YOUR POSSESSION IT MUST BE SURRENDERED TO THIS DEPARTMENT.

YOUR DRIVING PRIVILEGE IS REVOKED FOR 5 YEARS AS AN HABITUAL TRAFFIC OFFENDER. AUTHORITY: RCW 46.65

A HEARING REQUEST FORM IS ENCLOSED.

TO REINSTATE YOUR DRIVING PRIVILEGE REFER TO PARAGRAPHS A, B, E ON THE ENCLOSED REINSTATEMENT SHEET. DO NOT DRIVE UNTIL YOU HAVE BEEN NOTIFIED OF REINSTATEMENT BY THIS DEPARTMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I CAUSED TO BE PLACED IN A U. S. POSTAL SERVICE MAIL BOX, A TRUE AND ACCURATE COPY OF THIS DOCUMENT TO THE PERSON NAMED HEREIN AT THE ADDRESS SHOWN, WHICH IS THE LAST ADDRESS OF RECORD, POSTAGE PREPAID, CERTIFIED MAIL, ON MAY 12, 1993.

*Lucy H. Song*

AGENT FOR THE DEPARTMENT OF LICENSING  
SUSPENSION/REINSTATEMENT SECTION  
PHONE: (206) 586-2638  
CERTIFIED MAIL NUMBER

**157656**

PLEASE INCLUDE LICENSE NO., FULL NAME AND DATE OF BIRTH ON ALL CORRESPONDENCE.

X



FILE COPY

HABITUAL TRAFFIC OFFENDER HEARING REQUEST
RCW 46.65
1125 Washington St., SE • Olympia, WA 98504-8001

YOU MAY REQUEST A HEARING TO DETERMINE WHETHER YOUR DRIVING PRIVILEGE SHOULD BE REVOKED UNDER THE HABITUAL TRAFFIC OFFENDER LAW. ISSUES TO BE CONSIDERED ARE:

- 1) WHETHER WITHIN A FIVE YEAR PERIOD, YOU COMMITTED THREE (3) OR MORE OF THE FOLLOWING OFFENSES: DRIVING OR BEING IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS; RECKLESS DRIVING; HIT AND RUN (OCCUPIED); VEHICULAR HOMICIDE; VEHICULAR ASSAULT; DRIVING WHILE DRIVING PRIVILEGE SUSPENDED OR REVOKED; ELUDING A POLICE VEHICLE.
2) WHETHER WITHIN A FIVE YEAR PERIOD, YOU COMMITTED TWENTY (20) OR MORE MOVING VIOLATIONS (INCLUDING DEFECTIVE AND ILLEGAL VEHICLE EQUIPMENT) AS DEFINED IN WAC 308-104-160.
3) WHETHER THE INFRACTIONS WERE CAUSED BY OR WERE THE RESULT OF ALCOHOLISM/ DRUG ADDICTION AND SINCE YOUR LAST OFFENSE, YOU HAVE UNDERTAKEN REHABILITATION AND HAVE SUCCESSFULLY COMPLETED AT LEAST 60 DAYS IN A MINIMUM TWO (2) YEAR STATE APPROVED ALCOHOL/DRUG TREATMENT PROGRAM.

YOUR REQUEST MUST BE POSTMARKED NO LATER THAN MAY 27, 1993. RETURN YOUR REQUEST TO:

DEPARTMENT OF LICENSING
DRIVER SERVICES DIVISION
HEARINGS AND INTERVIEWS SECTION
P O BOX 9030
OLYMPIA, WA 98507-9030
PHONE (206) 753-6971

CUT ON THE LINE. KEEP THE ABOVE PORTION FOR YOUR INFORMATION

EFFECTIVE DATE: 06-11-93

DRIVER LICENSE NO.: MORRIMD293MT

I HEREBY REQUEST A DEPARTMENTAL HEARING ON THE REVOCATION OF MY DRIVING PRIVILEGE FOR VIOLATING THE HABITUAL TRAFFIC OFFENDER LAW.

I WILL HAVE AN ATTORNEY

I WILL NOT HAVE AN ATTORNEY

ATTORNEY'S NAME

YOUR SIGNATURE

DATE

ATTORNEY'S ADDRESS

PRINT YOUR NAME

CITY

STATE

ZIP+4

YOUR ADDRESS

ATTORNEY'S PHONE NUMBER

CITY

STATE

ZIP+4

( ) DAYTIME PHONE

I REQUEST THE DEPARTMENT PROVIDE A TRANSLATOR FOR THE HEARING.

LANGUAGE: