



NO. 12-0202

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**JOE E. MILLER, COMMISSIONER
OF THE WEST VIRGINIA DIVISION
OF MOTOR VEHICLES,**

Respondent Below, Petitioner,

v.

BENJAMIN M. KNOPP,

Petitioner Below, Respondent.

REPLY BRIEF OF PETITIONER

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Comes now the Petitioner, Joe E. Miller, Commissioner of the West Virginia Division of Motor Vehicles, by counsel, Janet E. James, Senior Assistant Attorney General, and submits this reply brief in accordance with the Court's *Scheduling Order*.

The circuit court opinions located by undersigned counsel which have had the issue of "rescission v. reinstatement" before them have come down of the side of Petitioner. The first two were, correctly, dismissed from Wood and Marion counties for lack of jurisdiction; the third was decided in Kanawha County.

In *Dowler v. Cicchirillo*, Case Number 08-P-7 (Wood County (June 9, 2008)), the circuit court found that, "It is clear that the Respondent [DMV] is mandated by West Virginia Code § 17C-5A-1a to revoke the Petitioner's driving privileges upon a conviction for driving a motor vehicle

while under the influence of alcohol....Due to the revocation pursuant to §17C-5A-1a, the Final Order of the Respondent dated September 26, 2007, which was the result of an administrative hearing governed by §§ 17C-5A-1 and 17C-5A-2, is essentially irrelevant and of no force and effect.”

In *Crandall v. Cicchirillo*, Civil Action No. 08-AA-7 (Marion County (January 7, 2009)), the circuit court made the distinction between rescission and reinstatement, finding that “...the order of revocation was initially ‘rescinded’, but as petitioner never underwent the revocation period, there was no need to ‘reinstate’ her privilege to operate a motor vehicle. Therefore, the respondents’ subsequent action of revoking petitioner’s license pursuant to the petitioner’s no contest plea in the Fairmont City Court is valid.”

In *Curfman v. Bolyard*, Civil Action No. 09-MISC-10 (Kanawha County (April 23, 2009)), the circuit court denied a writ of prohibition and mandamus, finding that the Petitioner had been convicted, and declining to reverse the DMV’s order of revocation on conviction.

As Petitioner noted in its opening brief, this issue was before this Court in *Williams v. West Virginia Div. of Motor Vehicles*, 226 W.Va. 562, 703 S.E.2d 533 (2010); however, the Court properly disposed of that case on the issue of jurisdiction, and did not reach the merits. Although, apparently, the Court would have agreed with the Petitioner’s interpretation of the statute:

The underlying action of the DMV was a mandatory license revocation based exclusively upon the statutorily-required revocation subsequent to the Appellee's plea of nolo contendere, with no requirement for an administrative hearing.

226 W.Va. 568, 703 S.E.2d 539.

In the present case, the administrative hearing was dismissed because the officer failed to appear at the hearing, which was the practice at the time. However, even if the revocation had been

rescinded upon an adjudication of the merits, the Respondent's subsequent guilty plea would still require the Commissioner to revoke his license. The standard of proof at an administrative hearing is much lower than that in the criminal realm, so it is logical that administrative rescission would not operate to vitiate a criminal conviction. The order of events in a case, such as rescission and conviction, does not, and should not, affect the duty of the Commissioner to revoke on conviction pursuant to W. Va. Code § 17C-5A-1a.

CONCLUSION

WHEREFORE, based upon the foregoing and for such other reasons as may appear to the Court, Appellant prays that this Court reverse the Order entered by the Circuit Court of Kanawha County on January 3, 2012.

Respectfully submitted,

**JOE E. MILLER, COMMISSIONER,
WEST VIRGINIA DIVISION OF
MOTOR VEHICLES,**

By Counsel,

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CERTIFICATE OF SERVICE

I, Janet E. James, Senior Assistant Attorney General, do hereby certify that the foregoing "Reply Brief of Petitioner" was served upon the following by depositing a true copy thereof, postage prepaid, in the regular course of the United States mail, this 11th day of July, 2012, addressed as follows:

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