

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

STATE OF WEST VIRGINIA, ex rel.  
JOE E. MILLER, Commissioner, West Virginia  
Division of Motor Vehicles,

Petitioner,

v.

Case No. 12-1224

WILLIAM S. THOMPSON, Judge of the  
Circuit Court of Boone County,

Respondent.

And

PATRICK I. WHITE,

Party In Interest.

PATRICK I. WHITE'S SUMMARY RESPONSE  
TO PETITION FOR WRIT OF PROHIBITION

NOW COMES Patrick I. White ("Respondent"), by counsel, Matthew M. Hatfield and the law firm of Hatfield & Hatfield, PLLC, and hereby files his summary response, pursuant to Rule 16(h) of the Revised Rules of Appellate Procedure, to the *Petition For Writ Of Prohibition* ("writ"). The Honorable William S. Thompson, Judge of the Circuit Court of Boone County, West Virginia ("Judge Thompson") issued a stay of the Patrick I. White's ("Respondent") driving privileges in compliance with the mandates set forth in W.Va. Code 17C-5A-2A, et. seq. and W.Va. Code 29A-5-1, et. seq. Specifically, the stay was issued upon motion and hearing and a finding by Judge Thompson upon the evidence presented that the Respondent shall prevail upon the merits of the appeal and that he will suffer irreparable harm if the stay is not imposed. Further, the stay has not exceeded one hundred fifty (150) days. Neither the Boone County Circuit Court nor Judge Thompson exceeded its jurisdiction or its legitimate power and, accordingly, this Court should not issue the writ.

## **Factual Background**

The Respondent filed on August 21, 2012 a *Motion For Stay Of Administrative Order* (“Stay Motion”, a copy of which is attached) in the Circuit Court of Boone County. The Stay Motion was properly noticed and set for hearing before Judge Thompson on August 29, 2012. The Petitioner did not file a written response in opposition to the Stay Motion. All parties appeared on August 29, 2012 for a hearing upon the said motion and were afforded the opportunity to offer evidence and present argument (the undersigned offered to both the Boone County Circuit Court and the Petitioner to call the Respondent as a witness to confirm the representations made before the court. The Petitioner, however, did not call the Respondent as a witness). Thereafter, Judge Thompson took the matter under advisement and instructed both sides to submit a proposed order. The *Order Granting Temporary Stay* (“Stay Order”) was then entered on September 10, 2012. The Petitioner then filed a *Motion to Vacate Order Granting Temporary Stay* wherein it contended: 1) the stay was improperly issued because it was not limited to one hundred fifty (150) days and 2) the Respondent (and Petitioner below) did not testify as to the irreparable harm he would suffer if the stay was not issued. Notably, the Petitioner did not secure a hearing date upon the *Motion to Vacate Order Granting Temporary Stay* but, rather, chose to file this writ proceeding. The Petitioner now contends this Court should prohibit the Boone County Circuit Court from issuing the stay until: 1) the Stay Order specifies the stay is limited to one hundred fifty (150) days and 2) the Respondent testifies about the irreparable harm he will suffer if the stay is not issued. In an effort to conserve judicial resources, the Respondent offered to set a hearing before Judge Thompson to again address the Petitioner’s concerns. The Petitioner, however, declined the offer to correct the concerns for which it now seeks the writ. *See* the attached e-mail of October 25, 2012 from Elaine Skorich, Esquire.

## Argument

### Standard For Issuance Of Writ

W.Va. Code 53-3-1 generally states a writ of prohibition shall lie as a matter of right when the inferior court does not have jurisdiction over the subject matter or, having such jurisdiction, exceeds its legitimate power. Further, a writ of prohibition, like writs of mandamus and habeas corpus, is an extraordinary remedy and should only be issued for extraordinary causes. State ex rel Suriano v. Gaughan, 198 W.Va. 339, 480 S.E.2d 548 (W.Va. 1996). In determining whether to issue a writ of prohibition, *“this Court will look to the adequacy of other available remedies such as an appeal and to the over-all economy of effort and money among litigants, lawyers and courts; however, this Court will use prohibition in this discretionary way to correct only substantial, clear-cut, legal errors plainly in contravention of a clear statutory, constitutional, or common law mandate which may be resolved independently of any disputed facts and only in cases where there is a high probability that the trial will be completely reversed if the error is not corrected in advance”*. Syl. Pt. 1 Hinkle v. Black, 164 W.Va. 112, 262 S.E.2d 744 (W.Va. 1979). As discussed in greater detail below, there is a low probability the Boone County Circuit Court will be completely reversed if this writ is not issued (i.e., the Respondent can testify as to the proffers made by counsel and the Stay Order can be amended to reflect the one hundred fifty (150) day stay, but the net result is likely to remain the same). *“Where prohibition is sought to restrain a trial court from the abuse of its legitimate powers, rather than to challenge its jurisdiction, the appellate court will review each case on its own particular facts to determine whether a remedy by appeal is both available and adequate, and only if the appellate court determines that the abuse of powers is so flagrant and violative of petitioner’s rights as to make a remedy by appeal inadequate, will a writ of prohibition issue”*. Certainly, the circumstances which warrant the issuance of a writ are limited. The Petitioner must,

therefore, demonstrate that the Boone County Circuit Court either: 1) had no jurisdiction over the administrative appeal or 2) exceeded its legitimate power. It can show neither.

A. The Boone County Circuit Court Has Jurisdiction Over The Administrative Appeal

A person whose driver's license is at issue is entitled to judicial review pursuant to W.Va. Code 29A-1-1, et. seq. *"Proceedings for review shall be instituted by filing a petition, at the election of the petitioner, in either the Circuit Court of Kanawha County, West Virginia or in the circuit court of the county in which any one of the petitioners resides or does business . . ."* W.Va. Code 29A-5-4(b). The Respondent (petitioner below) is a resident of Boone County, West Virginia. Pursuant to Rule 2(a) and Rule 2(b) of the Rules Of Procedure For Administrative Appeal a petition for review of an administrative order shall be filed in the office of the clerk of the circuit court in which venue lies by law. The underlying offense (driving under the influence) is alleged to have occurred in Madison, Boone County, West Virginia. Further, the underlying criminal action (which was dismissed) was brought in the Magistrate Court of Boone County, West Virginia. The Boone County Circuit Court has jurisdiction over this administrative appeal. This cannot be argued.

B. The Boone County Circuit Court Did Not Exceed Its Legitimate Power  
i. The Stay Has Not Exceeded 150 Days

W.Va. Code 17C-5A-2(s) provides, in part, that a stay of an administrative order concerning the revocation of a person(s) driver's license not exceed one hundred fifty (150) days. The Stay Order was entered by the Boone County Circuit Court September 10, 2012. Approximately sixty (60) days have expired since the Stay Order was entered. Moreover, this statute does not preclude a circuit court from imposing consecutive stays. Smith v. Bechtold, 190 W.Va. 315, 438 S.E.2d 347 (W.Va. 1993). As such, the Boone County Circuit Court has not

exceeded its legitimate authority nor violated the requirement set forth in W.Va. Code 17C-5A-2(s) by imposing the Stay Order. Assuming, *arguendo*, the Stay Order violates the time requirement set forth in W.Va. Code 17C-5A-2(s), the undersigned has offered to amend the said Stay Order to specify the one hundred fifty (150) day time limitation. The petitioner, however, refused this offer as it would prefer to pursue this extraordinary remedy. See the attached e-mail dated October 25, 2012. This is an extreme waste of time, money, energy, effort and overall judicial resources.

ii. The Boone County Circuit Court Satisfied The Evidentiary Requirements Set Forth In W.Va. Code 17C-5A-2(s)

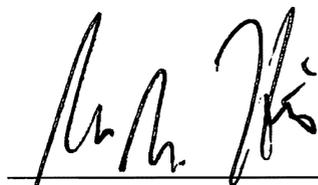
A court may grant a stay of an administrative appeal concerning a driver's license revocation proceeding "*only upon motion and hearing, and a finding by the court upon the evidence presented, that there is a substantial probability that the appellant shall prevail upon the merits and the appellant will suffer irreparable harm if the order is not stayed . . .*" W.Va. Code 17C-5A-2(s). A circuit court is granted wide discretion concerning the manner in which it handles hearings, motions, etc. In fact, W.Va. Code 29A-5-4(c) provides, in part, that a circuit court, pending the administrative appeal, may grant a stay upon such terms as it deems proper. First, the Boone County Circuit Court issued the stay upon a motion and hearing. This is not in dispute. Second, evidence was presented concerning whether there is a substantial probability that that the appellant shall prevail upon the merits. Specifically, the entire incident (the subject traffic stop) was captured by the arresting officer via an in-car camera. The Boone County Circuit Court was provided with this video and reviewed the same prior to issuing the Stay Order. Third, evidence and arguments were presented concerning the irreparable harm which the Respondent would suffer if the stay were not issued. Specifically, the Respondent lives in Madison, Boone County, West Virginia – a rural area which has no available public

transportation (bus services, taxi services, rail/subway services). Judge Thompson, upon information and belief, took judicial notice of this fact at the Stay Motion hearing. Obviously, the Respondent, like many others, is dependent upon driving a vehicle in order to live and function on a daily basis. The Petitioner was also free to call (in fact, Respondent's counsel offered) the Respondent as a witness at the said hearing (i.e., the Respondent could have been questioned about the irreparable harm he would suffer if the stay was not imposed, etc.). It did not and should now be precluded from obtaining the issuance of a writ based upon this issue. In sum, the Boone County Circuit Court issued the stay after it heard arguments from counsel, reviewed the pleadings (evidence) filed herein, reviewed the video (evidence) of the initial traffic stop, etc. Thus, the lower tribunal did not exceed its legitimate power herein.

**Relief Requested**

The undersigned is unsure as to what the Petitioner is referring to when it requests this Court issue a writ to overrule Respondent's Order Denying Motion To Dismiss. See pg. 9 of *Petition For Writ Of Prohibition*. A Motion To Dismiss is not germane to the issues herein. Regardless, the Respondent prays that this Court deny the writ of prohibition as the stay has not exceeded one hundred fifty (150) days and the stay was issued in compliance with the evidentiary requirements set forth in W.Va. Code 17C-5A-2(s) and W.Va. Code 29A-5-4(c).

PATRICK I. WHITE,  
A Party In Interest,  
*By counsel*



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Madison, West Virginia 25130  
(304) 369-1162  
*Counsel for Patrick I. White*

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

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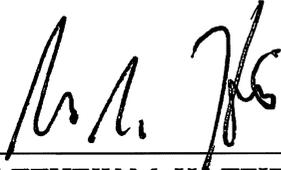
PATRICK I. WHITE,

Party In Interest.

CERTIFICATE OF SERVICE

I, Matthew M. Hatfield, counsel for Patrick I. White, do hereby certify that the foregoing *Patrick I. White's Summary Response To Petition For Writ Of Prohibition* has served upon the below counsel by facsimile at (304) 926-3498 and by first class U. S. Mail, postage prepaid, on this the 8<sup>th</sup> day of November, 2012.

Elaine Skorich, Asst. Atty. Gen. (WVSB #8097)  
DMV – Office of the Attorney General  
P. O. Box 17220  
Charleston, West Virginia 25317-0010  
*Counsel for Petitioner*



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*Counsel for Patrick I. White*

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

PATRICK I. WHITE,  
Petitioner,

v.

Civil Action No. 12-C-190

WEST VIRGINIA DIVISION  
OF MOTOR VEHICLES, JOE MILLER,  
COMMISSIONER,  
Respondent.

MOTION FOR STAY OF ADMINISTRATIVE ORDER

NOW COMES the petitioner, Patrick White, by counsel, Matthew M. Hatfield, and hereby moves this Court to STAY the *Decision Of Hearing Examiner And Chief Hearing Examiner* (OAH Case No. 316618BCDE) which revoked the petitioner's driving privileges all pursuant to a hearing held on December 15, 2011 before William F. Cox, Hearing Examiner for the Office of Administrative Hearing. W.Va. Code §17C-5A-2(s) states, in pertinent part, that a "court may grant a stay or supersedeas of the order only upon motion and hearing, and a finding by the court upon the evidence presented, that there is a substantial probability that the appellant shall prevail upon the merits and the appellant will suffer irreparable harm if the order is not stayed". The petitioner, in the *Petition For Administrative Review*, sets forth the substantial probability the he will prevail upon the merits herein and how he will suffer irreparable harm if the order is not stayed. For clarification, however, the petitioner again states as follows:

Likelihood Of Prevailing

That the petitioner stood trial before Magistrate Snodgrass in Boone County Magistrate Court. Magistrate Snodgrass ultimately dismissed all charges, including the driving under the

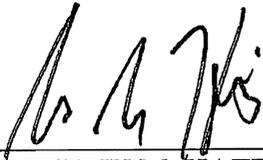
influence charge which gave rise to the said driver's license revocation. Magistrate Snodgrass ruled that Patrolman L. W. Holeston's police cruiser dashboard camera footage showed no erratic or illegal driving on the part of the petitioner that would give rise to a reasonable suspicion to initiate the traffic stop of the petitioner. This video (which is the "best evidence") is crystal clear and the petitioner intends to show this video to this Court. There is no basis for the traffic stop and, therefore, there is a substantial likelihood the petitioner will prevail on the merits of this matter. This video will also demonstrate to this Court that the petitioner was not "slurring" his words, having trouble standing, having trouble walking, etc. In other words, the video contradicts the arresting officer's testimony.

Irreparable Harm

The petitioner is required to operate a motor vehicle in this State to perform his job duties, attend college, and care for children whom are involved in extra-curricular activities, etc. Further, the petitioner's wife is a registered nurse in Charleston, West Virginia. This means the petitioner is left to transport and care for children while she is working. He cannot provide for his children's care, attend school, etc. without a valid driver's license. Accordingly, he would suffer irreparable harm if this Court were not to grant a STAY.

WHEREFORE, the petitioner prays this Court will schedule a hearing upon this motion and grant the relief requested herein.

PATRICK WHITE,  
*By Counsel,*



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MATTHEW M. HATFIELD, ESQUIRE

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(304) 369-1162

*Counsel for Petitioner*

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

PATRICK I. WHITE,  
Petitioner,

v.

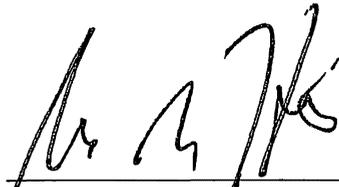
Civil Action No. 12-C-190

WEST VIRGINIA DIVISION  
OF MOTOR VEHICLES, JOE MILLER,  
COMMISSIONER,  
Respondent.

CERTIFICATE OF SERVICE

I, Matthew M. Hatfield, counsel for the petitioner, do hereby certify that I have this the 21<sup>st</sup> day of August, 2012, served the foregoing *Motion For Stay Of Administrative Order* and *Amended Petition For Review Of Administrative Order* by both U. S. Mail, postage prepaid, and facsimile, unto the following:

Elaine Skorich, Assistant Attorney General  
John T. Bonham, II, DMV Assistant General Counsel  
Post Office Box 17200  
Charleston, WV 25317  
(304) 926-3886 facsimile



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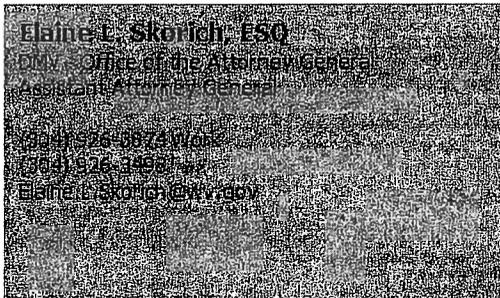
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*Counsel for Petitioner*

## Patrick White

From: **Skorich, Elaine L** (Elaine.L.Skorich@wv.gov)  
Sent: Thu 10/25/12 5:17 PM  
To: Matt Hatfield (mhhatfield@hotmail.com)  
Cc: Bonham, John T (John.T.Bonham@wv.gov); Basham, Olive S (Olive.S.Basham@wv.gov); Osborne, Belina E (Belina.E.Osborne@wv.gov)  
1 attachment  
Elaine L Skorich ESQ.vcf (1.7 KB)

Matt,

I spoke with my client about having a hearing before Judge Thompson to address the issue of Mr. White putting on evidence regarding irreparable harm and forgoing the writ that was filed. Like I explained, this is a chronic issue throughout the state, and we need to have this matter addressed by the Supreme Court. Therefore, I cannot agree to your offer. We just need to hear what the Supreme Court has to say now. Thank you for offering, though.



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