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CLERK OF COURT
SUPREME COURT OF APPEALS
WEST VIRGINIA

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Patricia S. Reed, Commissioner,
Division of Motor Vehicles

Appellant,

Appeal Number 15-0971

Pamela A. Haynes,

Appellee.

PAMELA HAYNES' SUMMARY RESPONSE TO DMV BRIEF

DMV APPEAL FROM CIRCUIT COURT'S AWARD OF PROHIBITION WRIT

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SUMMARY RESPONSE OF PAMELA A. HAYNES

ISSUE

Should the DMV be permitted to utilize an unconstitutionally imposed administrative revocation for first offense DUI to enhance a revocation for a subsequent DUI? The trial court held that this was not permissible.

FACTS

At various times relevant to this case, Mrs. Haynes has been a resident of either West Virginia or Ohio. As her home state changed, she obtained a driver's license from the appropriate then current state of her residence.

In 1999, she moved to Ohio and surrendered her West Virginia license to Ohio in order to obtain an Ohio license. (See Ohio BMV Document at App p 173) During underlying proceedings, counsel for WV DMV conceded that she had a valid Ohio license in 2003. (App p 60-61.)

However, in 2003, while staying at a campground in Parkersburg, she was arrested for DUI. At that time, she produced her valid Ohio license. Inexplicably, West Virginia DMV then sent notice of revocation to an old West Virginia address which was apparently still on file in DMV records. (App p 343-344) However, in fact, she had moved from this address several years before and was then, in 2003, a resident of the state of Ohio. (App p 449-450). For obvious reasons, she did not receive this document and therefore lost the ability to challenge this revocation. It then became final by default. Notably, this revocation was not based on a criminal conviction.

Subsequently, in 2012, she was charged with DUI as a result of a checkpoint stop. She contested this revocation and her appeal eventually resulted in circuit court

proceedings. Along with an administrative appeal, she also filed a writ of prohibition to challenge the use of the 2003 revocation to enhance any penalty imposed as a result of her 2012 arrest. At the underlying hearings, Ms. Haynes testified that she had not lived at the WV address for several years prior to 2003 and that she had surrendered her WV license to Ohio authorities. (App p. 449-452.) Finally, the *Statement of Arresting Officer* mailed to the DMV following her 2003 arrest clearly shows that she had an Ohio driver's license at that time. (App p 345-346.)

The trial court denied her administrative appeal but granted the writ of prohibition. It held that the 2003 revocation was issued in violation of her due process rights and therefore could not be used for enhancement purposes. The court then remanded the matter to allow imposition of the appropriate sanction in consideration of its ruling.(App p 15)

TABLE OF AUTHORITIES

Clay v. City of Huntington, 184 W Va 708, 403 SE2d 725, (1991).....4

Harrison v. Commissioner WV DMV, 226 W Va 23, 697 SE2d 59, (2010).....3-4

Jordan v. Roberts, 161 W Va 750, 246 S.E.2d 259, (1978).....4

State v. Cain, 178 W Va 353, 359 SE2d 581, (1987).....4

Williams v. Coiner, 392 F.2d 210, (4th cir., 1968).....4

Ohio Revised Code 4510.61.....3

W Va Code 17B-1A-1 et seq.....3

WV Code 17C-5A-2(j).....4

Interstate Driver License Compact.....3
 (see web address *Apps.csg.org/ncic/compact.aspx?id=56*)

ARGUMENT

The sole issue in this case concerns the Circuit Court's ruling that a prior 2003 DUI revocation can not be used to enhance subsequent administrative sanctions due to the fact that the prior 2003 sanction was imposed in violation of her due process rights.

The facts of that 2003 revocation are indisputable. Several years before that arrest, Mrs. Haynes had moved to Ohio. She had also surrendered her WV license to Ohio authorities at that time and had obtained a valid Ohio driver's license. The records required to be sent to the DMV by the arresting officer all note that she had an Ohio Driver's license. However, the WV DMV sent notice of her proposed license revocation to her former WV address. She did not receive this notice and lost the opportunity to timely contest the proposed revocation. Incredibly, the WV DMV asserts that it should be able to use this unconstitutional revocation to enhance subsequent violations. Besides defying logic, that position also runs counter to principles of the interstate Driver License Compact to which West Virginia and Ohio have both been members since at least 1987. See Ohio Revised Code 4506.60 now 4510.61 and W. Va. Code 17B-1A- 1 et seq. In fact, the website for the National Center for Interstate Compacts (NCIC) states, " Its theme is **One Driver, One License, One Record.**" (Emphasis added.) Both states have also been members of the Non Resident Violator Compact since 1985.

The cases cited by the DMV are inapposite to the issue being litigated in this case. In none of those cases was the constitutionality of the underlying revocation being challenged. In fact, Harrison v. Commissioner, Div. Of Motor Vehicles, 226 W. Va. 23, 697 S.E.2d 59, (2010) recognizes that a license to drive is entitled to due process

protection. However, unlike Ms. Haynes, none of the affected drivers in that case asserted that prior proceedings were conducted in an unconstitutional manner. *Id.* Harrison, 226 W Va 23 at 34, 697 SE2d 59 at 70.

Jordan v. Roberts, 161 W Va 750, 246 S.E.2d 259, (1978) held that a driver's license is entitled to due process protection. By way of analogy, in recidivist proceedings it has been held that unconstitutional convictions can not be used to enhance a subsequent offense. See Williams v. Coiner, 392 F.2d 210, (4th cir., 1968). (Federal Court applying West Virginia substantive law.) and State v. Cain, 178 W Va 353, 359 SE2d 581, (1987) Likewise, our Court has held that litigation of an issue that is central to a property right can not be precluded.. See Clay v. City of Huntington, 184 W Va 708, 403 SE2d 725, (1991), (per curiam) (city denied due process rights by court issuing a decision without allowing city to present its witnesses). In Mrs. Haynes' case she is therefore entitled to challenge a prior revocation that was imposed in violation of her constitutional rights which, if applied to her current arrest, will serve to increase any sanction imposed as a result of this new arrest.

As previously stated, the sole issue in this case is limited to whether an unconstitutionally imposed sanction can be used as a basis to enhance a subsequent violation. Ms. Haynes asserts that the stain of unconstitutionality from 2003 still serves to taint the present 2012 revocation. This is due to the fact that the 2003 revocation, if deemed valid, will serve to increase the applicable period of revocation for subsequent offenses such as the revocation in this underlying appeal. See WV Code 17C-5A-2(j).

In conclusion, it must be reiterated that Ms. Haynes is only asking that the DMV

not be allowed to use a prior unconstitutionally imposed administrative revocation from 2003 to increase any sanction resulting from her May 3, 2012, arrest. The Circuit Court was correct to rule that it could not be used for enhancement purposes.

Respectfully Submitted,

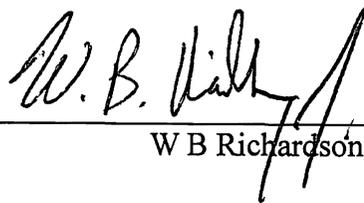


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the foregoing and hereto annexed Haynes Summary Response, upon the following by mailing a true and exact copy thereof, via United States Mail, postage prepaid, on this 9th day of February, 2016 to the following:

Elaine Skorich
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W B Richardson, Jr.