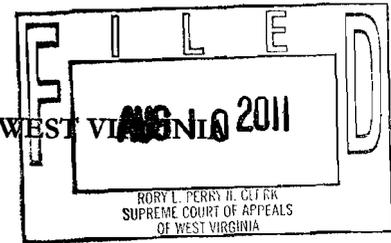


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 11-0815



**JOE E. MILLER, Commissioner,  
Division of Motor Vehicles,**

**Respondent Below, Petitioner,**

vs.

**JUSTIN BRANT WOOD,**

**Petitioner Below, Respondent.**

**RESPONDENT'S SUMMARY RESPONSE**

**FACTS**

On February 13, 2010, Respondent was arrested for first offense driving under the influence of alcohol in Monongalia County, West Virginia by the Morgantown City Police Department. Respondent plead "no contest" to such charge on July 6, 2010. (Appendix Page 11)

On the basis of Respondent's no contest plea, Petitioner issued an Order of Revocation dated August 12, 2010 revoking Respondent's privilege to operate a motor vehicle in the State for one (1) year. The Order of Revocation stated that the basis for the revocation was that "you were convicted of the offense of DUI". (Emphasis added) (Appendix Page 12)

That at the time of his arrest, Respondent held a standard Class E driver's license and he did not hold a commercial driver's license nor does he operate a commercial vehicle.

**ARGUMENT**

In order for the provisions of *West Virginia Code Section 17C-5A-3a(d)* to apply, there must be a second "conviction" for DUI.

As set forth in *West Virginia Code Section 17C-5A-3a(a)(1)*:

“(d) Notwithstanding any provision of the code to the contrary, a person shall participate in the program if the person is convicted under section two, article five of this chapter or the person’s license is revoked under section two of this article or section seven, article five of this chapter and the person was previously either convicted or his or her license was revoked under any provision cited in this subsection within the past ten years . . . .” (Emphasis added.)

Thus, there still must be a “conviction” for DUI before the provisions of *West Virginia Code Section 17C-5A-3(a)(d)* apply. Since the Respondent herein plead “no contest” to DUI, there has not been a second conviction.

On the date of Respondent’s “no contest” plea, *West Virginia Code Section 17-C-5A-1a(a)* provided as follows:

“If a person . . . is convicted for an offense described in section two (Section 17C-5-2) article 5 of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section because the person did drive a motor vehicle while under the influence of alcohol . . . the persons license to operate a motor vehicle in the state shall be revoked or suspended in accordance with the provisions of this section.” (Emphasis added)

Said code section further provides in subsection (e) as follows:

“For the purposes of this section . . . a plea of no contest does not constitute a conviction.”

Since Respondent plead “no contest” to the charges against him, he was not “convicted” of the charge of DUI and thus, there was no basis for the issuance of the Order of Revocation.

**WHEREFORE**, Respondent requests that the Court issue an order staying the Order of Revocation issued by Petitioner in this matter.

**JUSTIN BRANT WOOD,**  
**Respondent, By Counsel,**

**SOLOMON & SOLOMON**

By: 

**MICHAEL L. SOLOMON**  
**WV STATE BAR I.D. #3512**  
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CERTIFICATE OF SERVICE

I hereby certify that on the 9<sup>th</sup> day of August, 2011, I served the foregoing  
**RESPONDENT'S SUMMARY RESPONSE** upon the following individual by placing a copy of same  
in an envelope, postage prepaid, in the United States Mail, addressed as follows:

Scott E. Johnson, Esq.  
Senior Assistant Attorney General  
P. O. Box 17200  
Charleston, WV 25317-0010



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