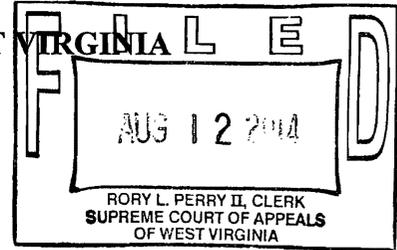


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
No. 14-0138



RONNIE MEADOWS,

Petitioner,

v.

Civil Action No. Below: 13-AA-89

**STEVEN O. DALE, ACTING COMMISSIONER
OF THE WEST VIRGINIA DIVISION OF
MOTOR VEHICLES,**

Respondent.

FROM THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

PETITIONER'S REPLY BRIEF

Respectfully submitted:

RONNIE MEADOWS

By Counsel,

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I. ARGUMENT

The Respondent concedes that the lower court erroneously failed to conduct an evidentiary hearing to balance the actual prejudice suffered by Petitioner against the reasons for delay as set forth in *Holland v. Comm'r of W. Va Div. of Motor Vehicles*, 13-0924, 2014 WL 2682277 (W. Va., June 13, 2014) despite Petitioner's request for an evidentiary hearing. (A.R. 141) By summarily concluding that Petitioner failed to show that he suffered actual substantive prejudice as a result of the delay, the lower court was clearly wrong. (A.R. 9)

From a prejudice standpoint, the impact of the delay is evident. Petitioner was denied his statutory and constitutional right to cross examine the arresting officer and challenge the evidence contained in the report submitted by the arresting officer and relied upon by the Commissioner to revoke Petitioner's drivers' license. He was precluded from challenging the manner in which the field sobriety tests and the secondary breath test were administered. Petitioner was also denied the ability to question the arresting officer regarding the reasons his employment was terminated with the Charleston Police Department on October 15, 2010, among other things. (A.R. 46)

In light of the above, the Respondent *still* maintains that Petitioner was afforded his right to due process of law. Procedural due process safeguards in a license revocation proceeding require:

" . . . a formal written notice of charges; sufficient opportunity to prepare to rebut the charges; opportunity to have retained counsel at any hearings on the charges, **to confront his accusers**, and to present evidence on his own behalf; an unbiased hearing tribunal; and an adequate record of the proceedings."

Jordan v. Roberts, 161 W. Va. 750, 755, 246 S.E.2d 259, 262 (1978) quoting *North v.*

Board of Regents, 160 W. Va. 248, 233 S.E.2d 411 (1977) (emphasis supplied). Petitioner timely and appropriately checked the box on the hearing request form titled “I request the investigating officer’s attendance” as required by W. Va. Code §17-5A-2(d) (2008) to alert the Commissioner of his statutory duty to secure the attendance of the arresting officer at the hearing (A.R. 55) Of all the cases cited by Respondent, none address a situation where under the 2008 version of W. Va. Code §17C-5A-2, the driver’s timely request to have the arresting officer present is denied due to the unavailability of the arresting officer. In this instance, the officer’s unavailability is a direct result of the Commissioner’s extraordinary delay. Nonetheless, the Respondent still maintains the illusion that Petitioner was afforded due process of law and refuses to address this glaring deprivation of Petitioner’s rights in his memorandum.

Additionally, the Respondent alleges that because the deceased officer’s documents were submitted into evidence and “weighed” against the live testimony of Petitioner, who was actually present and subjected to cross examination, the order of revocation is proper. The so called “weighing” of evidence referred by Respondent amounts to a boilerplate decision mimicking the arresting officer’s report devoid of logic and reason. For example, the hearing examiner determined that Petitioner was impaired by alcohol and a controlled substance, his blood pressure medication, despite the complete and utter lack of evidence to suggest that the medication Petitioner consumed could cause or did actually cause impairment. (A.R. 167) Moreover, the arresting officer was found to be more credible than Petitioner despite the fact that he never subjected himself to cross examination, was removed as an officer with the Charleston Police Department for unknown reasons, and never bothered to inquire as to what type of “medication” Petitioner was taking or why he was taking medication. He also failed to explain why he

administered field sobriety tests to a survivor of a brain aneurysm with obvious impairments to his balance and coordination. The arresting officer's absence thus shielded his investigation, or lack of investigation, from challenge or reproach from Petitioner.

This case highlights the inevitable result when a party is forced into a hearing against a stack of papers containing self-serving testimonial evidence, the author of which is unavailable to be cross examined due to the extraordinary delay caused by the Commissioner, who both employed a hearing examiner to decide the matter and an attorney general to represent the interests of the adverse party. Even more daunting is that after suggesting to the lower court that the hearing examiner that heard the evidence failed to draft a final order and instead merely acquiesced to the Commissioner's suggested outcome without the benefit of reviewing the file or examining the evidence, the lower court denied Petitioner's request to conduct an evidentiary hearing on the matter.

II. CONCLUSION

WHEREFORE, for the foregoing reasons, the Petitioner prays that this Honorable Court reverse the decision of the Circuit Court of Kanawha County and the Final Order issued by the West Virginia Division of Motor Vehicles which revoked Petitioner's driver's license. Petitioner also prays that this court order the Commissioner to immediately restore to Petitioner a valid, permanent driver's license or for whatever alternative relief this court deems appropriate.

RONNIE MEADOWS

By Counsel



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**STEVEN O. DALE, ACTING COMMISSIONER
WEST VIRGINIA DIVISION OF MOTOR
VEHICLES,**

Respondent.

CERTIFICATE OF SERVICE

I, David Pence, counsel for Petitioner, do hereby certify that I have served a true and exact copy of the foregoing **PETITIONER'S REPLY BRIEF** by depositing a true copy thereof in the United States Mail, postage prepaid, in an envelope addressed to:

Janet James, Asst. Attorney General
DMV - Office of the Attorney General
P. O. Box 17200
Charleston, WV 25317

on this 11th day of August 2014.



David Pence