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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
NO. 19-0362

ADAM HOLLEY, ACTING COMMISSIONER,  
WEST VIRGINIA DIVISION OF  
MOTOR VEHICLES,

Petitioner,

v.

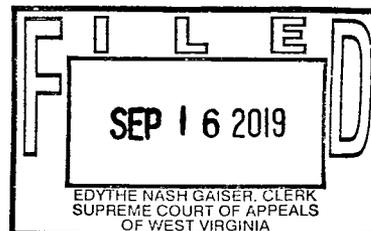
TERESA MAYNARD, DIRECTOR AND  
CHIEF HEARING EXAMINER, OFFICE  
OF ADMINISTRATIVE HEARINGS,

Respondent,

and

CLARENCE SIGLEY,

Party in Interest.



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REPLY BRIEF OF THE DIVISION OF MOTOR VEHICLES

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ADAM HOLLEY, Acting Commissioner,  
Division of Motor Vehicles,

By Counsel,

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Now comes Adam Holley, Acting Commissioner of the West Virginia Division of Motor Vehicles (“DMV”), by and through his undersigned counsel, and pursuant to Rev. R. App. Pro. 10(g) and the *Scheduling Order* entered by this Court on April 22, 2019, submits the *Reply Brief of the Division of Motor Vehicles*.

## I. ARGUMENT

### A. Lack of subject matter jurisdiction can be raised at any time.

In its brief, the Respondent alleges that the Petitioner only sought prohibition in the circuit court on the ground that the Office of Administrative Hearings (“OAH”) exceeded its legitimate powers by interpreting the statutes at issue and that it “is generally accepted that where an argument is raised for the first time on appeal, the argument is waived.” (Resp. Br. at P. 1.)

“It is well established that the issue of subject matter jurisdiction can be raised at any time, even *sua sponte* by this Court.” *State ex rel. Universal Underwriters Ins. Co. v. Wilson*, 239 W. Va. 338, 345, 801 S.E.2d 216, 223 (2017). Further, “[t]his Court, on its own motion, will take notice of lack of jurisdiction at any time or at any stage of the litigation pending therein.” *Id.* at Syl. Pt. 2.

Furthermore, “[t]he urgency of addressing problems regarding subject-matter jurisdiction cannot be understated because any decree made by a court lacking jurisdiction is void.” *State ex rel. TermNet Merch. Servs., Inc. v. Jordan*, 217 W. Va. 696, 700, 619 S.E.2d 209, 213 (2005); *see also* Franklin D. Cleckley, Robin Jean Davis, and Louis J. Palmer, Jr., *Litigation Handbook on W. Va. Rules of Civ. Pro.*, § 12(b)(1), at 325-26 (4<sup>th</sup> ed. 2012) (“Any judgment or decree rendered without such jurisdiction is utterly void.”).

*State ex rel. Universal Underwriters Ins. Co. v. Wilson*, 239 W. Va. 338, 346, 801 S.E.2d 216, 224 (2017).

Accordingly, the DMV has not waived the issue of the OAH’s lack of jurisdiction below, and this Court must address the same here.

**B. OAH's jurisdiction is limited to *contested* cases.**

The Respondent alleges that the OAH's jurisdiction is not limited by the substance or merits of the underlying objection raised by the appealing driver. (Resp. Br. at P. 12.) Further, the Respondent alleges that the DMV's "reading conflates the jurisdictional predicates for the OAH to *hear* an appeal with the evidentiary bases on which the OAH could *sustain* that appeal." (Resp. Br. at P. 13.) Finally, the Respondent also argues on behalf of Mr. Sigley that "[p]ursuant to Section 17C-5A-1a(c), the Commissioner may suspend and revoke licenses based upon a 'transcript of conviction.' W. Va. Code § 17A-5C-1a(c)<sup>1</sup>. A driver whose license is revoked under Section 17A-5C-1a(c)<sup>2</sup> may overturn this revocation if they can establish that they are not named in such a transcript." (Resp. Br. at P. 14.)

Here, there is no dispute as to identity from the order entered by the Commissioner under W. Va. Code § 17C-5A-1a(c); therefore, the OAH has no authority to interpret the Commissioner's statute to grant a hearing to resolve whether the Commissioner should ignore a guilty plea. The Respondent's argument demonstrates one reason the OAH's delay in issuing its final orders is so egregious. Instead of requiring a driver to have an actual dispute in what is supposed to be a *contested* case under W. Va. Code § 29A-5-2 (1964), the OAH entertains every frivolous request for a hearing all while permitting a drunk driver to have his license statutorily stayed pursuant to W. Va. Code § 17C-5A-2(a) (2015). Once the DMV revoked Mr. Sigley's license pursuant to W. Va. Code § 17C-5A-1a(c), he was required to allege that he was not the person convicted.

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<sup>1</sup> There is no section 5C in Chapter 17A, and Chapter 17A, "Motor Vehicle Administration, Registration," is inapplicable to the instant matter.

<sup>2</sup> Again, there is no section 5C in Chapter 17A.

Unlike the companion criminal matter wherein Mr. Sigley was permitted to defend himself so as to require that every element of the case be established, his license revocation proceeding is a civil matter wherein he was required to assert or to controvert the matter with the only defense permitted by the statute, i.e., he was not the person who plead guilty to the DUI offense. He did not so allege, and the OAH did not require him to so state in this “contested case” proceeding. Therefore, the only issue which the OAH could have heard under W. Va. Code § 17C-5A-1a(c) was identity, and because it was uncontested, they lacked the power to decide anything else and should have dismissed the matter instead of permitting further delay in having a drunk driver avoid the remedial consequences assigned to his license revocation.

**C. It is inappropriate for the OAH to act as an advocate for Mr. Sigley.**

The Respondent argues that the “DMV did not cite to any authority to precedent to support its argument that Mr. Sigley’s deferral was tantamount to a conviction.” (Resp. Br. at P. 8.) Further, the Respondent alleges that “[t]his case does not fall with the ‘deferred adjudication’ [sic] exception to the OAH’s jurisdiction” and relies on this Court’s decision in *Young v. State of West Virginia*, 241 W. Va. 489, 826 S.E.2d 346 (2019). (Resp. Br. at P. 16.)

This Court determined in *Young v. State of West Virginia* that the only legitimate deferral process for DUI is pursuant to W. Va. Code § 17C-5A-1a(c). If Mr. Sigley plead guilty to DUI in magistrate court, then he was not entitled to an administrative hearing. There is no other legitimate deferral for DUI, and the OAH is again acting outside the authority provided in its enabling statutes, W. Va. Code § 17C-5C-1 (2010) *et seq.* The DMV revoked Mr. Sigley’s license upon conviction, and the OAH has authority to hear an appeal of that revocation for identity purposes only *if* that issue is contested.

Instead, the OAH argues that the DMV had no authority to revoke Mr. Sigley's license when he plead guilty in the companion criminal matter. Whether the DMV has authority or not to revoke Mr. Sigley's license because of his guilty plea is a matter for Mr. Sigley, not the "independent" tribunal, to seek redress.

"A state administrative law judge shall perform the duties of the office impartially and diligently." W. Va. Code R. § 158-13-4.3 (2006). It is inappropriate for the OAH to not only sanction Mr. Sigley's chicanery in magistrate court by granting him a hearing on anything other than an identity challenge, but it is inappropriate for the OAH to argue on his behalf on the merits of his guilty plea and the DMV's application of W. Va. Code § 17C-5A-1a(c).

## II. CONCLUSION

Within the last few years, this Court has been concerned about OAH delay. *See, Straub v. Reed*, 239 W. Va. 844, 851, 806 S.E.2d 768, 775 (2017); *Reed v. Winesburg*, 241 W. Va. 325, 825 S.E.2d 85, 90 (2019); *Reed v. Grillot*, No. 17-0691, 2019 WL 1012160, at \*5 (W. Va. Mar. 4, 2019) (memorandum decision); *Holley v. Morrison*, No. 18-0239, 2019 WL 1765295, at \*1 (W. Va. Apr. 19, 2019) (memorandum decision). The Acting Commissioner has been concerned about the OAH delay since its inception in 2010. The OAH has finally received this Court's message in the above-cited cases, and the OAH is on pace to eliminate the backlog of delayed cases completely in the next few months.

However, this case is illustrative of the primary reason the backlog occurred in the first place. Historically, the resolution of a legitimate dispute has not been the reason impaired drivers request an administrative hearing. Their most frequent goal is to delay or to avoid the consequences of driving under the influence. Since the OAH began in 2010, the resolution of the vast majority of

hearing requests is not a final order resolving the merits of the DUI but a procedural order canceling the hearing because the driver who requested the hearing has withdrawn the hearing request or has plead guilty to DUI in the companion criminal matter. The pattern and practice of procedural gamesmanship has lulled the OAH into a perception that all petitioners want a delay. This stratagem by the driver has also created a distorted view of due process and has created, for the majority, a mechanism to permit DUI offenders an extended stay of the eventual revocation. This distortion of the civil, administrative license revocation proceeding sought by DUI offenders and historically acquiesced to by OAH is egregious conduct that resulted in egregious delays. One can only imagine the outrage if the parties reversed roles, and the Commissioner engaged in a practice of revoking driver's licenses despite admitting that the driver was innocent of DUI.

The circuit court committed reversible error by dismissing the matter as premature when the OAH lacked jurisdiction to schedule an administrative hearing when the DMV revoked Mr. Sigley's driver's license upon conviction and authority to interpret W. Va. Code § 17C-5A-1a(c)(2010). For the reasons outlined above, the DMV respectfully requests that this Court reverse the circuit court order.

Respectfully submitted,

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