

No. 33220 – *Andrew Moten v. F. Douglas, Stump, Commissioner of the West Virginia Division of Motor Vehicles*

FILED

June 15

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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Albright, Justice, concurring:

I concur with the majority’s decision to dismiss this appeal as improvidently awarded based on its untimely filing. However, I write separately to address the substantive issue of the appeal – whether the circuit court committed error by not remanding the case on the grounds that: (1) the Division of Motor Vehicles (“DMV”) should have granted Mr. Moten’s request for a continuance; and (2) this Court’s decision in *Adkins v. Cline*, 216 W.Va. 504, 607 S.E.2d 833 (2004), required that the case be remanded for a new hearing in light of the dismissal of the criminal charge.

In administrative proceedings seeking the suspension or revocation of an individual’s driver’s license for alcohol-related conduct while operating a motor vehicle,¹ the Commissioner of Motor Vehicles (“Commissioner”) is required to consider and give substantial weight to the results of related criminal proceedings, if such evidence is presented in the administrative proceeding. *See* Syl. Pt. 3, *Choma v. W.Va. Div. of Motor Vehicles*, 210 W.Va. 256, 557 S.E.2d 310 (2001). In *Choma*, this Court reasoned that “if proof of a DUI conviction in a criminal proceeding is not only admissible but dispositive in a license

¹*See* W.Va. Code §§ 17C-5A-1 to -4 (2004).

suspension proceeding, then fundamental fairness requires that proof of an acquittal in that same criminal DUI proceeding should be admissible and have weight in a suspension proceeding.”² *Id.* at 260, 557 S.E.2d at 314. In *Adkins*, this Court affirmed the trial court’s decision which reversed the DMV’s administrative license suspensions and remanded the case for further proceedings consistent with *Choma* based on the fact that the criminal charges against the Appellees did not result in convictions. While *Adkins* also addressed other issues,³ this Court applied the *Choma* requirement that the Commissioner give consideration to the results of any criminal prosecution.

In this case, Mr. Moten moved to continue the administrative proceedings pending the outcome of the related criminal proceedings. The DMV denied the motion and revoked Mr. Moten’s driver’s license. After the revocation, the State dismissed the criminal proceedings against Mr. Moten. Had the DMV granted the motion to continue, Mr. Moten would have had the opportunity to present the dismissal of the criminal charges and the

²This Court also determined that the Commissioner’s suspension decision arbitrarily and capriciously discredited and disregarded the evidence that favored the Appellant and was clearly contrary to the weight of the evidence.

³The main issues decided by this Court in *Adkins* were (1) whether the open-ended stays of the Commissioner’s original suspension orders were in violation of statutory stay limitations; and (2) the scope of the “prospective” application of *Choma*. This Court determined that stays granted to administrative DUI license proceedings must respect the legislative limitation of 150 days and that *Choma* applied to any judicial determination of administrative license suspension made after the date of *Choma*’s filing. *See Adkins*, 216 W.Va. at 513, 607 S.E.2d at 837.

circumstances surrounding that dismissal in the course of the administrative hearing. The Commissioner necessarily would have been required to consider and to accord the dismissal substantial weight in determining whether to revoke Mr. Moten's license.

This Court has held that “[a] driver’s license is a property interest which requires the protection of this State’s Due Process Clause before its suspension can be obtained under the implied consent law. W.Va. Code, 17C-5a-1, *et seq.*” Syl. Pt. 1, *Jordan v. Roberts*, 161 W.Va. 750, 246 S.E.2d 259 (1978). “Under procedural due process concepts a hearing must be appropriate to the nature of the case and from this flows the principle that the State cannot preclude the right to litigate an issue central to a statutory violation or deprivation of a property interest.” *Id.* at 750, 246 S.E.2d at 260, syl. pt. 2. In Mr. Moten’s case, the DMV denied him the opportunity to present the State’s dismissal of the criminal charges for consideration in the administrative process in either the initial, but continued, hearing or in a reconvened hearing after the criminal proceedings were ended. I submit that the DMV should be obligated to afford a further hearing in situations where the State has decided to drop the criminal charges after the initial administrative hearing is concluded.

It is axiomatic that “[a]side from all else, due process means fundamental fairness.” *Choma*, 210 W.Va. at 260, 557 S.E.2d at 314 (quoting *Pinkerton v. Farr*, 159

W.Va. 223, 230, 220 S.E.2d 682, 687 (1975)). This Court has recognized that the two tracks of criminal and civil driver's license-related proceedings that arise out of an arrest for alleged DUI are "interrelated to the point that due process requires that the results of related criminal proceedings must be given consideration by the DMV in the DMV's administrative process." *Carroll v. Stump*, 217 W.Va. 748, 755, 619 S.E.2d 261, 268 (2005) (quoting *Mullen v. Div. of Motor Vehicles*, 216 W.Va. 731, 734, 613 S.E.2d 98, 101 (2005)).

Fundamental fairness requires the award of a further hearing in cases like the one *sub judice*. The interests of justice weigh against denying Mr. Moten the opportunity to have the Commissioner consider the dismissal of the criminal charges. The statutorily defined ten-year revocation of a driver's license in Mr. Moten's situation is a severe sanction. The dismissal of the related criminal charges is certainly relevant to the adjudication of such a severe sanction. While the Legislature has a legitimate interest in protecting the public from persons who drive under the influence of alcohol,⁴ imposition of a ten-year revocation without consideration of all the available evidence – as in Mr. Moten's case – does not fairly serve the public interest. The record discloses that the arresting officer failed to give Mr. Moten a blood, breath, or urine test and conceded at the administrative hearing that the results of the field sobriety tests of Mr. Moten – "blood shot eyes, slurred speech and fumbling for his license and paperwork could have been caused by various

⁴See *Carroll*, 217 W.Va. at 755, 619 S.E.2d at 268.

reasons unrelated to alcohol.” The Commissioner might well have decided that license revocation was unwarranted in light of the officer’s testimony and in consideration of the fact that the State dropped the criminal charges against Mr. Moten.

Louisiana’s implied consent law provides that when any person’s driver’s license has been seized, suspended, or revoked in connection with an alleged violation of the criminal law, and the criminal charge does not result in a conviction, plea of guilty, or bond forfeiture, the person shall have that driver’s license immediately reinstated. *See Nunnally v. State, Dept. of Public Safety and Corrections*, 663 So. 2d 254 (La. App. 1995). Such a provision comports with due process and fundamental fairness. Our requirement in *Choma* that substantial weight be accorded such results in the criminal case is much more flexible; nevertheless, it should be accorded full respect by the Commissioner of Motor Vehicles. This Court ought not permit its directive in *Choma* to be circumvented by the refusal of the Commissioner to accord a citizen a second hearing after the criminal case has concluded.

I would affirm the denial of a continuance because of our public policy that encourages prompt administrative hearing of DUI matters. However, had the substantive issues survived scrutiny with respect to their timeliness, I would have sought to reverse and

remand the case for a second administrative hearing for the presentation of the results of the criminal proceeding.