

No. 27909 - State of West Virginia v. Garland Leonard

Maynard, Chief Justice, dissenting:

**FILED**

**December 12, 2000**  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**RELEASED**

**December 13, 2000**  
RORY L. PERRY II, CLERK  
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I dissent because I agree with the circuit court that there had been a continuance of prosecution from the magistrate court to the circuit court so that the revoked license (DUI), first offense charge was not time-barred.

The appellant's prosecution in magistrate court clearly commenced within one year after the misdemeanor offense was committed, in compliance with W.Va. Code § 61-11-9. Therefore, the State fulfilled its obligation to prosecute the appellant in a timely manner. The appellant, on the other hand, delayed his prosecution by moving to transfer the charge against him to circuit court. In finding that the appellant's prosecution is time-barred, the majority effectively punishes the state for its good faith efforts to bring a timely prosecution and rewards the appellant for conduct which caused the delay of which he now complains.

I fear that the majority's decision puts yet another tool into the hands of criminal defendants with which to manipulate crowded court dockets to their own advantage. Accordingly, I dissent.