

No. 30519 -- *State ex rel. Ronald A. Holcomb v. Honorable David W. Nibert, Judge of the Circuit Court of Mason County*

**FILED**

**December 5, 2002**  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**RELEASED**

**December 6, 2002**  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS

Albright, Justice, concurring in part, dissenting in part:

I write separately because, although I agree with the majority that our law does not and should not provide for dismissal of fines and court costs because a person is indigent,<sup>1</sup> I do believe a writ of mandamus should have issued in order to allow the petitioner to attempt to obtain the relief, to the extent permitted by statute, he ultimately was seeking -- reinstatement of his driving privileges. Granting a writ, as moulded, seems particularly appropriate in this case, since the petitioner was proceeding pro se and was unaware of the applicable law, which was quite clearly demonstrated in the majority opinion.

In general terms, our state laws require that when a criminal defendant does not pay costs, fines and other assessments imposed by a circuit, magistrate or municipal court within a prescribed amount of time, the clerk of the court is to notify the Division of Motor

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<sup>1</sup>See, Syl. Pt. 7, in part, *State v. Murrell*, 201 W.Va. 648, 499 S.E.2d 870 (1997) (“An individual is not excused from the imposition of the maximum sentence allowed under a statute simply because he is indigent, even if that sentence includes the imposition of fines pursuant to statute.”).

Vehicles (hereinafter “DMV”), which in turn is to suspend the delinquent defendant’s driver’s license until such time as the assessments are paid in full and the reinstatement fee is paid to DMV. *See* W.Va. Code §§ 50-3-2a, 62-4-17, 8-10-2a and -2b, 17B-3-6, 17B-3-3c. The majority failed to point out that as part of this process, the Legislature provided a mechanism by which those who are unable to pay the court-imposed assessments may receive court authorization to operate a motor vehicle if certain conditions are met. Since it appears that the appellant’s convictions occurred in magistrate court,<sup>2</sup> the applicable statutory exception to license suspension is found in West Virginia Code § 50-3-2a(c)(1) which states, in pertinent part,

[t]hat any person who has had his or her license to operate a motor vehicle in this state suspended pursuant to this subsection and his or her failure to pay is based upon inability to pay may, if he or she is employed on a full or part-time basis, petition to the circuit court for an order authorizing him or her to operate a motor vehicle solely for employment purposes. Upon a showing satisfactory to the court of inability to pay, employment and compliance with other applicable motor vehicle laws, the court shall issue such an order.

The petitioner’s expressed concern was that he be relieved of the obligation to pay court-imposed costs and fines *in order that* he be permitted to drive a motor vehicle. Consequently, in light of the foregoing, issuance of a writ of mandamus, moulded to permit

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<sup>2</sup>Had the assessments been imposed in circuit court, the applicable statutory exception appears in West Virginia Code § 62-4-17(b), while the exception related to municipal court assessments is located in West Virginia Code § 8-10-2b(b).

an opportunity to enjoy the benefits of West Virginia Code § 50-3-2a(c)(1), would have been the proper course to take.

Accordingly, I respectfully register my dissent.