

No. 32531 – *In Re: Petition of Kenneth D. Donley for Judicial Review of Administrative Decision Made by Roger Pritt, Commissioner, Department of Transportation, Division of Motor Vehicles*

**FILED**

**July 7, 2005**

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

Albright, Chief Justice, concurring:

While I concur with the result reached by the majority, I write separately to recognize that principles of fairness suggest that the same promptness concerns that are imposed upon a defendant who requests a hearing in connection with an administrative revocation of his operator's license should be similarly imposed upon the West Virginia Department of Motor Vehicles ("DMV"). To permit the DMV to grant itself an extension of the 180-day deadline for revocation hearings that is mandated by West Virginia Code § 17C-5A-2(b) (2004) without providing for any limits on the length of such extensions encourages the establishment of a lopsided system – a system that proves inherently unjust for the defendant whose revocation proceedings are protracted, not because of his requests, but because of lengthy administrative delays.<sup>1</sup> Barring express legislative amendment on this issue of timely scheduled hearings following the granting of a continuance requested by the

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<sup>1</sup>I clearly recognize that the bulk of the delays in this case transpired before the revocation hearing was initially scheduled due to the passage of almost three years between the entry of the defendant's guilty plea and the transmittal of the abstract of judgment to the DMV. This fact, however, does not excuse the additional six-month delay that was forced upon the defendant due to the unavailability of a hearing examiner.

DMV, it is likely that the system will continue to be tilted in favor of the DMV with regard to issues of timely action.

While the DMV had a legitimate basis for continuing the revocation hearing – the unavailability of a hearing examiner on the date originally selected for the hearing – the continuation of the hearing for another six months seems patently unreasonable. A thirty- or sixty-day continuance in this situation might prove acceptable, but to permit an entire year to pass between the defendant’s request for the hearing and the holding of the revocation hearing seems excessive when the legislative scheme involved *mandates* the holding of such hearings within a 180-day period, barring demonstration of good cause for a continuance. *See* W.Va. Code § 17C-5A-2(b).

While the majority had no problem concluding that the delay in the proceedings involved in this case (June 1998 entry of guilty plea to September 2002 revocation hearing) was “unreasonable” for purposes of considering whether the delay amounted to a violation of the defendant’s due process rights, the majority chose not to view the six-month continuation of the revocation hearing as unreasonable. In finding the continuation acceptable, the majority placed undue weight on the statutory inclusion of language that permits a postponement or continuance upon a request from either side. *See* W.Va. Code § 17C-5A-2(b). To grant the DMV *carte blanche* authority to reschedule

revocation hearings with no countervailing concern for the passage of time based solely on legislative authorization of postponements or continuances appears shortsighted in light of the legislative scheme that requires prompt action on the part of the defendant if he/she wishes to challenge the revocation or suspension of a motor vehicle license. Simply put, the legislative inclusion of language authorizing a continuance upon permissible grounds should not abrogate the time-based concerns that permeate the legislative framework governing administrative sanctions for DUI violations. By turning a blind eye to this need for timely hearings when a continuance has been granted, the majority overlooks the continuing concern for prompt action – an issue that should be applied equally to both defendants and the administrative agency in charge of enforcing this legislative scheme.<sup>2</sup>

I note an additional need for legislative consideration of whether a temporal requirement should be imposed for purposes of governing the length of time permitted for the transmittal of an abstract of judgment by a magistrate. The almost three-year delay between the defendant's entry of a guilty plea and the transmittal of the abstract of judgment to the DMV was clearly beyond the pale of acceptable time allowances for such routine procedural duties.

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<sup>2</sup>This seems only fair in light of the fact that the statutory scheme at issue requires that any procedural rule adopted by the DMV “governing the postponement or continuance of any such [revocation] hearing on the commissioner’s own motion or for the benefit of any law-enforcement officer or any person requesting the hearing” “shall be enforced and applied to all parties equally.” W.Va. Code § 17C-5A-2(b).

In my view, the Legislature ought to address these two gaps in its scheme for prompt disposition of license revocation issues in the administrative setting. I agree, however, that the statute, as presently written, does not provide the Appellant with any relief for the unseemly delays that were imposed upon him.

Therefore, I reluctantly concur with the majority's opinion. I am authorized to say that Justice Starcher joins with me in this concurring opinion.