

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2005 Term

\_\_\_\_\_  
No. 32748  
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**FILED**  
**November 29, 2005**

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SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

IN RE: PETITION OF SCOTT A. MCKINNEY FOR JUDICIAL REVIEW  
OF ADMINISTRATIVE DECISION MADE BY F. DOUGLAS STUMP,  
COMMISSIONER, DEPARTMENT OF TRANSPORTATION,  
DIVISION OF MOTOR VEHICLES

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Appeal from the Circuit Court of Raleigh County  
Honorable H.L. Kirkpatrick, Judge  
Civil Action No. 04-AA-17-K

REVERSED

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Submitted: November 1, 2005  
Filed: November 29, 2005

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JUSTICE MAYNARD delivered the Opinion of the Court.

JUSTICE DAVIS concurs and reserves the right to file a concurring opinion.

CHIEF JUSTICE ALBRIGHT dissents and reserves the right to file a dissenting opinion.

JUSTICE STARCHER dissents and reserves the right to file a dissenting opinion.

## SYLLABUS BY THE COURT

1. “When a statute is clear and unambiguous and the legislative intent is plain[,] the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute.” Syllabus Point 1, *State ex rel. Fox v. Board of Trustees of Policemen’s Pension*, 148 W.Va. 369, 135 S.E.2d 262 (1964), *overruled on other grounds*, *Booth v. Sims*, 193 W.Va. 323, 456 S.E.2d 167 (1995).

2. Pursuant to W.Va. Code § 17B-3-6(a)(1) (1997), the West Virginia Division of Motor Vehicles is authorized to suspend the driver’s license of any person without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee committed an offense for which mandatory revocation of a driver’s license is required upon conviction, regardless of whether the licensee is convicted of the offense.

3. The purpose of this State’s administrative driver’s license revocation procedures is to protect innocent persons by removing intoxicated drivers from the public roadways as quickly as possible.

Maynard, Justice:

Appellant F. Douglas Stump, Commissioner of the West Virginia Division of Motor Vehicles, appeals the November 17, 2004 order of the Circuit Court of Raleigh County that reversed an administrative driver's license revocation. For the reasons that follow, we reverse the circuit court's order.

## **I.**

### **FACTS**

Scott A. McKinney, Appellee herein, was convicted of driving under the influence (hereafter "DUI") on October 2, 1997. As a result of that conviction, the Commissioner of the Division of Motor Vehicles (hereafter "the Commissioner") revoked McKinney's driver's license.

On February 24, 2002, while McKinney's driver's license remained revoked, he was arrested for speeding and for driving while revoked for DUI in violation of W.Va. Code § 17B-4-3(b) (2004).<sup>1</sup> McKinney subsequently pled guilty to a lesser speeding offense

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<sup>1</sup>When McKinney was charged with driving while revoked for DUI, the 1999 version of W.Va. Code § 17B-4-3 was in effect. The 2004 amendment to this code section did not alter the language relevant to this appeal. Therefore, we cite to the 2004 version.

and to the lesser crime of driving while suspended or revoked for administrative reasons in violation of W.Va. Code § 17B-4-3(a).

The Division of Motor Vehicles (hereafter “the Division”) thereafter issued an order, dated March 11, 2003, that advised McKinney that his privilege to drive was suspended for one year pursuant to W.Va. Code § 17B-3-6(a)(1) (1997). The order advised McKinney that “the Division records and/or other evidence shows that you drove on 02/24/02 while your license was suspended for driving under the influence of alcohol.”

After a February 23, 2004, hearing, the Commissioner of the Division of Motor Vehicles upheld the suspension, concluding that McKinney “operated a motor vehicle on February 24, 2002, while his license was revoked for driving under the influence.” Additionally, the Commissioner found that “Pursuant to West Virginia Code § 17B-3-6(a), the Division is authorized to suspend the driver’s license of any person without preliminary hearing upon showing by its records or other sufficient evidence that the licensee has committed an offense in which mandatory revocation of a driver’s license is required upon conviction.” McKinney appealed to the Circuit Court of Raleigh County.

By order entered November 17, 2004, the circuit court reversed the administrative license suspension. The circuit court reasoned that because McKinney was convicted of driving while suspended for administrative reasons pursuant to W.Va. Code §

17B-4-3(a), which does not require suspension for a first offense under W.Va. Code § 17B-4-3(c), the Commissioner was precluded from suspending McKinney's license for an additional year. The Commissioner now appeals the circuit court's order.

## **II.**

### **STANDARD OF REVIEW**

Concerning the standard of review in cases like the one before us, we have indicated that “[t]his Court applies the same standard of review that the circuit court applied to the Commissioner’s administrative decision – giving deference to the Commissioner’s purely factual determinations; and giving *de novo* review to legal determinations.” *Choma v. West Virginia DMV*, 210 W.Va. 256, 258, 557 S.E.2d 310, 312 (2001). Because the instant appeal involves a question of statutory interpretation, we apply a *de novo* standard.

## **III.**

### **DISCUSSION**

This case concerns the construction and application of two statutes. First, W.Va. Code § 17B-3-6(a)(1) (1997), relied upon by the Division in suspending McKinney’s driver’s license, provides,

(a) The division is hereby authorized to suspend the

driver's license of any person without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation of a driver's license is required upon conviction[.]

Plainly, this statute indicates that the Division is authorized to suspend a person's driver's license when it has sufficient evidence that the person committed an offense for which mandatory revocation of a driver's license is required upon conviction.

The second statute is W.Va. Code § 17B-4-3 (2004), relied upon by the circuit court in reversing McKinney's license revocation for driving while revoked for DUI, which provides in part,

(a) Except as otherwise provided in subsection (b) or (d) of this section, any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended or revoked by this state or any other jurisdiction is, for the first offense, guilty of a misdemeanor . . . .

(b) Any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully revoked for driving under the influence of alcohol, controlled substances or other drugs, or for driving while having an alcoholic concentration in his or her blood of eight hundredths of one percent or more, by weight, or for refusing to take a secondary chemical test of blood alcohol content, is, for the first offense, guilty of a misdemeanor . . . .

(c) Upon receiving a record of the first or subsequent conviction of any person under subsection (b) of this section upon a charge of driving a vehicle while the license of such person was lawfully suspended or revoked, the division shall extend the period of such suspension or revocation for an additional period of one year and after the date such person would otherwise have been entitled to apply for a new license.

Upon receiving a record of the second or subsequent conviction of any person under subsection (a) of this section upon a charge of driving a vehicle while the license of such person was lawfully suspended or revoked, the division shall extend the period of such suspension or revocation for an additional period of one year from and after the date such person would otherwise have been entitled to apply for a new license.

Subsection (c) of this statute indicates that license revocation is mandated only upon a second or subsequent conviction for driving while revoked for administrative reasons. The question before this Court is which of these two statutes applies to McKinney.

The Commissioner argues that W.Va. Code § 17B-3-6(a)(1) applies. According to the Commissioner, this code section authorizes the Division to suspend a person's driver's license upon a showing of sufficient evidence that the person has committed an offense for which mandatory revocation of a driver's license is required upon conviction. According to the Commissioner, McKinney's driver's license was not suspended for driving while revoked for administrative reasons. Rather, the Division had sufficient evidence in its records<sup>2</sup> that McKinney drove a vehicle while his license was revoked for DUI. Further, asserts the Commissioner, according to W.Va. Code § 17B-4-3(c), a first conviction for driving while revoked for DUI requires extending the license suspension for an additional year. Therefore, the Commissioner concludes that the Division had the authority, pursuant to W.Va. Code § 17B-3-6(a)(1), to suspend McKinney's license.

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<sup>2</sup>Specifically, the Division had received McKinney's uniform traffic citation and the abstract of judgment for driving while revoked for administrative reasons.



This Court agrees with the Commissioner that the Division had the authority to suspend McKinney's driver's license after it received evidence that he drove a vehicle while his driver's license was revoked for DUI, even though McKinney was not actually convicted of driving while revoked for DUI. When this Court is called upon to determine the meaning of a statute, we are guided by the principle that "[w]hen a statute is clear and unambiguous and the legislative intent is plain the statute should not be interpreted by the courts, and in such a case it is the duty of the courts not to construe but to apply the statute." Syllabus Point 1, *State ex rel. Fox Board of Trustees of Policemen's Pension*, 148 W.Va. 369, 135 S.E.2d 262 (1964), *overruled on other grounds*, *Booth v. Sims*, 193 W.Va. 323, 456 S.E.2d 167 (1995). Applying this principle to W.Va. Code § 17B-3-6(a)(1) leads us to conclude that this code section is clear and unambiguous, and the Legislature's intent when it enacted the statute is plain. Therefore, we hold that pursuant to W.Va. Code § 17B-3-6(a)(1) (1997), the West Virginia Division of Motor Vehicles is authorized to suspend the driver's license of any person without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee committed an offense for which mandatory revocation of a driver's license is required upon conviction, regardless of whether the licensee is convicted of the offense. We see no reason why the clear language of W.Va. Code § 17B-3-6(a)(1) should not be applied in this case.

The facts below show that the Division had sufficient evidence that McKinney drove while his driver's license remained revoked for DUI. Also, pursuant to W.Va. Code

§ 17B-4-3(c), driving while revoked for DUI is an offense for which mandatory revocation of a driver's license is required upon conviction. Accordingly, pursuant to W.Va. Code § 17B-3-6(a)(1), the Division was authorized to suspend McKinney's license for driving while revoked for DUI.

McKinney posits several arguments to support his contention that W.Va. Code § 17B-3-6(a)(1) does not apply to him. First, he reads § 17B-3-6(a)(1) to authorize suspension only upon actual conviction of an offense for which mandatory revocation of a driver's license is required. He points out that he was convicted of driving while suspended or revoked for administrative reasons, an offense for which mandatory revocation is not required under W.Va. Code § 17B-4-3(c). We believe that McKinney plainly misreads § 17B-3-6(a)(1). This code section requires only that the Division have sufficient evidence that the licensee committed an offense "*for which mandatory revocation of a driver's license is required upon conviction.*" It does not require sufficient evidence that the licensee actually was convicted of such an offense before license revocation is authorized.

Also, "[i]t is a cardinal rule of statutory construction that a statute should be construed as a whole, so as to give effect, if possible, to every word, phrase, paragraph and provision thereof[.]" Syllabus Point 9, in part, *Vest v. Cobb*, 138 W.Va. 660, 76 S.E.2d 885 (1953). To give effect to W.Va. Code § 17B-3-6(a)(1), it must be read to provide for something other than mandatory revocation for a first *conviction* for driving while revoked for DUI because this is clearly provided for in W.Va. Code § 17B-4-3(c). In other words,

to read W.Va. Code § 17B-3-6(a)(1) as urged by McKinney would be to find that the Legislature enacted a completely redundant statutory provision. This we decline to do.

McKinney next avers that W.Va. Code § 17B-4-3(c) shows a legislative intent to authorize a license suspension only upon the second or subsequent conviction for driving while revoked for administrative reasons. Although this may be true, McKinney ignores the fact that his license was not suspended because of his conviction for driving while suspended or revoked for administrative reasons but because the Division had sufficient evidence that he drove while revoked for DUI. For this same reason, we reject McKinney's argument that it would be irrational to presume that the Legislature intended to lessen the penalty for driving while suspended for administrative reasons under § 17B-4-3(c) while retaining the more severe penalty for the same offense in § 17B-3-6(a)(1). Again, McKinney received a "more severe" penalty under § 17B-3-6(a)(1) for driving while revoked for DUI and not for driving while revoked for administrative reasons.

In addition, McKinney contends that to apply § 17B-3-6(a)(1), as the Division did herein, renders the code section inconsistent with § 17B-4-3(c). This is incorrect. West Virginia Code § 17B-4-3(c) applies in cases where a person is convicted of driving while suspended or revoked for administrative reasons and the Division does not have sufficient evidence that he or she committed an offense for which mandatory revocation of a driver's license is required upon conviction. On the other hand, W.Va. Code § 17B-3-6(a)(1) applies

where there is sufficient evidence that a person committed an offense for which mandatory revocation of a driver's license is required upon conviction regardless of the offense for which that person is actually convicted. There simply is no conflict between the two code sections.<sup>3</sup>

Finally, we are confident that our holding in this case is consistent not only with the clear statutory language of W.Va. Code § 17B-3-6(a)(1) but also with the Legislature's intention in enacting the license revocation statutes. The purpose of this State's administrative driver's license revocation procedures is to protect innocent persons by removing intoxicated drivers from the public roadways as quickly as possible. This Court recently reiterated in *State ex rel. Stump v. Johnson*, 217 W.Va. 733, \_\_\_, 619 S.E.2d 246, 256 (2005)<sup>4</sup> the fact that "the administrative driver's license revocation procedures of the Commissioner are meant to protect the public from persons who drive under the influence

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<sup>3</sup>We also find no merit in McKinney's contention that W.Va. Code § 17B-4-3(c), which McKinney alleges is the "more specific statute," should control over W.Va. Code § 17B-3-6(a)(1), which he alleges is the "more general" statute. As we discussed above, the code sections are not in conflict.

<sup>4</sup>In *State ex rel. Stump v. Johnson*, this Court held in Syllabus Point 3,

Neither a prosecuting attorney, law enforcement officer nor any other person has the authority to enter into an agreement that would prevent the Commissioner of the West Virginia Department of Motor Vehicles from carrying out his or her legislative responsibilities or to prevent or impede a law enforcement officer from presenting evidence of the arrest in the Commissioner's license revocation administrative hearing.

of alcohol.” *Citing Stalnaker v. Roberts*, 168 W.Va. 593, 599, 287 S.E.2d 166, 169 (1981) (finding “[t]he intent of the West Virginia traffic laws which provide that the commissioner of motor vehicles revoke the licenses of dangerous drivers is protection for the innocent public”); *State ex rel. Ruddlesden v. Roberts*, 175 W.Va. 161, 164, 332 S.E.2d 122, 126 (1985) (recognizing “[t]he drunk driving laws of this State are hardly remedial in nature. They are regulatory and protective, designed to remove violat[or]s from the public highways as quickly as possible”); *Shell v. Bechtold*, 175 W.Va. 792, 796, 338 S.E.2d 393, 396 (1985) (stating “[t]he purpose of the administrative sanction of license revocation is the removal of persons under the influence of alcohol and other intoxicants from our highways . . . . The revocation provisions are not penal in nature . . . and should be read in accord with the general intent of our traffic laws to protect the innocent public”) (internal citations omitted); *Johnson v. Commissioner*, 178 W.Va. 675, 677, 363 S.E.2d 752, 754 (1987) (indicating that “[t]he administrative sanctions of license revocation is intended to protect the public from persons who drive under the influence of alcohol”); and *State ex rel. Hall v. Schlaegel*, 202 W.Va. 93, 97, 502 S.E.2d 190, 194 (1998) (opining that “[t]he purpose of the administrative sanction of license revocation, as we stated in *Shell v. Bechtold*, 175 W.Va. 792, 338 S.E.2d 393 (1985), ‘is the removal of persons who drive under the influence of alcohol and other intoxicants from our highways.’ *Id.* at 796, 338 S.E.2d at 396. This objective of removing substance-affected drivers from our roads in the interest of promoting safety and saving lives is consistent ‘with the general intent of our traffic laws to protect the innocent public’”).

We believe that the purpose of speedily removing intoxicated drivers from our public roadways would be greatly frustrated if the Division's revocation powers were totally dependent on the discretion of local prosecutors in choosing how to charge drunk drivers and whether to accept pleas to lesser charges – a discretion based primarily on the exigencies of the criminal justice system, not the protection of innocent drivers. While this Court understands the concern that our holding herein will interfere with the ability of prosecutors to dispose of drunk driving cases with plea bargains, thus potentially overloading trial court dockets, we deem this concern subordinate to our duty to apply statutory law as the Legislature plainly intended. We also believe this concern to be subordinate to the substantial legislative policy of protecting innocent persons from dangerous drunk drivers.

#### **IV.**

#### **CONCLUSION**

For the reasons set forth above, we conclude that the Division had the authority, under W.Va. Code § 17B-3-6(a)(1), to revoke McKinney's driver's license for driving while revoked for DUI. Accordingly, the November 17, 2004, order of the Circuit Court of Raleigh County reversing the Division's administrative driver's license revocation is reversed.

**Reversed.**

