

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Joe E. Miller, Commissioner,
West Virginia Division of Motor Vehicles,
Respondent Below, Petitioner**

vs) **No. 11-0427** (Wayne County 10-P-043)

**Samuel J. McCoy,
Petitioner Below, Respondent**

FILED

April 27, 2012

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

MEMORANDUM DECISION

Joe E. Miller, Commissioner of the West Virginia Division of Motor Vehicles (“DMV”), by counsel Janet E. James, appeals the circuit court of Wayne County’s order dated February 9, 2011, remanding this administrative license revocation proceeding to a hearing examiner for a de novo hearing on the issue of whether the sobriety checkpoint procedures in this matter were properly followed. The respondent, Samuel J. McCoy, by counsel D. Scott Bellomy, has filed a response.

This Court has considered the parties’ briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

On May 9, 2009, Respondent Samuel McCoy was arrested for driving under the influence at a sobriety checkpoint in Wayne County. He was arrested by State Trooper J.A. Rich II, who was assisting the Wayne County Sheriff’s Department in the operation of the sobriety checkpoint. The DMV issued an initial order revoking McCoy’s driver’s license. McCoy requested a hearing and indicated on the DMV form that he was challenging the propriety of the sobriety checkpoint. The DMV forwarded a letter to McCoy indicating the date of the DMV hearing. Stamped on the DMV’s letter was “sobriety checkpoint challenged.” The criminal case against McCoy was dismissed.

A DMV hearing examiner conducted a hearing based upon McCoy’s appeal of the revocation. McCoy introduced the written guidelines to be followed when the Wayne County Sheriff’s Department sets up a sobriety checkpoint. On cross-examination of the arresting officer, McCoy’s counsel elicited testimony that the officer did not know whether the Wayne County Sheriff’s Department followed their own guidelines in operating this checkpoint. The DMV

Commissioner affirmed the revocation following this hearing. In the order affirming the revocation, there were no findings as to whether the sobriety checkpoint guidelines were followed.

McCoy appealed to the circuit court. Finding that the sobriety checkpoint was properly challenged by notification in writing by McCoy, and that McCoy placed the guidelines into evidence at that hearing, the circuit court found that the hearing examiner made no findings of fact as to whether the sobriety checkpoint guidelines were followed. The circuit court stated at the hearing: “I don’t have a record to see if the guidelines were followed.” The circuit court remanded to the hearing examiner for a de novo hearing on this issue. The DMV appeals.

“On appeal of an administrative order from a circuit court, this Court is bound by the statutory standards contained in W.Va. Code § 29A-5-4(a) and reviews questions of law presented *de novo*; findings of fact by the administrative officer are accorded deference unless the reviewing court believes the findings to be clearly wrong.” Syl. Pt. 1, *Muscatell v. Cline, Comm’r*, 196 W.Va. 588, 474 S.E.2d 518 (1996). In the present case, the circuit court concluded that the order below was clearly wrong as it contained no consideration of the issues regarding the propriety of the sobriety checkpoint. The circuit court determined that the proper course of action was to remand for a de novo hearing to allow proof of the compliance, or lack thereof, with the written guidelines regarding Wayne County sobriety checkpoints. This Court concludes that there was no error in the circuit court’s decision to remand under the facts and circumstances of the present case.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: April 27, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh