DOCKET NO: W11D-MV17-0235522-S	)	STATE OF CONNECTICUT SUPERIOR COURT
STATE OF CONNECTICUT	)	
v.	)	JUDICIAL DISTRICT OF WINDHAM at DANIELSON, G.A. #11
STEPHEN WILLIAMS	)	January 12, 2018

MEMORANDUM OF DECISION: DEFENDANT'S MOTION TO DISMISS

I. Procedural History

On about October 4, 2017, the defendant was charged with Operating Under Suspension, in violation of General Statutes § 14-215. He filed a motion to dismiss those charges on October 6, 2017. The court heard oral argument from the parties on December 1, 2017.

The history and focus of this motion relate to a separate case resulting from a motor vehicle stop on March 30, 2004, where the defendant was charged with several infractions, including speeding under ticket L628759-0 (hereinafter referred to as "speeding ticket case"). The speeding ticket case was assigned to the Danielson Superior Court for adjudication, given docket number MV04-6287590. On November 5, 2004, apparently because of the defendant's failure to appear, the "speeding ticket" case was "closed out" pursuant to General Statutes § 14-

140 (b).[1] While the exact date is not clear from the record provided, that closeout was eventually reopened and the defendant was convicted after a bench trial before Hon. Michael Riley on about October 25, 2005, who imposed a fine. The defendant appealed that verdict, which kept the speeding ticket matter in litigation for the next several years until the Appellate Court finally dismissed it for lack of due diligence on September 2, 2009.

The defendant continued to pursue post-verdict relief on the speeding ticket case, culminating with a Motion to Correct Illegal Sentence brought before the trial court on February 20, 2015. That motion was granted by Hon. Harry Calmar on February 20, 2015. At a new sentencing hearing on April 20, 2015, Hon. Hope Seeley imposed a fine of $35. The defendant

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[1] **General Statutes § 14-140. Release on own recognizance. Report of failure to appear or to pay fine or fee, surcharge or cost. Reciprocal agreements. Opening of judgment**

(a) Any person who has been arrested by an officer for a violation of any provision of any statute relating to motor vehicles may be released, upon his own recognizance, by such officer in his discretion, unless such violation is of a provision relating to driving while under the influence of intoxicating liquor or drugs or using a motor vehicle without permission of the owner or evading responsibility for personal injury or property damage or involves the death or serious injury of another, in which cases such person shall not be released on his own recognizance.

(b) If any person so arrested or summoned wilfully fails to appear for any scheduled court appearance at the time and place assigned, or if any person charged with an infraction involving the use of a motor vehicle, or with a motor vehicle violation specified in section 51-164n, fails to pay the fine and any additional fee imposed or send in his plea of not guilty by the answer date or wilfully fails to appear for any scheduled court appearance which may be required, or if any person fails to pay any surcharge imposed under section 13b-70, any fee imposed under section 51-56a or any cost imposed under section 54-143 or 54-143a, *a report of such failure shall be sent to the commissioner by the court having jurisdiction. The provisions of this section shall be extended to any nonresident owner or operator of a motor vehicle residing in any state, the proper authorities of which agree with the commissioner to revoke, until personal appearance to answer the charge against him, his motor vehicle registration certificate or operator's license, upon his failure to appear for any scheduled court appearance.* Any infractions or violations, for which a report of failure to appear has been sent to the commissioner under this subsection, that have not otherwise been disposed of shall be dismissed by operation of law seven years after such report was sent.

(c) The commissioner may enter into reciprocal agreements with the proper authorities of other states, which agreements may include provisions for the suspension or revocation of licenses and registrations of residents and nonresidents who fail to appear for trial at the time and place assigned.

(d) Any judgment under this section shall be opened upon the payment to the clerk of the Superior Court of a fee of forty dollars. Such filing fee may be waived by the court.

appealed Judge Seeley's decision, which was ultimately dismissed by the Appellate Court on July 15, 2015.[2] A motion to the Appellate Court to reconsider was denied on September 15, 2015, and a petition for certification to the Connecticut Supreme Court was denied on November 4, 2015. Finally, the defendant sought certiorari to the Supreme Court of the United States (No. 15A728), but appears to have failed submit the necessary filings to perfect his appeal by the deadline of April 4, 2016. The stay resulting from his appeal having expired,[3] the defendant failed to pay the fine and the matter was closed out at the end of business on April 4, 2016. Bringing us back to the matter presently before the court, that April 4, 2016, closeout of the speeding ticket case is the reason the defendant's operating privileges were allegedly under suspension when he was arrested on the present charges on October 4, 2017.

II. Law and Discussion

"Where a motion to dismiss an information against an accused is made prior to trial, only probable cause sufficient to justify the continued prosecution need be established. The probable cause determination is, simply, an analysis of probabilities. . . . The determination is not a technical one, but is informed by the factual and practical considerations of everyday life on

[2] So the complete history of the speeding ticket is clear, court records do indicate that the matter was incorrectly "closed out" pursuant to § 14-140 on or about May 1, 2015, for non-payment of the $35 fine, the day after the defendant filed his appeal. Upon discovering the error, however, the clerk properly reopened the matter and waived the necessary fees on June 5, 2015.

[3] **Practice Book § 61-13. Stay of Execution in Criminal Case**

Except as otherwise provided in this rule, a judgment in a criminal case shall be stayed from the time of the judgment until the time to file an appeal has expired, and then, if an appeal is filed, until ten days after its final determination. The stay provisions apply to an appeal from a judgment, to an appeal from a judgment on a petition for a new trial and to a writ of error, where those matters arise from a criminal conviction or sentence. Unless otherwise provided in this rule, all stays are subject to termination under subsection (d). . . . .

(3) Sentence of a fine

A sentence to pay a fine shall be stayed automatically by an appeal, and the stay shall not be subject to termination.

which reasonable and prudent [persons], not legal technicians, act. . . . The existence of probable cause does not turn on whether the defendant could have been convicted on the same available evidence. . . . Furthermore, we have concluded that proof of probable cause requires less than proof by a preponderance of the evidence. . . . To establish probable cause, the state [is] not required to present evidence as to each of the elements of the offense in a form that would be admissible at a later trial. In *State v. Kinchen*, supra, 243 Conn. [690] at 702-703, 707 A.2d 1255 [1998], our Supreme Court found information contained in a written police report sufficient to establish probable cause to justify the continued prosecution of a defendant." (Citation omitted, quotation marks omitted.) *State v. Howell*, 98 Conn. App. 369, 378-379, 908 A.2d 1145 (2006). "In determining whether the evidence proffered by the state is adequate to avoid dismissal, such proof must be viewed in the light most favorable to the state." (Citation omitted.) *State v. Kinchen*, 243 Conn. 690, 702, 707 A.2d 1255 (1998).

The sum of defendant's argument to dismiss the current charge is that the Department of Motor Vehicles *should not* have maintained the suspension of his operating privileges because of the speeding ticket case past November 5, 2011, and, therefore, he *should not* have been under suspension at the time he was arrested on October 4, 2017. The defendant rests his argument on the final sentence of § 14-140 (b), which states, in pertinent part: "Any infractions or violations, for which a report of failure to appear has been sent to the commissioner under this subsection, that *have not otherwise been disposed of shall be dismissed by operation of law seven years after such report was sent.*" (Emphasis added.) The defendant asserts that the "closeout" issued in the speeding ticket case on November 5, 2004, triggered this clause and mandated dismissal of

that information not later than November 5, 2011. Since the speeding ticket case *should have* been dismissed by November 5, 2011, the defendant argues that the Department of Motor Vehicles "lacked the power" to have had his operating privileges under suspension when he was arrested for the present charges on October 4, 2017.

The obvious flaw in the defendant's theory is that he wholly ignores the fact that he reopened the November 5, 2004, closeout and was convicted after trial on October 25, 2005, which was a final and appealable *disposition* well within the seven year limit he asserts. See, e.g., General Statutes § 54-95 Appeal by defendant in criminal prosecution; stay of execution. All of the time between that trial and the November 5, 2011, deadline asserted by the defendant, was consumed with his appeals and other post-trial challenges to the *disposition*. Even if the defendant's theory was factually supported, it would be irrelevant here. In deciding this motion to dismiss, the court must determine only whether there is probable cause to believe the defendant's operating privilege was under suspension; *State v. Howell*, supra, 98 Conn. App. 378-379; not whether there may be some defense to that charge. Ironically, the argument offered by the defendant challenging the authority of the Department of Motor Vehicles to have suspended his license past November 5, 2011, acknowledges that probable cause exists. Id.

III. Conclusion

WHEREFORE, the defendant's motion to dismiss is **DENIED**.

THE COURT

Hon. John M. Newson

PICS MAILED 1-12-18

APPELLATE COURT

STATE OF CONNECTICUT

AC 41401

STATE OF CONNECTICUT

v.

STEPHEN JOHN WILLIAMS

JULY 25, 2018

ORDER

THE MOTION OF THE STATE OF CONNECTICUT-APPELLEE, FILED JUNE 6, 2018, TO DISMISS APPEAL, HAVING BEEN PRESENTED TO THE COURT IT IS HEREBY ORDERED THAT THE APPEAL AS AMENDED IS DISMISSED.

BY THE COURT,

/S/
SUSAN REEVE
DEPUTY CHIEF CLERK

NOTICE SENT: JULY 26, 2018
COUNSEL OF RECORD
HON. JOHN M. NEWSON
CLERK, SUPERIOR COURT, W11D MV04 6287590 S, W11D MV17 0235522 S
174472

SUPREME COURT

STATE OF CONNECTICUT

PSC-18-0193

STATE OF CONNECTICUT

v.

STEPHEN JOHN WILLIAMS

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

The defendant's petition for certification to appeal from the Appellate Court (AC 41401) is denied.

D'AURIA AND MULLINS, Js., did not participate in the consideration of or decision on this petition.

Stephen John Williams, self-represented, in support of the petition.
Michele C. Lukban, senior assistant state's attorney, in opposition.

Decided October 24, 2018

By the Court,

/S/
Susan C. Reeve
Deputy Chief Clerk

Notice Sent: October 24, 2018
Petition Filed: September 20, 2018
Clerk, Superior Court, W11DMV04 6287590S, W11DMV17 0235522S
Hon. John M. Newson
Clerk, Appellate Court
Reporter of Judicial Decisions
Staff Attorneys' Office
Counsel of Record