

No. 19- **19-5253**

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Jonathan Thomas Wright,

Petitioner.

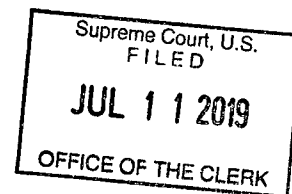
vs.

Adam Holley,

Acting Commissioner of the West Virginia Department of Motor Vehicles,

by Counsel, Elaine L. Skorich

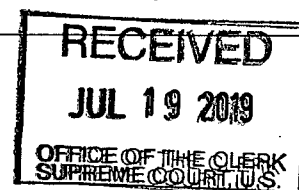
Respondent.



On Petition for a Writ of Certiorari to
The Supreme Court of Appeals of West Virginia

PETITION FOR A WRIT OF CERTIORARI

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Petitioner in Lower Court
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QUESTIONS PRESENTED

- I. Whether it is a violation of a substantial due process rights for a State agency to proceed with punishments in violation of state statute and a Stay Order while a case is pending appeal and be granted a Motion to Dismiss for Mootness by the State Supreme Court because the punishment has already been carried out.
- II. Whether it is a violation of procedural due process for an appellate court to rule on a Motion without giving the opposing party the opportunity to respond.

LIST OF PARTIES

- [X] All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

JONATHAN THOMAS WRIGHT,

PETITIONER,

vs.

STATE OF WEST VIRGINIA,

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

PETITION FOR WRIT OF CERTIORARI

Jonathan Thomas Wright respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of West Virginia in this case.

OPINION BELOW

The Order granting the Respondent's Motion to Dismiss for Mootness in the Supreme Court of Appeals of West Virginia, regarding the Administrative Appeal of the Petitioner

designated as No. 18-0867 (Case No. 391872A originally recorded as *Wright v. Reed*) was entered May 30, 2019 and is reproduced in the appendix to this petition at Pet. App. 1.

JURISDICTION

The Supreme Court of Appeals of West Virginia issued its order on May 30, 2019. This Appeal is timely filed within the 90 day requirement. The jurisdiction of this Court is invoked under 28 U.S. Code § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause provides:

No person shall . . . be deprived of life, liberty, or property, without due process of law.

The Equal Protection Clause of the Fourteenth Amendment, Section 1, provides:

nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This appeal arises from the criminal action designated State of *West Virginia v. Wright* (Case No. 16-M54M-02688) and the Wood County Magistrate Court Final Order entered June 1, 2017. Upon receipt from the Parkersburg Police Department of an unsigned West Virginia DUI Information Sheet which is required to be signed under West Virginia Code § 17C-5A-1(b), the Commissioner of the West Virginia Department of Motor Vehicles issued an Order of Revocation of the Petitioner's driver's license on June 22, 2016, challenging his property interest in driving privileges. The Petitioner timely filed a request for an administrative hearing. The

Petitioner made several motions before the Office of Administrative Hearings relating to his request for assignment of attorney representation due to his disability and limited financial resources which were denied. The disabled Petitioner was initially granted the assistance of a non-attorney advocate, but the day of the hearing the advocate was told to leave prior to the hearing by Chelsea Walker-Gaskins, attorney for the WV DMV and granted by Hearing Examiner Robert DeLong. The Petitioner was then forced to represent himself and penalized for choosing not to testify without an advocate present. None of the Petitioner's evidence or witness statements were considered by the hearing examiner because the Petitioner did not know to ask that the evidence be entered into the record and he did not file notice of expert testimony in advance of the hearing. This is corroborated in the State's Appeal Response Brief. The Final Order of the Office of Administrative Hearings West Virginia Department of Transportation was entered on October 3, 2017 affirming the Commissioner's Order of Revocation.

The Petitioner, with the assistance of family members, hired a private attorney to represent him in the appeal process. The Petitioner's Petition for Appeal and Brief/Memorandum in Support thereof and a Motion to Stay was timely filed in the Circuit Court of Wood County on November 14, 2017 (Case No. 17-P-178). The Stay was granted by Wood County Circuit Court Judge John D. Beane on December 20, 2017. The Stay was never revoked by the Court.

The Respondent's Response Brief was filed December 4, 2017 and the Petitioner's Brief in Reply was filed on January 17, 2018. A Motion to Dismiss for Lack of Jurisdiction due to untimely filing of the Petition was filed by the Respondent on January 5, 2018. The Respondent contended that the circuit court's docket sheet showed the Petitioner's Brief was stamped received on November 29, 2017, twenty days past the statutory deadline to file the appeal. A hearing was held regarding the Respondent's Motion during which the Petitioner argued that

both the appeal for the criminal conviction and the administrative action were filed at the same time, but due to clerical error regarding application of the enclosed check, which is required for the administrative appeal but applied in error to the criminal appeal which had no fee, the administrative Petition was not stamped in a timely manner. The Petitioner requested that the Wood County Clerk's Office personnel involved be permitted to testify. Circuit Court Judge John D. Beane stated he did not permit testimony during the appeal process and that he would investigate the matter himself and make a decision. The Wood County Circuit Order granted the Respondent's Motion to Dismiss which was entered on September 4, 2018.

The Petitioner's Brief (Docket No. 18-0296) was filed with the Supreme Court of West Virginia on January 4, 2019 and contained both the appeal of the Wood County Circuit Court Order and appeal of the merit issues involved in the case contained in the Order. In the Respondent's Brief, the Respondent waived remand of the case to the Wood County Circuit Court and conceded to a decision on the merits of the case. The Petitioner concurred and contended that all the assignments of error be considered which were presented in the Circuit Court Appeal. The Respondent then filed a Motion to Dismiss for Mootness on May 14, 2019 (Pet. App. 2-9) which contained the admission that the State had proceeded with punishment and based on that fact the matter was moot. On May 30, 2019, before the Petitioner could respond to the Respondent's Motion, the Supreme Court of Appeals of West Virginia granted the Respondent's Motion which was not received until after June 3, 2019. The Petitioner filed a response to the Respondent's Motion to Dismiss for Mootness on June 3, 2019 contending that the actions taken by the DMV violated West Virginia state statute and the existing Order of Stay (Pet. App. 10-17).

The opinion of the Supreme Court of Appeals of West Virginia endorsed the State's violation of state statute and a judicial Order of Stay, denied the Petitioner's right to appeal, and was made without allowing the Petitioner the opportunity to respond to the Motion.

REASONS FOR GRANTING THE WRIT

- I. THIS COURT SHOULD RESOLVE THE ISSUE OF WHETHER IT IS A VIOLATION OF FIFTH AMENDMENT DUE PROCESS PROTECTIONS FOR AN INDIVIDUAL TO BE PUNISHED BY A STATE AGENCY IN VIOLATION OF STATE MANDATES AND A STAY OF EXECUTION ORDER IN EFFECT DURING THE APPEAL PROCESS AND THEN BE DENIED THEIR RIGHT TO APPEAL BY A FINDING OF MOOTNESS OF THE ISSUE BASED ON THE FACT THAT THE PUNISHMENT HAD ALREADY BEEN CARRIED OUT.**

The Due Process Clause of the Fifth and Fourteenth Amendments to the U.S. Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. The petitioner argues that due process protections include a state agency's violation of appellate and state mandates in carrying out punishment while a case is being appealed and a Stay of Execution Order is in place. The Respondent first argued that the DMV revoked the Petitioner's license upon receipt of the DUI Information Sheet from the investigating officer and later received notice that the Petitioner had been convicted for the same offense and that the circuit court upheld the conviction. The Respondent stated "An administrative drivers' license revocation is triggered as the result of one of two occurrences: 1) a written statement to the DMV from an investigating officer that a DUI has been committed, pursuant to West Virginia Code § 17C-5A-1; or 2) notice to the DMV that a person has pled to or been convicted of DUI, pursuant to West Virginia Code § 17C-5A-1(a). **After a DUI arrest, West Virginia Code § 17C-5A-1 requires an officer to provide a 'Statement of Arresting Officer,' to the**

DMV, which then triggers a license revocation pursuant to subparagraph (c) [Emphasis added]. . ." *Dale v. Knopp*, 231 W. Va. 88, 93, 743 S.E.2d 899,904 (2013)" (Pet. App. 2-9). It is then contended that the Petitioner's drivers' license was first revoked as the result of the receipt of the DUI Information Sheet received from Officer Semones and later revoked again as a result of the Circuit Court of Wood County's decision to uphold the Petitioner's criminal conviction. The "Statement of Arresting Officer" is the WV DUI Information Sheet and is required to be signed as shown on Page 6 under West Virginia Code § 17C-5A-1, § 17C-5-7, and/or § 17E-1-15 and is to be mailed to Statement of Arresting Officer, PO Box 17050, Charleston, WV 25317. West Virginia Code § 17C-5A-1(b) states,

Any law-enforcement officer investigating a person for an offense described in section two, article five of this chapter . . . shall report to the Commissioner of the Division of Motor Vehicles by written statement within forty-eight hours of the conclusion of the investigation the name and address of the person believed to have committed the offense. The report shall include the specific offense with which the person is charged and, if applicable, a copy of the results of any secondary tests of blood, breath or urine. **The signing of the statement required to be signed by this subsection constitutes an oath or affirmation by the person signing the statement that the statements contained in the statement are true and that any copy filed is a true copy. The statement shall contain upon its face a warning to the officer signing that to willfully sign a statement containing false information concerning any matter or thing, material or not material, is false swearing and is a misdemeanor. [Emphasis added]**" Further, West Virginia Code § 17C-5A-1(c) states, **"If, upon examination of the written statement of the officer and the tests results described in subsection (b) of this section, the commissioner determines that a person committed an offense described in section two, article five of this chapter . . . the commissioner shall make and enter an order revoking or suspending the person's license to operate a motor vehicle in this state. . . [Emphasis added]"**

Officer Semones never signed the statement as required by statute which is an issue that has been raised in the OAH hearing process with the Petitioner's Motion to Dismiss which was denied, the appeal to Circuit Court of Wood County, and the appeal to Supreme Court of Appeals of West Virginia. Neither the WV DMV nor the prosecutor has denied the lack of

signature. Therefore, this admission by the Respondent means that there was never a signed statement and therefore the license revocation should never have been triggered in the first place.

The Respondent further stated,

West Virginia Code § 17C-5A-1a is activated upon a guilty plea to or conviction of DUI. West Virginia Code § 17C-5A-1a(a) provides that '[i]f a person . . . is convicted for a [] [DUI] offense . . . the person's license to operate a motor vehicle in this state shall be revoked or suspended[.]' (Pet. App. 2-9)

West Virginia Code § 17C-5A-1a(a) actually states, "If a person . . . is convicted for an offense defined in section two, article five of this chapter . . . **and if the person does not act to appeal the conviction** within the time periods described in subsection (b) of this section, the person's license to operate a motor vehicle in this state shall be revoked or suspended in accordance with the provisions of this section." Therefore, since this matter has been appealed, the license revocation upon conviction should never have occurred as well.

The Respondent also stated, "West Virginia Code § 17C-5A-1a(c) further provides that, upon receipt of a 'transcript of the judgment of conviction . . . the commissioner *shall* make and enter an order revoking the person's license to operate a motor vehicle in this state.' (emphasis added)." 231 W. Va. 88, 93, 743 S.E.2d 899,904 (Pet. App. 2-9). West Virginia Code § 17C-5A-1a(b) actually states,

. . . If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript **when the person convicted has not requested an appeal** within twenty days of the sentencing for such conviction . . . If the conviction is the judgment of a circuit court, the circuit clerk shall forward the transcript when the person convicted **has not filed a notice of intent to file a petition for appeal** or writ of error within thirty days after the judgment was entered." (c) **If, upon examination of the transcript of the judgment of conviction . . . the commissioner determines that the person was convicted for an offense described in section two, article five of this chapter . . . the commissioner shall make and enter an order revoking the person's license to operate a motor vehicle in this state. . . [Emphasis added]"**

West Virginia statute clearly shows that the transcript does not initiate license revocation when an appeal is pending.

In regard to the Stay of Execution, the WV DMV made a motion to suspend the stay of execution after Wood County Circuit Court Judge John D. Beane upheld the criminal conviction. In the hearing, Judge Beane stated that he would not rule on suspending the stay until the matter was completely resolved. The matter was clearly not resolved due to the appeal of the conviction to the Supreme Court of Appeals of West Virginia and the appeal of the conviction to the this Court. Therefore, the DMV illegally suspended the Petitioner's drivers' license in violation of the Stay Order and he has been punished under a revocation that never should have taken place under the state statute. Therefore, the WV DMV's decision to revoke the Petitioner's license, especially in light of the Petitioner's appeal and the Stay of Execution violates the requirements of West Virginia Code § 17C-5A-1(a).

There is much confusion under West Virginia law regarding whether the criminal and administrative processes are one process or two processes since they involve a single incident. Several issues have been raised during the administrative process in this case regarding the lack of clarity on this matter. During the Office of Administrative Hearing (OAH) hearing process, Ms. Walker-Gaskins sent an email which was treated as an official motion by Teresa Maynard, OAH Chief Hearing Examiner, that the hearing should be removed from the docket due to the parallel criminal conviction in Magistrate Court. Her motion, along with the Petitioner's official Motion to Dismiss due to the inadmissibility of the Respondent's evidence, unlawful arrest, Miranda violations, and invalid criminal complaint were denied and the hearing was held. Ms. Maynard's explanation for denial of the Petitioner's Motion to Dismiss was that the Petitioner was entitled to a hearing and nothing else. Therefore, the denial of the Respondent's Motion to

Dismiss establishes a precedent that these are two separate processes and any action on the criminal should have no bearing on the administrative. On the other hand, if they are considered one process, since the criminal conviction has not been resolved, the administrative case should not be considered moot.

In consideration of the issue of mootness in this case and in accordance with *Wilkinson v. W. Va. Office Insurance Commission*, No. 33672, Syllabus Point 1, *State ex rel. M.C.H. v. Kinder*, 173 W.Va. 387, 317 S.E.2d 150 (1984),

A case is not rendered moot even though a party to the litigation has had a change in status such that he no longer has a legally cognizable interest in the litigation or the issues have lost their adversarial vitality, if such issues are capable of repetition and yet will evade review.

In *State v. Merritt* (No. 33105, 2007) per curiam Syllabus Points 1 and 2, the Supreme Court of Appeals of West Virginia found,

- (1) Moot questions or abstract propositions, the decision of which would avail nothing in the determination of controverted rights of persons or of property, are not properly cognizable by a court. Syl. Pt. 1, *State ex rel Lilly v. Carter*, 63 W. Va. 684, 60 S.E. 873 (1908), and
- (2) Three factors to be considered in deciding whether to address technically moot issues are as follows: first, the court will determine whether sufficient collateral consequences will result from determination of the questions presented so as to justify relief; second, while technically moot in the immediate context, questions of great public interest may nevertheless be addressed for the future guidance of the bar and of the public; and third, issues which may be repeatedly presented to the trial court, yet escape review at the appellate level because of their fleeting and determinate nature, may appropriately be decided.” Syl. Pt. 1, *Israel by Israel v. West Virginia Secondary Schools Activities Commission*, 182 W. Va. 454, 388 S.E.2d 480 (1989).

Therefore, the issues contained in the Petitioner’s appeal to the Supreme Court of Appeals of West Virginia which contained questions of great public interest provide an exception to the issue of mootness. These are issues that are capable of repetition and yet will evade review since the motion to dismiss for mootness was granted. These issues include:

- (1) the decision of a circuit court judge to act on information not in evidence and the refusal to allow pertinent and vital testimony to resolve an issue of jurisdiction;
- (2) the unfair, arbitrary, and capricious actions of the OAH in the hearing process and the circuit court which have been raised in the appeal process;
- (3) the ADA violations by the OAH during the hearing process;
- (4) the issue of medical defense as it relates to *mens rea* and voluntariness of actions in light of *State v. Hinkle* and *Dale v. Ellison*;
- (5) the refusal of the OAH to accept evidence into the record that has been presented by a Petitioner and the ability of the OAH to completely control what evidence may be used during the appeal process in light of due process fairness;
- (6) the lack of recourse for Petitioner's who are denied subpoenaed evidence from government officials during the OAH hearing process;
- (7) the issue of whether the WV DMV has the right to ignore a Stay of Execution Order and/or the appeal process to arbitrarily carry out punishment in violation of state statute;
- (8) the issue of whether a petitioner can be penalized for clerical error; and,
- (9) the issue of whether the WV DMV can pursue revocation without a proper signature on the WV DUI Information Sheet known as the Statement of Arresting Officer as required by state statute.

In the Respondent's Brief, the Respondent stated willingness to waive a remand of the Petitioner's appeal back to circuit court to hear testimony regarding timely filing of the appeal which was the initial purpose of the Petitioner's Appeal and asked that the State Supreme Court rule on the merits of the case. The Petitioner then concurred asking that in light of WV Code § 29-A-5(e) all the Petitioner's assignments of error presented to the Circuit Court of Wood County be considered which included the issues previously articulated. Therefore, the Petitioner's appeal was not moot under *State v. Merritt* (2007) per curiam Syllabus Points 1 and 2 in that, the appeal decision would provide "determination of controverted rights of persons or of property", answer "questions of great public interest . . . for the future guidance of the bar and of the public, and avoidance of a situation in which an issue "may be repeatedly presented to the trial court, yet escape review at the appellate level because of their fleeting and determinate nature". Syl. Pt. 1, *Israel by Israel v. West Virginia Secondary Schools Activities Commission*, 182 W. Va. 454, 388 S.E.2d 480 (1989).

Thus, the arbitrary and illegal actions of the state agency should not be permitted to negate the Petitioner's due process rights. By condoning such actions, the Supreme Court of Appeals of West Virginia erred by giving the State the right to violate its own laws and judicial processes with impunity and deprive individuals of due process protections.

II. THIS COURT SHOULD RESOLVE THE QUESTION OF WHETHER A JUDICIAL BODY CAN ARBITRARILY RULE ON ONE PARTY'S MOTION WITHOUT GIVING THE OPPOSING PARTY AN OPPORTUNITY TO RESPOND IN VIOLATION OF PROPER JUDICIAL AND APPELLATE PROCESSES.

The Due Process Clause of the Fifth and Fourteenth Amendments to the U.S. Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. The petitioner argues that due process protections include the right of one party to have the opportunity to respond to the Motions of the opposing party and be heard before a judicial decision is made. The Respondent's Motion to Dismiss the Petitioner's Appeal for Mootness was filed on May 14, 2019. The Supreme Court of Appeals for West Virginia ruled on the Motion on May 30, 2019 without giving the Petitioner the opportunity to file a response. Having no notification of the Supreme Court's action at that time, the Petitioner did file a Response to the Motion on June 3, 2019 (Pet. App. 10-17).

The Fourteenth Amendment to the United States Constitution Section 1 guarantees procedural due process in civil cases. Due process requires that the procedures used to apply the laws must be "evenhanded" in order to avoid arbitrary exercise of government power against individuals. *Marchant v. Pennsylvania R.R.*, 153 U.S. 380, 386 (1894). As a result of the decision by the West Virginia Supreme Court to deny the Petitioner the right to be heard in

regard to the Respondent's Motion to Dismiss for Mootness, the Petitioner was subjected to the erroneous deprivation of his property interest.

In civil cases, a balancing test is used to determine whether the state's procedure with respect to the private interest affected, the risk of erroneous deprivation of that interest under that procedure, and the government interest at stake. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) Procedural due process rules are meant to protect parties from the mistaken or unjustified deprivation of life, liberty, or property *Carey v. Piphus*, 435 U.S. 247, 259 (1978). "[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases." *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976). **Due process procedures, therefore, should minimize substantively unfair or mistaken deprivations by enabling parties to contest the basis upon which a state attempts to deprive them of a protected interest.** [Emphasis added] *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972). At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result *Carey v. Piphus*, 435 U.S. 247, 266–67 (1978); *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). The Petitioner's appeal was denied a hearing without the opportunity for the Petitioner to have his arguments heard regarding the dispensation of the case. Substantive due process protections were denied when the Court refused to allow and consider the Petitioner's arguments against the motion.

Due process protections provide for the opportunity for interested parties to receive notice of pending action and be given an opportunity to respond. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950), this Court found, "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency

of the action and **afford them an opportunity to present their objections.** [Emphasis added]”
See also Richards v. Jefferson County, 517 U.S. 793 (1996). Further, notice must be sufficient to enable interested parties to determine what must be done to prevent the deprivation of their interest. *Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970).

Due process protections require a party to be given an opportunity to be heard prior to deprivation of a property interest. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). “**Parties whose rights are to be affected are entitled to be heard.**[Emphasis added]” *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863). This right constitutes a “basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment . . .” *Fuentes v. Shevin*, 407 U.S. 67, 80–81 (1972) Therefore, the opportunity to be heard “**must be granted at a meaningful time and in a meaningful manner** [Emphasis added]”. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

Due process protections also include the right to an impartial and fair hearing. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970). “The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law . . . At the same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980); *Schweiker v. McClure*, 456 U.S. 188, 195 (1982). Thus, the Fourteenth Amendment requires the provision of due process when an interest in one’s “life, liberty, or property” is threatened. *Morrissey v. Brewer*, 408 U.S. 471, 481

(1982). A driver's license is considered a property interest and is protected due to the fact that it may be essential to an individual's livelihood as well as the ability to seek medical treatment as well as live independently. *Bell v. Burson*, 402 U.S. 535 (1971).

The Supreme Court of West Virginia erred in granting the Respondent's motion without observing substantive due process procedures which require the Court to give the Petitioner the right to respond and be heard. As a result, the Petitioner was deprived of his right to challenge the intended and actual deprivation of his property interest and property rights through the appeal process.

CONCLUSION

Even though this case involves a first offense misdemeanor and would not normally reach an appeal with the Supreme Court of the United States, the issues at hand involve egregious due process violations within the judicial system of West Virginia and egregious ADA violations by a state agency against a disabled defendant whose medical condition was mistaken for driving under the influence of alcohol. The Petitioner faces a permanent record of a criminal conviction and license revocation for which he should not have been convicted or administratively punished. This can affect his acceptance to graduate school programs and international travel, as well as many other facets of life. The Petitioner respectfully asks this Court to grant the petition for certiorari.

Respectfully submitted,
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