

## **APPENDICES**

### **APPENDIX A**

**STATE OF WEST VIRGINIA**

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on May 30, 2019, the following order was made and entered:

Jonathan Thomas Wright,  
Plaintiff Below, Petitioner

vs.) No. 18-0867

Adam Holley,  
Acting Commissioner of the West Virginia DMV,  
Defendant Below, Respondent

**ORDER**

On May 14, 2019, the respondent Adam Holley, Acting Commissioner of the West Virginia DMV, by counsel Elaine L. Skorich, Assistant Attorney General, filed a motion to dismiss the appeal, for the reasons stated therein.

Upon consideration and review, the Court is of the opinion to and does hereby grant the motion. The case is dismissed as moot in light of the Court's decision in Case No. 18-0296.

A True Copy

Attest: /s/ Edythe Nash Gaiser  
Clerk of Court



## **APPENDIX B**



STATE OF WEST VIRGINIA  
DMV - OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 17200  
CHARLESTON, WV 25317

PATRICK MORRISEY  
ATTORNEY GENERAL

(304) 558-2522  
FAX (304) 558-2525

May 14, 2019

The Honorable Edythe Nash Gaiser  
WV Supreme Court of Appeals  
State Capitol Complex  
Building 1, Room E-317  
Charleston, WV 25305

Re: *Wright v. Holley*  
No. 18-0867

Dear Ms. Gaiser:

Enclosed for filing in the above-referenced action, please find and original and five (5) copies of the *Motion to Dismiss for Mootness*.

Thank you for your attention to this matter.

Very truly yours,

*Elaine L. Skorich*

Elaine L. Skorich  
Assistant Attorney General

Enclosure

pc: Joseph H. Spano, Jr., Esquire  
John T. Bonham, II, DMV Assistant General Counsel

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**  
**NO. 18-0867**  
**(Circuit Court Civil Action No. 17-P-178)**

**JONATHAN THOMAS WRIGHT,**

**Petitioner,**

**v.**

**ADAM HOLLEY, ACTING COMMISSIONER,  
WEST VIRGINIA DIVISION OF  
MOTOR VEHICLES,**

**Respondent.**

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**MOTION TO DISMISS FOR MOOTNESS**

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**ADAM HOLLEY, Acting Commissioner,  
Division of Motor Vehicles,**

**By Counsel,**

**PATRICK MORRISEY  
ATTORNEY GENERAL**

**Elaine L. Skorich, WVS# 8097  
Assistant Attorney General  
DMV Legal Division  
P.O. Box 17200  
Charleston, WV 25317-0010  
elaine.l.skorich@wv.gov  
(304) 558-2522**

Pursuant to Rule 31(a) of the Revised Rules of Appellate Procedure (2010), now comes Respondent Adam Holley<sup>1</sup>, Acting Commissioner of the West Virginia Division of Motor Vehicles (“DMV”), and hereby moves this Court to dismiss the instant matter for mootness for the reasons outlined below.

***Procedural Facts***

On June 7, 2016, the Petitioner was arrested for driving a motor vehicle while under the influence (“DUI”) of alcohol, controlled substances and/or drugs in Parkersburg, Wood County, West Virginia. (App. at PP. 10-37.) On June 22, 2016, the Respondent sent the Petitioner an *Order of Revocation* for DUI in File Number 391872A (“administrative revocation”), and on July 26, 2016, the OAH received a *Request for Administrative Hearing* from the Petitioner. (App. at P. 3, # 2.)

On June 1, 2017, the Magistrate Court of Wood County entered a *Criminal Judgment Order* indicating that a jury found the Petitioner guilty of DUI with an alcohol concentration in his blood < .15. (App. at P. 325.) The Petitioner appealed his guilty verdict to the Circuit Court of Wood County, and the circuit court upheld his conviction. The Petitioner appealed the circuit court’s decision to this Court in Case Number 18-0296. On May 2, 2018, pursuant to W. Va. Code § 17C-5A-1a (2010), the DMV sent the Petitioner an *Order of Revocation* in File Number 391872B (“revocation upon conviction”) which became effective on June 6, 2018.<sup>2</sup>

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<sup>1</sup> On March 31, 2019, Pat Reed retired as the Commissioner of the Division of Motor Vehicles. As of the filing of the instant motion, Adam Holley is the Acting Commissioner. Pursuant to Rule 41(c) of the Revised Rules of Appellate Procedure, Mr. Holley’s name has been substituted herein.

<sup>2</sup> The Petitioner did not receive a stay of his license revocation upon conviction; therefore, the Petitioner’s driving privileges have been revoked since June of 2018, and he has served all of the required revocation period. To reinstate his driving privileges, the Petitioner is required to successfully complete the West Virginia Safety and Treatment classes and to pay reinstatement fees. *See, W. Va. Code § 17C-5A-3(g) and (g)(1) and Dale v. Knopp*, 231 W. Va. 88, 95, 743 S.E.2d 899, 906 (2013) (holding, “such conditions, for purposes of this case, include 1) successful completion of an ‘educational, treatment or rehabilitation’ program; 2) payment of costs of such program; and 3) payment of revocation hearing costs.”

On August 31, 2017, the OAH held an administrative hearing. (App. at P. 169.) On October 3, 2017, the OAH entered its *Final Order* upholding the Petitioner's license revocation in File Number 391872A. (App. at P. 347.) On November 29, 2017, the Petitioner filed a *Petition for Judicial Review* in the Circuit Court of Wood County. (App. at P. 361.) On September 4, 2018, the circuit court entered a final order dismissing the Petitioner's administrative appeal due to untimely filing. (App. at P. 473.) It is from that order in the administrative revocation that the Petitioner appealed to this Court on October 4, 2018. The parties have briefed the appeal of the administrative revocation. On April 19, 2019, this Court entered a *Memorandum Decision* affirming the Petitioner's criminal conviction for DUI.

#### *Argument*

"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-1a. 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) . . ." *Dale v. Knopp*, 231 W. Va. 88, 93, 743 S.E.2d 899, 904 (2013).

"Upon receipt of the notice of revocation, a driver has the right to request an administrative hearing under West Virginia Code § 17C-5A-2(a). If a written request for hearing is received, the revocation is stayed and a hearing granted. *Id.*; *see also* W. Va. Code § 17C-5A-2(s)." 231 W. Va. 88, 93, 743 S.E.2d 899, 904. "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 [.]' 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.

"West Virginia Code § 17C-5A-1a(d) provides that '[t]he provisions of this section shall not apply if an order *reinstating* the operator's license of the person has been entered by the commissioner prior to the receipt of the transcript of the judgment of conviction.' (emphasis added)." 231 W. Va. 88, 93, 743 S.E.2d 899, 904. "West Virginia Code § 17C-5A-1a(d) operates only to preclude a driver from twice having his license revoked for the same offense." 231 W. Va. 88, 94, 743 S.E.2d 899, 905.

Here, 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. Accordingly, the DMV fulfilled its statutory duty when it also revoked upon conviction. The Petitioner appealed both the administrative revocation and the revocation upon conviction to this Court and has not fulfilled the requirements for reinstatement of his license pursuant to W. Va. Code § 17C-5A-3 (2010). This Court's affirmation of the Petitioner's criminal conviction for DUI upholds the revocation upon conviction in File Number 391872B, is dispositive of the issue of DUI, and renders the appeal of the administrative conviction in File Number 391872A moot.

" '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.' *State ex rel. West Virginia Secondary Schools Activities Comm'n v. Oakley*, 152 W. Va. 533, 537, 164 S.E.2d 775, 778 (1968), quoting Syllabus Point 1, *State ex rel. Lilly v. Carter*, 63 W. Va. 684, 60 S.E. 873 (1908). However, we, along with most courts, have tempered the inflexibility of mootness jurisprudence in recent years." *Israel by Israel v. W. Virginia Secondary Sch. Activities Comm'n*, 182 W. Va. 454, 457, 388 S.E.2d 480, 483 (1989).

"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, supra*.

In the instant matter, there are no collateral consequences. Regardless of this Court's decision in the appeal of the administrative license revocation, the Petitioner will have a DUI offense on his driver's history and must complete the reinstatement requirements because this Court affirmed his criminal conviction for DUI. Further, there are no questions of great public interest in the instant matter. The Petitioner's appeal to the circuit court in the administrative revocation was dismissed for untimely filing. There were no new or novel issues in that matter which would give future guidance to the bar or the public. Finally and for the same reasons above, a dismissal for untimely filing is not likely to be oft repeated.

### ***Conclusion***

For the above-reasons, the instant matter should be dismissed for mootness.

Respectfully submitted,

ADAM HOLLEY, ACTING  
COMMISSIONER, DIVISION  
OF MOTOR VEHICLES,

By Counsel,

PATRICK MORRISEY  
ATTORNEY GENERAL

Elaine L. Skorich

Elaine L. Skorich, WVS # 8097  
Assistant Attorney General  
DMV Legal Division  
P.O. Box 17200  
Charleston, WV 25317-0010  
[elaine.l.skorich@wv.gov](mailto:elaine.l.skorich@wv.gov)  
(304) 558-2522

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
NO. 18-0867  
(Circuit Court Civil Action No. 17-P-178)

JONATHAN THOMAS WRIGHT,

Petitioner,

v.

ADAM HOLLEY, ACTING COMMISSIONER,  
WEST VIRGINIA DIVISION OF  
MOTOR VEHICLES,

Respondent.

CERTIFICATE OF SERVICE

I, Elaine L. Skorich, Assistant Attorney General, do hereby certify that a true and exact copy of the foregoing *Motion to Dismiss for Mootness* was served upon the following by depositing true copies thereof, postage prepaid, in the regular course of the United States mail, this 14<sup>th</sup> day of May, 2019, addressed as follows:

Joseph H. Spano, Jr., Esquire  
Pritt & Spano, PLLC  
714½ Lee Street, E., Suite 204  
Charleston, WV 25301

  
ELAINE L. SKORICH

## APPENDIX C

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
DOCKET NO.: 18-0867

JAN 3 2019

Jonathan Thomas Wright,  
Plaintiff Below, Petitioner

vs.)

Appeal from the Order of the Circuit Court  
of Wood County  
(Civil Action No.: 17-P-178)

Adam Holley,  
Commissioner of the West Virginia DMV,  
Respondent

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**PETITIONER'S RESPONSE TO  
RESPONDENT'S MOTION TO DISMISS FOR  
MOOTNESS**

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Joseph H. Spano Jr.  
Pritt & Spano, PLLC  
714 ½ Lee Street, E., Suite 204  
Charleston, WV 25301  
(304) 346-7748  
WV State Bar ID No.: 11373  
[jspano@yourwvlawfirm.com](mailto:jspano@yourwvlawfirm.com)

### Response Argument

The Respondent first argues 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. 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 this Court. Neither the WV DMV nor the prosecutor has denied the lack of signature. Therefore, this admission by Ms. Skorich means that there was never a signed statement and therefore the license revocation should never have been triggered in the first place.

Ms. Skorich states, "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[.]' "(Motion Page 2-3) 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.

Ms. Skorich also states, "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. West Virginia Code §17C-5A-1a actually states (b) " . . . 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. . . .**"

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

Secondly, 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 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 is clearly not resolved due to the appeal of the conviction to this Court and the intended appeal of the conviction to the United States Supreme Court. Therefore, the DMV illegally suspended the Petitioner's drivers' license in violation of the stay and he has been punished under a revocation that never should have taken place in the first place. 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 granted by the Circuit Court of Wood County which has never been revoked, violates the requirements of West Virginia Code 17C-5a-1a.

During the OAH hearing process, Ms. Walker-Gaskins (attorney for the WV DMV at the time) made a motion through an email that the hearing should be removed from the docket due to the parallel criminal conviction in Magistrate Court. Her motion was denied and the hearing was held. Therefore, the precedent has been established that these are two separate processes and any

action on the criminal should have no bearing on the administrative. Further, if it is considered one process, since the criminal conviction has not been resolved, the case is not moot.

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, this court 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 this Court which contains questions of great public interest provides an exception to the issue of mootness. These are issues that are capable of repetition and yet will evade review if the motion to dismiss for mootness is 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;
- (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 used during the OAH hearing process;
- (7) the issue of whether the WV DMV has the right to ignore a Stay of Execution 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.

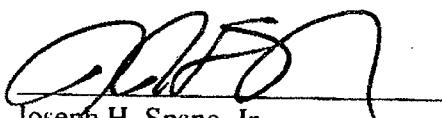
In the Respondent's Brief, the Respondent stated willingness to waive a remand of the current appeal back to circuit court to hear testimony regarding timely filing of the appeal which was the initial purpose of the Petitioner's Appeal and asked that this Court rule on the merits of the case. The Petitioner 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 includes the issues previously articulated. Therefore, this appeal is not moot under *State v. Merritt*, No. 33105 (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).

### CONCLUSION

For the above reasons the Respondent's Motion to Dismiss for Mootness should be denied.

JONATHAN T. WRIGHT  
By Counsel

  
Joseph H. Spano, Jr.  
Pritt & Spano, PLLC  
714 1/2 Lee Street, E., Suite 204  
Charleston, WV 25301  
(304) 346-7748  
WV State Bar ID No: 11373  
jspano@yourwvlawfirm.com

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
DOCKET NO.: 18-0867

Jonathan Thomas Wright,  
Plaintiff Below, Petitioner

vs.)

Appeal from the Order of the Circuit Court  
of Wood County  
(Civil Action No.: 17-P-178)

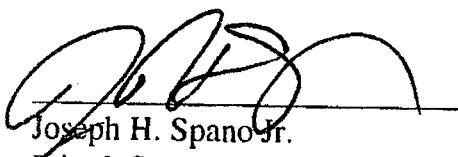
Pat Reed,  
Commissioner of the West Virginia DMV,  
Defendant Below, Respondent

**CERTIFICATE OF SERVICE**

I, Joseph H. Spano, Jr., counsel for Jonathan Thomas Wright, do hereby certify that service of the foregoing *Petitioner's Response to Respondent's Motion to Dismiss for Mootness* in the above styled case have been made upon the following:

Elaine L. Skorich  
Assistant Attorney General  
Office of the Attorney General  
DMV Legal Division  
P.O. Box 17200  
Charleston, WV 25317

this the 3rd day of June 2019, via United States mail, in a sealed envelope, postage prepaid.



Joseph H. Spano Jr.  
Pritt & Spano, PLLC  
714 ½ Lee Street, E., Suite 204  
Charleston, WV 25301  
(304) 346-7748  
WV State Bar ID No: 11373  
jspano@yourwvlawfirm.com