

No. 19-5253

IN THE
SUPREME COURT OF THE UNITED STATES

Jonathan Thomas Wright,

Petitioner.

vs.

Adam Holley,

Acting Commissioner of the West Virginia Department of Motor Vehicles,

Respondent.

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

PETITION FOR REHEARING

Jonathan Thomas Wright
Pro se Petitioner
Defendant in Lower Court
Post Office Box 2
Belpre, Ohio 45714
Tel.: (304) 488-8802
E-Mail: j_wright0@hotmail.com

QUESTION PRESENTED

WHETHER THE UNDERLYING VIOLATIONS OF AN INDIVIDUAL'S CONSTITUTIONAL RIGHTS UNDER THE FIFTH AND FOURTEEN AMENDMENTS WHICH SHOULD RENDER THE PRECEDING JUDGMENT INVALID CAN BE DECLARED MOOT BY A STATE AGENCY ESPECIALLY WHEN THOSE ISSUES RAISED ON APPEAL WERE NEVER DISPUTED.

LIST OF PARTIES

☒ 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.

ADAM HOLLEY,

ACTING COMMISSIONER OF THE

WEST VIRGINIA DEPARTMENT OF MOTOR VEHICLES,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, Jonathan Thomas Wright respectfully prays for rehearing of the Court's decision issued on October 7, 2019 and review of the judgment of the Supreme Court of Appeals of West Virginia in this case.

OPINION BELOW

This Writ of Certiorari arises from the Order granting the Respondent's Motion to Dismiss for Mootness of the Supreme Court of Appeals of West Virginia, dated May 30, 2019 which is reproduced in the appendix to this petition at Pet. App.

1.

JURISDICTION

Pursuant to Supreme Court Rule 44, the petition for rehearing is filed within 25 days of this Court's decision in this case. 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

The Equal Protections Clause of the Fourteenth Amendment provides that no individual will be deprived of equal protection due to their disability. The Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. The controlling effect of these underlying Constitutional rights and due process protections cannot be mooted by the state judiciary (*Roe v. Wade*, 410 U.S. 113 (1973)). Substantial intervening circumstances existed in that

these issues were consistently raised on appeal and remained undisputed in the Respondent's briefs and oral arguments.

These violations included discrimination against the Petitioner due to his disability in violation of ADA by denying him the assistance of an advocate without notice and forcing him to represent himself in an impaired state, the unfair, arbitrary, and capricious nature of the hearing process, and the refusal of the tribunal to accept or consider any of the Petitioner's evidence or witness testimony during the hearing and subsequent deliberations.

The decision of the Supreme Court to grant the Respondent's Motion of Mootness denied the Petitioner judicial remedy regarding the underlying Constitutional violations. At the same time, they condoned the fact that the Respondent's attorney admitted to violations of state statute and an Order of Stay when she arbitrarily revoked the Petitioner's license and based her mootness claim on the fact that the Petitioner had been damaged and nothing would ever change that fact.

REASON FOR GRANTING THE WRIT

THIS COURT SHOULD RESOLVE THE ISSUE OF WHETHER THE UNDERLYING VIOLATIONS OF AN INDIVIDUAL'S CONSTITUTIONAL RIGHTS UNDER THE FIFTH AND FOURTEEN AMENDMENTS WHICH SHOULD RENDER THE PRECEDING JUDGMENT INVALID CAN BE DECLARED MOOT BY A STATE AGENCY ESPECIALLY WHEN THOSE ISSUES RAISED ON APPEAL WERE NEVER DISPUTED.

The Equal Protections Clause of the Fourteenth Amendment provides that no individual will be deprived of equal protection due to their disability. The Due Process Clause of the Fifth and Fourteenth Amendments provide that no person

shall be deprived of life, liberty, or property without due process of law. The controlling effect of these underlying Constitutional rights and due process protections cannot be mooted by the state judiciary (*Roe v. Wade*, 410 U.S. 113 (1973)). Substantial intervening circumstances existed in that these issues were consistently raised on appeal and remained undisputed in the Respondent's briefs and oral arguments.

The OAH's actions violated the Petitioner's right to fair and impartial hearing, the right to enter evidence and present witnesses on his behalf, the right to be heard, and the right to equal treatment under the law. By refusing the Petitioner the assistance of an advocate as an accommodation under ADA without notice, the disabled Petitioner was forced, while under the influence of prescribed, non-narcotic medication for his disability, to represent himself and then was penalized for his inability to follow proper legal procedure such as asking that evidence be admitted into the record. The tribunal then refused to accept or consider any of the Petitioner's evidence or witness testimony during subsequent deliberations and refused to make that evidence part of the record. Such behavior indicated absolute bias against the Petitioner, created an unfair, arbitrary, and capricious hearing process, and attempted to limit the scope of the Petitioner's appeal. These actions denied the Petitioner the right to defend himself and be heard.

Documented in filings and transcripts, the unfair, arbitrary, and capricious nature of the hearing process was evident by the Hearing Examiner's: (1) refusal to accept evidence which was contrary to the Respondent's case (i.e., the Wood County

911 Call Center Report), (2) making arguments for the Respondent which were never raised, (3) allowing the Respondent to introduce new evidence without notice and refusal to allow the Petitioner the opportunity to examine it, (4) permitting verbal abuses by the Respondent and the Respondent's witness against the Petitioner and the Petitioner's witnesses during the hearing, and, (5) disparaging and sarcastic remarks by the Chief Hearing Examiner in her decisions indicated the Petitioner could not have a fair and impartial hearing.

Even though the issues raised on appeal have never been disputed by the Respondent, the Petitioner wishes to provide an overview for this Court which follows:

Violation of the Petitioner's protections under The Americans with Disabilities Act of 1990 (ADA). Under 42 U.S. Code § 12131 Title II Section 201(2), Subpart B 35.130,

"... (3) A public entity may not . . . utilize criteria or methods of administration – (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability. . . (7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability."

Facts specific to the case include:

1) Admitted medical records show the Petitioner has a medically documented, neurological disability for which he takes prescribed, non-narcotic medications. This disability manifests as impaired thought processes (i.e., fugue states, loss of train of thought, confusion, etc.), impaired physical traits (i.e.,

shaking or tremors, excessive sweating, unsteady gait, etc.), and accompanying psychological stressors (i.e., anxiety, depression, etc.).

2) Despite the introduction of Social Security Disability approval, Hearing Examiner Maynard initially questioned in her filings whether the Petitioner was in fact disabled. The Petitioner was then denied the assistance of an advocate. Ms. Maynard later stated an advocate could be present but not speak. On the day of the hearing, Hearing Examiner DeLong forced the advocate to leave and required the disabled Petitioner to represent himself.

3) The Hearing Examiner then penalized the Petitioner for not adhering to proper evidentiary procedures. In its brief below, the Respondent stated, "Petitioner showed a video at the administrative hearing yet failed to move for its admission into evidence as required by the W.Va. Rules of Evidence; therefore, the OAH did not include the same in the administrative record . . ." In the Respondent's Brief, she states, ". . . Although the Petitioner included the transcripts from two criminal pre-trial motion hearings and the criminal trial in the Appendix . . . he filed with this Court, those transcripts were not admitted into the record at the administrative hearing before the OAH. . ."

4) Later filings during judicial appeal show the Respondent admitting that none of the Petitioner's witness testimony was considered during deliberations;

5) In her Brief, the Respondent then attempted to limit the scope of the appeal by confirming that the administrative record contained none of the Petitioner's evidence and the appeal must be based on the administrative record.

6) The Petitioner was penalized for not testifying with the Respondent contending he had not refuted the allegations against him and, thus, conceded them.

7) The Petitioner's Motion to Dismiss addressed specific challenges including a medical defense. Ms. Maynard denied the Motion in her decision stating the Petitioner was entitled to a hearing "and nothing else". In the Respondent's Brief, she acknowledged, "On August 27, 2016, the Petitioner filed a *Petitioner's Motion to Dismiss and Notification of Intent to Challenge Respondent's Evidentiary Submission. . .*" Though aware of the issues raised, the Respondent never refuted them. Further, the Respondent never disputed the ADA and Constitutional violations against the Petitioner once raised on appeal.

8) The Tribunal refused to adhere to legal mandates once the Petitioner entered a medical defense supported by medical records. Under *State of WV v. Hinkle*, 200 W. Va. 280, 489 S.E.2d 287 (1996) Syllabus Point 2, the Court held that once a medical defense is introduced, the Respondent must prove voluntariness. In the Memorandum Decision *Dale v. Ellison*, W. Va. Supreme Court of Appeals No. 13-1321 (2014), the Court upheld reversal of driver's license revocation due to the individual's medical conditions from medical documents entered as evidence. Although the medical defense has been raised at every level of the appeal, the Respondent has never attempted to prove voluntariness.

9) In obvious discrimination against the Petitioner, Assistant Attorney General Chelsea Walker-Gaskins questioned whether it was moral and ethical to

allow the Petitioner, a disabled man, to even have a driver's license as shown in the hearing transcript.

10) The disabled Petitioner was not permitted to introduce expert testimony because of his failure to file advanced notice and the Hearing Examiner refused to continue the hearing. In addition, Hearing Examiner DeLong repeatedly limited the testimony of the Petitioner's witnesses and considerable evidentiary testimony was lost.

11) As evident in the transcript, the Petitioner's disability was exploited by the Respondent's attorney and condoned by the Hearing Examiner with open attacks against the Petitioner and repeated objections at times when the Petitioner was making a strong argument in order to cause him confusion and to lose his train of thought.

12) The due process violations inherent in the OAH hearing process are likely to be repeated and will remain unchallenged without review of this Court.

The refusal to accept any of the Petitioner's evidence or witness testimony served only to benefit the Respondent. The Hearing Examiner's refusal to enter prior transcripts of Officer Semones' testimony which showed contradictory evidence and embellished recitation of the events which occurred prejudicially benefitted the Respondent. This is the very definition of unfair, arbitrary, and capricious behavior.

According to *Margan v. United States* (1938), individuals must be given the opportunity to present evidence (*Margan v. United States*, 304 U.S. 1, 18-19

(1938)). See also *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863).; *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). This right is 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. . .” *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972). “... Any legal proceeding enforced by public authority . . . which regards and preserves these principles of liberty and justice, must be held to the due process of law.” *Id.* at 708; *Accord*, *Hurtado v. California*, 110 U.S. 516, 537 (1884). See also *Hagar v. Reclamation Dist.*, 111 U.S. 701, 708 (1884)

Unfair, arbitrary, and capricious bias within the OAH hearing processes. A driver’s license is a property interest and entitled to protection under the Due Process Clause. *Abshire v. Cline*, 193 W.Va. 180, 455 S.E.2d 549 (1995) Syllabus Point 1; Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. *Marchant v. Pennsylvania R.R.*, 153 U.S. 380, 386 (1894) *Palmer v. McMahon*, 133 U.S. 660, 668 (1890);. *Wong Yang Sung v. McGrath*, 339 U.S. 33, 50 (1950). See also *Carey v. Piphus*, 435 U.S. 247, 259 (1978);. *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976);) *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

“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*, 446 U.S. 238, 242 (1980) See also *Schweiker v. McClure*, 456 U.S. 188, 195 (1982); *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970). In this case, members of the Tribunal showed extreme bias and lack of impartiality, specifically,

1) While the Petitioner was required to follow proper procedure, Ms. Walker-Gaskins sent email communications ordering OAH staff members to take action without filing official Motions. For instance, on two occasions, the Respondent’s attorney ordered OAH Staff Member Vicky Tolley to quash the Petitioner’s subpoenas and to remove the case from the docket due to the parallel criminal conviction. Ms. Maynard later referred to that email as a Motion to Dismiss even though no official documents were ever filed.

2) Subpoenas were ignored, specifically Sharon Semones, did not appear; Police Chief Joseph Martin, after two subpoenas failed to produce the booking video; and, Magistrate Clerk Pauline Yearago, failed to provide the booking video and hearing transcripts. No negative repercussions resulted.

3) The Tribunal placed the burden of proof on the Petitioner in violation of *Cain v. W.Va. Div. of Motor Vehicles* (Syl. Pt. 3, in part, *Cain v. W.Va. Div. of Motor Vehicles*, 225 W.Va. 467, 694 S.E.2d 309 (2010) and WV Code §17C-5C-4(d) [2010].

4) Hearing Examiner DeLong ignored objective evidence and the Respondent’s witness’s own testimony admitting to the errors making the evidence against the Petitioner invalid. Even after Officer Semones admitted that his arrival

time on the police report was inaccurate and the Call Center Report was likely more accurate which indicated he was only on the scene for 12 minutes, the Hearing Examiner in his decision stated the length of time Officer Semones was on the scene was "not unequivocally determined".

5) The Respondent enjoyed a double standard regarding whether the administrative and criminal processes are one process or two (i.e., based on which benefits the Respondent at any given point). For example, the Respondent was permitted to reference the Petitioner's criminal conviction, but no credence was given to the Petitioner's references to criminal trial transcripts which showed Officer Semones' changing testimony and challenged his credibility.

6) Rather than ruling on the evidence presented, the Hearing Examiner repeatedly made legal arguments for the Respondent which the Respondent never introduced at the hearing. For example, in contradiction to the testimony of the Petitioner's witness, Matthew DeVore, which was never addressed by the Respondent or Office Semones in his testimony, the Hearing Examiner stated in his decision that in regard to *ex parte* communications the Officer's statements were likely based on the perceptions of another and dealt primarily with procedural rather than evidentiary issues;

7) At the conclusion of the OAH hearing, the Respondent's attorney remained in the hearing room with Hearing Examiner DeLong behind closed doors for more than 30 minutes. This issue was raised on appeal and has never been denied.

Whether violations of Constitutional protections and rights can be declared moot. Mootness issues are often raised because governmental defendants often try to moot out cases in order to avoid paying attorney and other fees. *Buckhannon Board and Care Home, Incorporated v. WV of Health and Human Resources*, 532 U.S. 598, 608-10 (2001). This Court found that one of the exceptions to the Mootness Rule is that **if an important right is denied, and the application of the mootness rule would mean the denial of that right – though likely to continue – would escape judicial review, the Court has jurisdiction to consider the case and, if appropriate, vindicate the right in question.** *Roe v. Wade*, 410 U.S. 113 (1973).

The Constitutional rights to due process and equal protections under the Fifth and Fourteenth Amendments are important rights and, since these rights were denied as a result of state administrative processes causing injury to the Petitioner, they are likely to continue and escape judicial review. *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), See also *State v. Merritt*, No. 33105 (2007) per curiam Syllabus Point 2. Thus, this case is an exception to the Mootness Rule.

The issue in the present case is whether mootness can be used to circumvent uncontested Constitutional right violations in a state administrative and judicial process. According to *Chafin v. Chafin* (2013), a case is not considered moot so long as the plaintiff continues to have an injury for which the court can award relief,

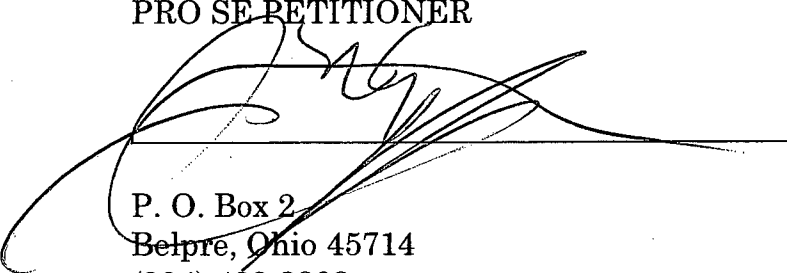
even if entitlement to the primary relief has been mooted and what remains is small. (*Chafin v. Chafin*, 133 S. Ct. 1017 (2013)). In essence, the presence of a “collateral” injury is an exception to mootness. *See, e.g., In re Burrell*, 415 F.3d 994, 998, 9th Cir. (2005).

CONCLUSION

This is a case of egregious, blatant violations of due process protections and the denial of the Petitioner’s right to a fair and impartial hearing which has remained undisputed. The arbitrary and capricious actions of the state agency in depriving the Petitioner of his Constitutional rights and due process protections should not be circumvented by a finding of mootness by the state judiciary.

WHEREFORE, the Petitioner respectfully requests that his Petition for a Rehearing of his Writ of Certiorari be granted.

Respectfully submitted,
JONATHAN THOMAS WRIGHT,
PRO SE PETITIONER



P. O. Box 2
Belpre, Ohio 45714
(304) 488-8802

INDEX TO 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



CERTIFICATE OF PETITIONER

Jonathan T. Wright, *pro se* Petitioner, attests that the attached **PETITION FOR REHEARING OF THE WRIT OF CERTORARI** for Case No. 19-5253 is restricted to the grounds of intervening circumstances of a substantial or controlling effect and other substantial grounds not previously presented. This Petition is presented in good faith and not for delay. The Brief contains 2,993 words and comprises 13 pages in accordance with Rule 44 formatting requirements.

I certify under penalty of perjury that the foregoing is true and correct.

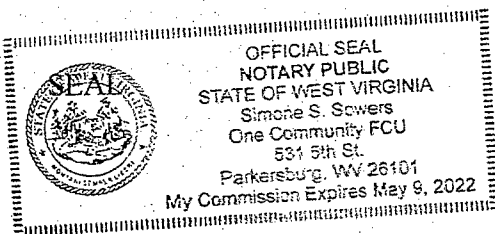
Respectfully submitted,
JONATHAN THOMAS WRIGHT,
PRO SE PETITIONER

P. O. Box 2
Belpre, Ohio 45714
(304) 488-8802

STATE OF WEST VIRGINIA

COUNTY OF WOOD

Subscribed and sworn before me this 20th day of October, 2019.



Notary

My commission expires

May 9th, 2022

No. 19-5253

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

JONATHAN THOMAS WRIGHT,

Petitioner,

v.

STATE OF WEST VIRGINIA,

Respondent.

CERTIFICATE OF SERVICE

Jonathan Thomas Wright, *pro se* Petitioner, certifies pursuant to Rule 29 of this Court, that on October 28, 2019, he served the within PETITION FOR REHEARING OF WRIT OF CERTIORARI on counsel for Respondent by causing a copy to be deposited in the United States mail, first-class postage pre-paid, addressed to:

Lindsay S. See, Solicitor General
West Virginia Attorney General's Office
1900 Kanawha Blvd. East
Capitol Complex, Bldg. 1, Rm. 26E
Charleston, WV 25305

All parties required to be served have been served.



JONATHAN THOMAS WRIGHT

Pro se Petitioner

Post Office Box 2

Belpre, Ohio 45714

(304) 488-8802

No. 19-5253
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2019

JONATHAN THOMAS WRIGHT,

Petitioner,

v.

ADAM HOLLEY,

Acting Commissioner of the West Virginia Department of Motor Vehicles,

Respondent.

DECLARATION OF PETITIONER

In accordance with Rule 29.2 of the Rules of the United States Supreme Court and in compliance with U.S. Code § 1746, the Petitioner affirms that the Petition for Rehearing of the Writ of Certiorari for Case No. 19-05253 was filed in a timely manner and received by the Court in the same package as Case No. 19-05252.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on November 19, 2019.



JONATHAN THOMAS WRIGHT

Pro se Petitioner
Post Office Box 2
Belpre, Ohio 45714
(304) 488-8802

