

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 18, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2007AP658
2007AP659
2007AP660**

**Cir. Ct. Nos. 2004TR21722
2004TR21723
2004TR21724**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

COUNTY OF MILWAUKEE,

PLAINTIFF-RESPONDENT,

v.

RYAN A. MUHAMMAD,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
PAUL R. VAN GRUNSVEN, Judge. *Affirmed.*

¶1 WEDEMEYER, J.¹ Ryan Muhammad appeals from an order denying his motion for an indigency hearing following the suspension of his

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2005-06).

driver's license. Muhammad makes two arguments: (1) he was denied due process when his driver's license was suspended for failure to pay a civil forfeiture; and (2) WIS. STAT. § 345.47 (2005-06)² requires circuit courts to hold indigency hearings before imposing coercive driver's license suspension. Because Muhammad was not denied due process and because the statute does not require the circuit court to conduct indigency hearings under the circumstances herein, this court affirms.

BACKGROUND

¶2 On September 30, 2004, Muhammad was ticketed by the Milwaukee County Sheriff's Department for operating while suspended, speeding, and operating after revocation/suspension of registration. On October 25, 2004, Muhammad appeared in court for the initial hearing and entered not guilty pleas on all three citations. At the pretrial conference on November 15, 2004, Muhammad moved to adjourn to enable him to obtain a valid driver's license. The trial court granted the motion and that case was adjourned. On February 2, 2005, the trial court held a status conference in the matter and Muhammad again moved to adjourn seeking more time to obtain a valid license. The trial court granted the motion and adjourned the matter to April 5, 2005.

¶3 At the April 5th status conference, Muhammad failed to appear and he was found guilty by default and ordered to pay forfeitures of \$184.50, \$209.30 and \$159.70. Muhammad failed to pay the forfeitures and as a result, on May 19, 2005, his driver's license was suspended for two years.

² All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶4 Muhammad then retained Legal Action of Wisconsin in an attempt to regain his license. On December 6, 2006, Muhammad notified the trial court that he had not paid his fines because he was unable to pay and requested that the court hold a hearing on the question of his inability to pay. Muhammad submitted an affidavit of indigence with his request. On December 18, 2006, the court ordered a briefing schedule. On February 15, 2007, the trial court denied the request for a hearing, ruling that an indigence hearing is not required under the circumstances in this case. Muhammad now appeals from that order.

DISCUSSION

A. Due Process

¶5 Muhammad first contends that his due process rights were violated because the United States and Wisconsin Constitutions require notice and an opportunity to be heard before the circuit court can suspend a driver's license for the sole purpose of coercing payment of civil forfeitures imposed as sentences in traffic cases. This court is not persuaded.

¶6 Review of this issue involves the interpretation of statutes as applied to undisputed facts. As such, this court independently reviews the circuit court's decision. *Tahtinen v. MSI Ins. Co.*, 122 Wis. 2d 158, 166, 361 N.W.2d 673 (1985). The interpretation and application of constitutional law is a question of law, which this court reviews independently. *State v. Anderson*, 2006 WI 77, ¶37, 291 Wis. 2d 673, 717 N.W.2d 74.

¶7 The due process clause of the United States Constitution requires that an individual be provided sufficient notice and an opportunity to be heard before he or she may be deprived of his or her property. *State v. Carlson*, 2002

WI App 44, ¶11, 250 Wis. 2d 562, 641 N.W.2d 451. Due process principles have been applied in the context of an individual's driver's license as once a person obtains a driver's license, he or she has a property interest in such. *Bell v. Burson*, 402 U.S. 535, 539 (1971). Thus, Muhammad is correct that before a driver's license may be suspended, that person must be afforded notice and an opportunity to be heard.

¶8 In the instant case, Muhammad was afforded repeated opportunities to be heard before his driver's license was suspended. He had several trial court hearings, where he could have provided information to the court. He could have requested a jury trial in this matter or entered a guilty plea. The problem was he failed to appear for the April 5, 2005 hearing. If he had appeared, he would have had an opportunity to present evidence at the sentencing relating to his present ability to pay and his financial condition. The trial court could have considered those factors when imposing the sentence. See *State v. Kuechler*, 2003 WI App 245, ¶¶15-16, 268 Wis. 2d 192, 673 N.W.2d 335. It is undisputed that Muhammad had notice of the April 5th hearing and for reasons unknown simply failed to avail himself of the due process procedures afforded to him by state law.

¶9 Muhammad argues that due process in this case required the trial court to conduct an indigency hearing before the court could suspend a driver's license. This court is not convinced. Due process is flexible and calls for such procedural protections as the particular situation demands. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). Under the particular circumstances here, Muhammad was afforded sufficient due process and proper notice of hearings. It was his individual action of failing to appear at the April 5th hearing, which led to the default judgment. Muhammad was afforded the opportunity to be heard before

penalties were assessed against him. He declined to take advantage of these due process protections. Under such circumstances, this court is not convinced that the trial court must post-judgment conduct an indigency hearing before suspension.

¶10 Muhammad cites three cases that address the question of how much due process is required before a defendant can be deprived of his driver's license: *Bell v. Burson*, 402 U.S. 535 (1971); *Dixon v. Love*, 431 U.S. 105 (1977), *Mackey v. Montrym*, 443 U.S. 1 (1979). In the first case, *Bell*, the Court found due process was violated where a driver's license was automatically suspended without any opportunity to present evidence as to liability. *Bell*, 402 U.S. at 536-40. The instant case is distinguishable from *Bell*, because Muhammad was afforded an opportunity to defend himself; he simply failed to appear for his hearing.

¶11 In *Dixon*, the Court held due process was satisfied when a driver's license was summarily suspended after three convictions of traffic offense within twelve months. *Id.* at 115. The Court reasoned that because the individual was afforded a full judicial hearing for each of the three violations, due process is not violated. *Id.* This case supports the result in the instant case. Like the defendant in *Dixon*, Muhammad had the opportunity to appear in court and could have elected a full judicial hearing to defend against the citations. Muhammad failed to do so. Thus, due process was not violated.

¶12 In *Mackey*, the Court held that due process was not violated when an individual's driver's license is automatically suspended without a hearing following the individual's refusal to take a breath-analysis test upon being arrested for drunk driving. *Id.* at 19. Muhammad argues this case does not apply because of the danger drunk drivers pose to others on the road. We conclude that *Mackey*

is inapplicable here because it required automatic suspension of the driver's license when the driver was pulled over. Thus, it is distinguishable from the instant case as Muhammad driver's license was not automatically suspended when he was pulled over.

¶13 Thus, none of these cases are directly on point, but do offer some guidance for the decision in this matter. The critical point here is that Muhammad driver's license was not automatically suspended when he was pulled over and ticketed for operating while suspended, speeding, and operating after revocation/suspension of registration. Rather, he was provided notice of court dates and afforded sufficient opportunity to appear and defend himself. It was only after Muhammad failed to take advantage of his due process protections that his license was suspended. Accordingly, Muhammad's due process rights were not violated under the facts and circumstances of this case.

B. WIS. STAT. § 345.47(1)(b)

¶14 Muhammad's second contention is that WIS. STAT. § 345.47(1)(b) requires the circuit court to conduct an indigency hearing before imposing coercive driver's license suspensions. Part of Muhammad's argument is based on the fact that if we hold that WIS. STAT. § 345.47 does not require an indigency hearing in this case, then it conflicts with WIS. STAT. § 800.09, which does require an indigency hearing before suspension. This court is not persuaded.

¶15 WISCONSIN STAT. § 345.47 applies to violations of traffic law in the circuit courts, and WIS. STAT. § 800.09 applies to violations of traffic law in municipal courts. Both statutes address the court's power to impose forfeitures and the remedies a court can take for failure to pay such forfeitures. Both statutes

permit a court to either incarcerate an individual or to suspend the individual's driver's license for failing to pay a forfeiture.

¶16 WISCONSIN STAT. § 345.47(1)(a) states “subject to s. 800.095(8), the defendant be imprisoned for a time specified by the court until the judgment is paid, but not to exceed 90 days.” Thus, the statute clearly states that if the court elects to impose imprisonment, it must follow § 800.095(8). WISCONSIN STAT. § 800.095(8) requires a court to hold a hearing if the defendant notifies the court that he or she is unable to comply with the judgment either due to indigence or some other good cause. WIS. STAT. § 800.095(4)(a). Thus, when incarceration is the penalty, a hearing must be conducted upon notification from the defendant.

¶17 However, WIS. STAT. § 345.47(1)(b) does not start with the “subject to s. 800.095(8)” clause. Rather, it states that in lieu of imprisonment, a court can order “that the defendant's operating privileges be suspended.” § 345.47(1)(b). Based on the plain language of these statutes, this court concludes that a hearing is not mandated by statute when the court imposes penalties under § 345.47(1)(b), but does require a hearing when the court imposes penalties under WIS. STAT. § 345.47(1)(a).

¶18 Thus, it is clear that the legislature drafted WIS. STAT. § 345.47(1)(a) to explicitly require an indigency hearing before a court could imprison an individual, but did not require the same for WIS. STAT. § 345.47(1)(b). Had the legislature wanted a hearing in either instance, it would have included the same “subject to” language used in sub. (a). *See State ex rel. Pedersen v. Blessinger*, 56 Wis. 2d 286, 201 N.W.2d 778 (1972); *Russello v. United States*, 464 U.S. 16, 22 (1983).

¶19 This court is not persuaded by Muhammad’s contention that WIS. STAT. ch 800 must be read together with WIS. STAT. § 345.47 to ensure that similarly situated individuals in different jurisdictions are treated in a similar fashion for the reason set forth in the county’s brief:

The preamble in chapter 800 clearly states that it deals with ordinance violations and applies to actions in municipal courts. WIS. STAT. § 800.001. WIS. STAT. § 800.095 requires indigency hearings in the case of both potential imprisonment and potential license suspension. *See* Wis. Stat. § 800.095(4)(a). Chapter 345, however, applies to violations of traffic law and applies to actions in circuit court. WIS. STAT. § 345.20(2)(a). Further, § 345.20(2)(b) explicitly makes § 345.47 applicable in municipal actions. However, there is no corollary section that makes any of the provisions of Chapter 800 applicable in circuit court actions.

Based on the foregoing, this court concludes that the legislature intended to differentiate between what is required when an individual appears in municipal court versus when an individual appears in circuit court. *See Milwaukee v. Kilgore*, 193 Wis. 2d 168, 183, 532 N.W.2d 690 (1995). When construing statutes which seem to conflict, this court must harmonize them in a way which will “give each full force and effect.” *Id.* at 184. The only way to do so here is to read the municipal court’s statute as requiring an indigency hearing when both incarceration and operating privilege suspension is a possibility and the circuit court’s statute as requiring a hearing only when incarceration is involved. Accordingly, this court affirms the determination of the trial court.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT RULE 809.23(1)(b)4.

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