STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1568

Dane Robert Peterson, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed July 15, 2008
Affirmed
Kalitowski, Judge

Cass County District Court
File No. 11-CV-07-507

Richard Kenly, Kenly Law Office, P.O. Box 31, Backus, MN 56435 (for appellant)

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Considered and decided by Peterson, Presiding Judge; Kalitowski, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

On appeal from the district court's order sustaining the revocation of his driver's license under Minn. Stat. § 169A.53, appellant Dane Robert Peterson argues that his due process rights were violated when (1) the wrong date was recorded on the Notice and

Order of Revocation and Temporary License; and (2) the district court failed to hold an implied-consent hearing within 60 days after the filing of his petition for judicial review. We affirm.

D E C I S I O N

Both the United States and the Minnesota Constitutions require that no person be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. And we have recognized that "[a] driver's license is an important property interest subject to due process protection." *Davis v. Comm'r of Pub. Safety*, 509 N.W.2d 380, 388 (Minn. App. 1993), *aff'd*, 517 N.W.2d 901 (Minn. 1994); *see also Bell v. Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586, 1589 (1971). "Due process requires a prompt and meaningful postrevocation review." *Fedziuk v. Comm'r of Pub. Safety*, 696 N.W.2d 340, 346 (Minn. 2005). When determining whether due process has been satisfied, the proper inquiry is whether appellant was prejudiced by the delayed judicial-review hearing. *Bendorf v. Comm'r of Pub. Safety*, 727 N.W.2d 410, 415 (Minn. 2007).

Here, appellant challenges the revocation of his license on procedural due process grounds. Both of the issues raised by appellant involve the application of law to undisputed facts, which we review de novo. *Bendorf*, 727 N.W.2d at 413; *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310 (Minn. 1989).

I.

Appellant argues that he was wrongfully denied his limited right to drive for seven days following his arrest when the officer wrote the wrong date of issuance on the Notice and Order of Revocation and Temporary License. We disagree.

When a driver has submitted to a test and the test results indicate an alcohol concentration of .08 or more, Minnesota's implied-consent law requires a peace officer to immediately serve the driver with notice of intent to revoke and revocation, invalidate the driver's license or permit card, and issue the driver a seven-day temporary license. Minn. Stat. § 169A.52, subd. 7(c) (2006). Here, it is undisputed that the officer served appellant with a notice and order of revocation and a temporary license, and told appellant that the temporary license would allow him to drive for seven days. But the record indicates that the officer inadvertently recorded the incorrect date of issuance on appellant's notice of revocation, writing February 6, 2007, instead of February 16, 2007. Appellant argues that, as a result of this clerical error, he was denied his right to take advantage of Minn. Stat. § 169A.52, subd. 7's temporary-license provision, and thus was denied one of the procedural due process safeguards cited in *Bendorf*. *See Bendorf*, 727 N.W.2d at 416 (noting that prompt postrevocation review, the short duration of suspension, and the availability of limited licenses in hardship cases provide procedural protections "sufficient to satisfy due process.").

But to have standing to raise a constitutional challenge, an individual "must show a direct and personal harm resulting from the alleged denial of constitutional rights." *Davis*, 509 N.W.2d at 391 (quotation omitted); *see also Riehm v. Comm'r of Pub. Safety,*

745 N.W.2d 869, 873 (Minn. App. 2008), *review denied* (Minn. May 20, 2008). And the record here shows that appellant suffered no such "direct and personal harm" as a result of the officer's clerical error. *See Davis*, 509 N.W.2d at 391. The record supports the district court's finding that appellant decided not to drive at all following his arrest because his insurance had run out and he could not afford to renew it, not because his notice of revocation had been misdated.

Because appellant's decision not to drive had nothing to do with the officer's clerical error, appellant suffered no "direct and personal harm" as a result of the mistake. *See Davis*, 509 N.W.2d at 391. Accordingly, we conclude that the district court did not err in determining that because appellant suffered no prejudice, there was no due process violation. *See Riehm*, 745 N.W.2d at 873.

II.

Appellant contends that the district court erred in determining that he was afforded sufficient procedural due process because his implied-consent hearing was conducted more than 60 days after he filed his petition and he was not granted temporary reinstatement of his license. We disagree.

When an individual's driver's license is administratively revoked pursuant to Minn. Stat. § 169A.52 (2006), he may petition for judicial review of the revocation. Minn. Stat. § 169A.53, subd. 2(a) (2006). The judicial-review hearing "must be held at the earliest practicable date, and in any event no later than 60 days following the filing of the petition for review." *Id.*, subd. 3(a) (2006). The filing of the petition for review does not automatically stay the revocation under the statute, but the "reviewing court may

order a stay of the balance of the revocation . . . if the hearing has not been conducted within 60 days after filing of the petition upon terms the court deems proper." *Id.*, subd. 2(c) (2006). Thus, when a district court does not provide an implied-consent hearing within 60 days after the petition for review, the remedy available to an aggrieved driver is not rescission of the license revocation, but rather a stay of revocation. *See Riehm*, 745 N.W.2d at 877.

Appellant argues that the district court's failure to schedule his implied-consent hearing within the statutorily directed 60-day time frame violated his right to due process. But the Minnesota Supreme Court has not held that the 60-day time frame in Minn. Stat. § 169A.53, subd. 3, is mandatory. *See Bendorf*, 727 N.W.2d at 415 (citing *Fedziuk*, 696 N.W.2d at 347 n.9). Rather, controlling precedent in Minnesota holds that the 60-day limit is merely directory. *Riehm*, 745 N.W.2d at 876; *see also Bendorf*, 727 N.W.2d at 415 ("[w]e did not, however . . . hold that the 60-day time frame in Minn. Stat. § 169A.53, subd. 3, is mandatory.").

Appellant further argues that not having an implied-consent hearing within 60 days and not being granted temporary reinstatement violated his right to due process. The appropriate inquiry in a procedural due process case is: "what level of prejudice has the driver suffered?" *Bendorf*, 727 N.W.2d at 415. This prejudice inquiry is necessary because "due process is flexible and calls for such procedural protections as the particular situation demands." *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 2600 (1972)). We consider three factors "when evaluating the sufficiency of procedural protections: (1) 'the private interest that will be affected by the official action,' (2) 'the

risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards,' and (3) 'the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.'" *Bendorf*, 727 N.W.2d at 415-16 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903 (1976)).

Applying this test to the facts here, we conclude that appellant's due process rights were not violated by the district court's failure to hold an implied-consent hearing within 60 days after the filing of appellant's petition or the court's failure to grant appellant temporary reinstatement of his license. It is undisputed that appellant had a private interest in continued possession and use of his driver's license pending the hearing, and that his interest was burdened when his license was revoked. But we have recognized that the "duration of the revocation and the availability of hardship relief are relevant to the determination of the impact on the driver's private interest." *Id*. at 416 (quotation omitted). Here, appellant's implied-consent hearing took place 79 days after he filed his petition instead of within 60 days, as directed by statute. But unlike the driver in *Bendorf*, appellant failed to "avail[ ] himself of hardship relief by moving for a stay of his revocation" pending his hearing. *See id.; Riehm*, 745 N.W.2d at 878 (concluding that no prejudice had been shown because the driver could have requested a stay of the revocation, but chose not to do so).

The record indicates that appellant failed to serve or file a formal motion for temporary reinstatement of his license pending his hearing. And "[t]he state has a

compelling interest in highway safety justifying efforts to keep impaired drivers off the road." *Bendorf*, 727 N.W.2d at 417. Moreover, the state has an interest in "maintaining an administrable system for handling cases involving impaired drivers" and "allowing courts to stay a driver's license revocation in the event that a hearing might not be able to be held within the 60-day time frame set forth in Minn. Stat. § 169A.53, subd. 3." *Id.*

Appellant argues that his boilerplate request for temporary reinstatement, on page eight of his petition for judicial review, should suffice as a motion for temporary reinstatement. We disagree. Both caselaw and the rule governing motion practice in Minnesota prohibit such a result. Before any motion shall be heard, Minn. R. Gen. Pract. 115 requires a moving party to pay the required motion filing fee and serve a copy of the notice of motion, motion, proposed order, and any supporting affidavits or memorandum of law on opposing counsel, as well as file the original with the court. *See* Minn. R. Gen. Pract. 115.04(a). Because appellant failed to comply with any of rule 115's procedural requirements, the district court did not err in concluding that appellant "did not move by a separate motion for temporary reinstatement."

The district court's determination is further supported by the supreme court's decision in *Merritt v. Comm'r of Pub. Safety,* holding that a discovery request buried inside a boilerplate petition for review did not constitute a formal motion to compel. *See* 424 N.W.2d 298, 299 (Minn. 1988) (finding that the effect of recognizing the driver's informal discovery request would be "to encourage defense attorneys to file boilerplate petitions for judicial review of license revocations and, second, to provide a gratuitous, unwarranted benefit to the driver . . . .").

Because appellant failed to move for a stay of revocation, and thus failed to minimize any prejudice associated with his hearing being delayed, and because the state has a compelling interest in promoting highway safety and effective judicial administration in cases involving impaired drivers, we conclude that the district court did not err in determining that appellant was afforded sufficient procedural due process.

Affirmed.