

No. 02-624

IN THE SUPREME COURT OF THE STATE OF MONTANA

2003 MT 155N

JERRY HOKE,

Petitioner and Appellant,

v.

DEPARTMENT OF JUSTICE, DRIVER'S LICENSE BUREAU,

Respondent and Respondent.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and for the County of Ravalli, Cause No. DC-02-171,
The Honorable Jeffrey H. Langton, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Steven N. Eschenbacher, Attorney at Law, Hamilton, Montana

For Respondent:

Hon. Mike McGrath, Attorney General; Jennifer Anders,
Assistant Attorney General, Helena, Montana

Jeffrey Hays, Darby City Attorney, Hamilton, Montana

Submitted on Briefs: February 13, 2003

Decided: June 3, 2003

Filed:

Clerk

Justice Jim Regnier delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996 Internal Operating Rules, the following decision shall not be cited as precedent but shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by case title, Supreme Court cause number, and result to the State Reporter Publishing Company and to West Group in the quarterly table of noncitable cases issued by this Court.

¶2 The Appellant, Jerry Hoke, appeals from the August 16, 2002, Findings of Fact, Conclusions of Law, and Order of the Twenty-First Judicial District Court, Ravalli County. Therein, the District Court determined that Marshall Larry Rose (1) had a sufficient particularized suspicion that Hoke was in physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two, and (2) was justified in requesting that Hoke submit a breath sample for analysis. Accordingly, the District Court denied Hoke's petition for reinstatement of his driver's license.

¶3 The dispositive issue on appeal is whether the court's findings of fact are supported by substantial evidence and are, therefore, not clearly erroneous and whether the court's conclusions of law are correct. *Ray v. Nansel*, 2002 MT 191, ¶¶ 19-20, 311 Mont. 135, ¶¶ 19-20, 53 P.3d 870, ¶¶ 19-20.

¶4 We have determined to decide this case pursuant to our Order dated February 11, 2003, amending Section 1.3 of our 1996 Internal Operating Rules and providing for memorandum opinions.

¶5 On the face of the briefs and the record on appeal it is manifest that the appeal is without merit as the issues are clearly controlled by settled Montana law, which the District Court correctly interpreted, and because there is clearly sufficient evidence to support the court's findings of fact. Therefore,

¶6 We affirm the judgment of the District Court.

/S/ JIM REGNIER

We Concur:

/S/ KARLA M. GRAY
/S/ JAMES C. NELSON
/S/ PATRICIA COTTER
/S/ JIM RICE