

State of Minnesota  
Chisago County

District Court  
Tenth Judicial District

Court File Number: [REDACTED]

Case Type: Implied Consent

CHARLES ALAN RAMSAY  
2780 SNELLING AVE N  
STE 330  
ROSEVILLE MN 55113

**Notice of Filing of Order**

RECEIVED

OCT 19 2015

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[REDACTED] vs Commissioner of Public Safety

You are notified that an order was filed on October 14, 2015.

Implied Consent Order

Dated: October 14, 2015

Kathleen E. Karnowski, Court Administrator  
By: Kristine Mraz, Deputy  
Chisago County District Court  
313 North Main Street  
Center City MN 55012  
(651) 213-8650

cc: JOAN MARIE EICHHORST

A true and correct copy of this notice has been served by mail upon the parties herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

FILED

OCT 14 2015

KATHLEEN E. KARNOWSKI  
COURT ADMINISTRATOR  
CHISAGO COUNTY, MN

STATE OF MINNESOTA

COUNTY OF CHISAGO

DISTRICT COURT

TENTH JUDICIAL DISTRICT

Court File No. [REDACTED]

[REDACTED] [REDACTED] [REDACTED]  
Petitioner,

vs.

Commissioner of Public Safety,

Respondent.

**ORDER**

The above-entitled matter came on for a hearing before the Honorable John R. McBride, Judge of the District Court, on September 3, 2015 at the Chisago County Government Center, 313 North Main Street, Center City, Minnesota. Petitioner appeared in person and with his counsel, Charles A. Ramsay, Esq. The Commissioner of Public Safety appeared by and through its counsel, Dominic J. Halik, Assistant Attorney General.

The hearing was based upon the petition for reinstatement of Petitioner's driving license pursuant to Minn. Stat. § 171.19. At the conclusion of the hearing, the Court directed the attorneys to submit final argument by written submission. Petitioner filed his memorandum on September 17, 2015. Respondent filed its responsive memorandum on October 1, 2015. Thereafter, the Court took the matter under advisement.

Now, based upon all the files, records, and proceedings, the Court issues the following:

**ORDER**

1. The petition for reinstatement of Petitioner's driving license is **GRANTED**.
2. The suspension of Petitioner's driving privileges is hereby **RESCINDED**.
3. The attached Memorandum of Decision is incorporated and specifically made a part of this Order.

**BY THE COURT:**



McBride, John

(Judge)

2015.10.14

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John R. McBride  
Judge of District Court

## MEMORANDUM OF DECISION

I.

On May 27, 2015, Sergeant [REDACTED] [REDACTED] of the North Branch Police Department responded to a single vehicle accident. Upon his arrival on the scene, Sergeant [REDACTED] observed a pickup truck in the ditch. The Sergeant made contact with a juvenile child, who was a passenger in the truck. The child indicated to Sergeant [REDACTED] that her face hurt, and the Sergeant observed injuries to the child's face, nose, and arms. Sergeant [REDACTED] identified the driver of the truck as [REDACTED] [REDACTED] [REDACTED] Petitioner in this matter. After developing probable cause to believe Petitioner had been driving while under the influence of alcohol, Sergeant [REDACTED] arrested Petitioner. Later, while at the hospital, Sergeant [REDACTED] obtained Petitioner's consent to draw his blood. The blood draw was not taken utilizing the implied consent law.

On May 28, 2015, Sergeant [REDACTED] signed a Criminal Vehicular Operation/Homicide Peace Officer Certification ("Certification"). The Certification indicated that there was probable cause to believe that on May 27, 2015 Petitioner caused injury to another person in the course of operating a motor vehicle in a negligent manner while under the influence of alcohol, a controlled substance, or a combination of these elements. The Certification was forwarded to the Department of Public Safety, Driver and Vehicle Services ("DVS"). On May 29, 2015, the State brought criminal charges against Petitioner, including a charge of criminal vehicular operation in violation of Minn. Stat. §

609.2113, subd. 2(2)(i) (2014).

After receiving Sergeant [REDACTED] Certification, DVS sent a letter to Petitioner on June 2, 2015. The letter notified Petitioner that Respondent was suspending his driver's license or privilege to operate a motor vehicle effective June 16, 2015. The reason for the suspension was identified as "criminal vehicular operation peace officer certification 5-27-15." The letter also notified Petitioner of the "requirements for reinstatement," which provided that the suspension was effective on June 16, 2015 and that it would continue until notified of reinstatement by DVS. Additionally, the letter notified Petitioner of rights to request administrative review with Respondent and petition for judicial review pursuant to Minnesota Statutes § 171.19.

Petitioner filed a petition for judicial review on July 27, 2015 and an amended petition for judicial review on September 2, 2015. The hearing in this matter was scheduled for September 3, 2015, approximately 38 days after Petitioner filed his initial petition. As of the time for the hearing, Petitioner's driver's license remains suspended without any privilege to operate a motor vehicle.

## II.

Petitioner seeks reinstatement of his suspended driver's license arguing that the suspension was without due process of the law. Petitioner argues that Minn. Stat. § 171.19 violates his rights to due process of law by not providing a prompt post-suspension review. The Commissioner argues that Minn. Stat. §

171.19 does not violate the due process of law because the statute does provide for prompt postsuspension review and that Petitioner failed to demonstrate a level of prejudice suffered sufficient to constitute a procedural due process violation. The issue before the Court is whether Minn. Stat. § 171.19 violates Petitioner's constitutional right to due process of law by not providing a prompt postsuspension review.

A party challenging the constitutionality of a statute bears the burden of demonstrating beyond a reasonable doubt that a constitutional violation has occurred. *Fedziuk v. Commr. of Pub. Safety*, 696 N.W.2d 340, 344 (2005). Minnesota statutes are presumed constitutional, and a court's power to declare a statute unconstitutional must be exercised with extreme caution and only when absolutely necessary. *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). If possible, a court must interpret a statute to uphold its constitutionality. *St Paul Cos., Inc. v. Hatch*, 449 N.W.2d 130, 137 (Minn. 1989).

The United States and Minnesota Constitutions provide that a person's life, liberty, and property will not be deprived by the government "without due process of law." U.S. Const. amend. XIV, § 1; Minn. Const. art I, § 7. It is well settled that a person's license to drive a motor vehicle is an important property interest that is protected from State deprivation without due process of law. *Bell v Burson*, 402 U.S. 535, 539 (1971); *Heddan v. Dirkswager*, 336 N.W.2d 54, 58 (Minn. 1983). Due process requires a prompt and meaningful review after a prehearing revocation of a person's driver's license. *Fedziuk* 696 N.W.2d at 346.

In a due process challenge, as raised in this case, "the appropriate inquiry is to determine what level of prejudice the driver has suffered." *Bendorf v. Commr.*, 727 N.W.2d 410, 415 (Minn. 2007). This inquiry is required 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 (1972)). In determining the process due to a driver, a court considers three factors announced by the United States Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976). The three factors the court balances are:

First, the private interest that will be affected by the official action; second, 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 finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*Mathews*, 424 U.S. at 334-35.

In applying the above principles to the present case, it is important to note that the Minnesota Supreme Court has addressed a very similar due process challenge, as the one raised before this Court, when it decided the case of *Fedziuk v. Commissioner of Public Safety*, 696 N.W.2d 340 (2005). In *Fedziuk*, the Minnesota Supreme Court determined that a prior version of the implied consent law, specifically Minn. Stat. §169A.53, (2003), violated principles of due process by not providing prompt and meaningful review for a driver whose license to operate a motor vehicle was revoked prior to a hearing. 696 N.W.2d at 344-48. In weighing the *Mathews* factors in that case, the Supreme

Court examined the postrevocation judicial and administrative reviews available to a driver under the statute. In considering the availability of judicial review afforded by Minn. Stat. § 169A.53 (2003) for a driver, the Supreme Court noted that the prior version of the statute contained the language, "the 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" and that this language was removed by the legislature in the 2003 amendment to the statute. *Id.* at 345. The *Fedziuk* Court determined that, "by eliminating the requirement for prompt postrevocation judicial review, the 2003 amendments affected the driver's private interest in continued possession and use of the license pending the outcome of a hearing." *Id.* at 346. The Supreme Court concluded that, while judicial review under the statute was meaningful to a driver, it was no longer prompt due to the 2003 amendment to the statute.

Next, The Supreme Court examined whether the administrative review, in addition to the unspecified period for judicial review, sufficiently afforded drivers meaning full postrevocation review. The Supreme Court concluded that the administrative review provided in Minn. Stat. § 169A.53, (2003) while prompt, did not provide sufficient meaningful review because it did not contemplate an evidentiary hearing, did not afford the driver the right to bring witnesses or present testimony, did not guarantee the driver the right compel witness to attend a hearing and did not guarantee the right to cross-examine persons at a hearing. *Id.* at 347-48. Ultimately, the Minnesota Supreme Court determined in

*Fedziuk* that the postrevocation review process provided by Minn. Stat. § 169A.53 (2003) offended a driver's constitutional rights to due process of law. *Id.* at 348. Because of the Supreme Court's decision in *Fedziuk*, the Legislature amended Minn. Stat. § 169A.53 to reinsert the language requiring a prompt hearing that was excised by the 2003 amendment. 2005 Minn. Laws 1158-60.

With the understanding of the *Fedziuk* decision, the Court now turns to statute challenged in this case. Minnesota Statute § 171.19 provides:

Any person whose driver's license has been refused, revoked, suspended, canceled, or disqualified by the commissioner, except where the license is revoked or disqualified under section 169A.52 or 171.186, may file a petition for a hearing in the matter in the district court in the county wherein such person shall reside and, in the case of a nonresident, in the district court in any county, and **such court is hereby vested with jurisdiction, and it shall be its duty, to set the matter for hearing upon 15 days' written notice to the commissioner, and thereupon to take testimony and examine into the facts of the case to determine whether the petitioner is entitled to a license or is subject to revocation, suspension, cancellation, disqualification, or refusal of license, and shall render judgment accordingly.** The petition for hearing must either be filed within 180 days of the effective date of the order of revocation, suspension, cancellation, disqualification, or refusal to license or be filed before expiration of the withdrawal period, whichever occurs first. The petition shall be heard by the court without a jury and may be heard in or out of term. The commissioner may appear in person, or by agents or representatives, and may present evidence upon the hearing by affidavit personally, by agents, or by representatives. The petitioner may present evidence by affidavit, except that the petitioner must be present in person at such hearing for the purpose of cross-examination. In the event the department shall be sustained in these proceedings, the petitioner shall have no further right to make further petition to any court for the purpose of obtaining a driver's license until after the expiration of one year after the date of such hearing.

(Emphasis added).

This statute is applicable to drivers whose license is suspended, not pursuant to the implied consent law, but for other grounds under the law. In this case, Petitioner's license was suspended by the Commissioner pursuant to Minn. Stat. § 171.187, subd. 1(1) based upon Sergeant [REDACTED] Certification that probable cause exists to believe Petitioner committed the crime of vehicular operation in violation of Minn. Stat. § 609.2113, subd.2(2)(i). Petitioner's period of suspension is indefinite; until either there is a resolution of the underlying crime that resulted in the suspension or the Commissioner terminates the suspension pursuant to the Commissioner's administrative review authority. Minn. Stat. § 171.187, subd. 2. Petitioner may only seek judicial review of his license suspension pursuant to Minn. Stat. § 171.19.

When looking at the judicial review available under Minn. Stat. § 171.19, it is readily apparent that, like the judicial review statute analyzed in *Fedziuk*, Minn. Stat § 171.19, while providing meaningful review, does not provide prompt postsuspension review to sufficiently protect Petitioner's private interest in the continued possession and used of the license pending the outcome of a hearing. The statute contains no requirement that, upon filing of a petition, the matter shall be set for hearing at the earliest practicable date, or similar language. All that the statute contains regarding the duty to schedule a hearing is that the Court upon the filing of a petition shall "set the matter for hearing upon 15 days' notice written notice to the Commissioner." Minn. Stat. § 171.19. This requirement of the Court is not a mandate that the hearing must be

scheduled promptly; rather, it is a requirement of notice that once the Court sets the hearing, it shall provide at least 15 days' written notice to the Commissioner. Additionally, unlike the implied consent law in Minn. Stat. § 169A.53, subd. 2(c) the statute does not provide the court with authority to issue a stay of the suspension pending a hearing, if the hearing cannot be scheduled promptly. Moreover, Minn. Stat. § 171.19 does not require the court to issue a prompt decision after a hearing is held, as it does not include a deadline by which a decision must be made. *Compare* Minn. Stat. § 171.19 with Minn. Stat. § 169A.53, subd. 3(e). With no prompt hearing language, no authority for a court to stay the suspension pending a hearing, and no prompt decision deadline, a driver like Petitioner is left with the government taking away his protected private interest without prompt recourse to seek review. Without these safeguards, Petitioner's private interest in the continued use of his license is not sufficiently protected under the due process of the law, as similarly determined in *Fedziuk*.

Immediate administrative review is available to Petitioner by making written request for review of the suspension to the Commissioner. Minn. Stat. § 171.187, subd. 4. The Commissioner, or a designee, is required to "review the order of suspension, the evidence upon which the order was based, and any other material information brought to the attention of the Commissioner, and determine whether sufficient cause exists to sustain the order." *Id.* see also Minn. R. 7409.4600, subp. 3 (2003). The Commissioner is tasked with reporting in

writing the decision on the review within 15 days of receiving the administrative review request. *Id.* This administrative review process that is applicable to Petitioner's case is the same or similar to the administrative review that was available to the driver in the *Fedziuk* decision. The process simply does not provide essential procedural safeguards. A driver is not guaranteed an evidentiary hearing, the right to bring witnesses and present testimony, the right to compel witnesses to attend a hearing or the right to cross-examine witnesses. While this review process is prompt, it is not meaningful for the same reasons announce by our Supreme Court in *Fedziuk*.

When the judicial review and the administrative review provision of Minn. Stat. § 171.19 are considered as a whole, they offend Petitioner's constitutional guarantees of due process of the law by not providing prompt and meaning review of the prehearing suspension of his driver's license.

The Commissioner argues that, given the availability of hardship relief in the form of limited licenses, the Ignition Interlock Program and other remedies, which Petitioner has not availed himself of, combined with the fact that Petitioner received a hearing within 38 days of filing his petition, Petitioner has failed to demonstrated that he has been prejudiced by the process provided for in Minn. Stat. § 171.19. This argument is misplaced given the circumstances of the process afforded to Petitioner by the statute. As it was for the driver in *Fedziuk*, it is the statue itself that fails to adequately provide Petitioner with proper procedural due process, and the record demonstrates that Petitioner

has suffered prejudice from its failure to guarantee a prompt and meaningful review of his license suspension.

III.

Based upon the foregoing, the failure of Minn. Stat. § 171.19 to provide Petitioner with prompt meaningful review after a prehearing suspension of his driver's license renders the statute unconstitutional as it violates Petitioner's rights to due process. Accordingly, the Commissioner's suspension of Petitioner's driver's license is rescinded and it shall be reinstated.

JRM  
McBride,  
John  
(Judge)  
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