

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

██████████

Court File No. ██████████

Petitioner,

v.

One 2008 Toyota Matrix
MN License Plate No.: ██████████
VIN: ██████████
(City of ██████████),

**ORDER REGARDING
PETITIONER'S MOTION FOR
SUMMARY JUDGMENT**

Respondent.

The above-captioned matter came before the Honorable ██████████, Judge of District Court, for a hearing on November 14, 2018 upon Petitioner ██████████'s motion for summary judgment. Charles Ramsay, Esq. appeared on behalf of Petitioner ██████████, who also appeared. ██████████, Esq. appeared on behalf of the State to represent its interest in the 2008 Toyota Matrix, MN License Plate No.: ██████████, VIN: ██████████. At the conclusion of the hearing, the Court provided the parties two weeks to attempt to resolve the dispute without the Court's involvement. On November 26, 2018, the parties notified the Court that they were unable to reach a resolution. That same day, the Court took this matter under advisement. Based upon all the files, records, and proceedings herein, the Court issues the following order:

BACKGROUND

1. In 2011, Petitioner [REDACTED] (“Petitioner”) was arrested on suspicion of driving while impaired. He pleaded guilty to third-degree operating a motor vehicle with an alcohol concentration of 0.08 in violation of Minn. Stat. § 169A.20, subd. 1(5).

2. On or around March 16, 2018, Petitioner was again arrested on suspicion of driving while impaired in [REDACTED] Minnesota. He was charged with: (1) second-degree operating a motor vehicle under influence of alcohol with two priors; (2) second-degree alcohol concentration of 0.008 within two hours with two priors; and (3) careless driving. (Hennepin County Court File No. [REDACTED].)

3. Because second-degree DWI is a “designated offense” under Minn. Stat. § 169A.63, subd. 1(e)(1), the [REDACTED] police seized Petitioner’s vehicle, a 2008 Toyota Matrix, for forfeiture. It is not disputed that Petitioner is the registered owner of the vehicle, and that he timely received the Notice of Seizure and Intent to Forfeit Vehicle, pursuant to section 169A.63, subdivision 2(3).

4. On April 9, 2018, Petitioner filed a petition to contest the revocation of his driver’s license. (Hennepin County Court File No. [REDACTED]) On June 5, 2018, Judge [REDACTED] upheld the revocation.

5. On April 20, 2018, Petitioner filed a demand for judicial determination of the vehicle forfeiture. Petitioner’s counsel requested a date for a summary judgment motion, and a hearing was set for October 5, 2018. Due to some unanticipated changes to the Court’s calendar, the hearing was rescheduled to November 14, 2018. At the time of the hearing, Petitioner’s criminal case remained unresolved. As of the date of this Order, the criminal case is still pending and a trial date has not been scheduled yet.

ANALYSIS

6. Petitioner challenges the constitutionality of section 169A.63, the forfeiture statute. During the hearing, Petitioner focused his argument on the following: the seizure of his vehicle without a prompt post-deprivation review violated his due-process rights.

Minnesota's forfeiture statute

7. On the subject of vehicle forfeiture in connection with DWI charges, section 169A.63, subdivision 9(d), states that: “[a] judicial determination under this subdivision must be held at the earliest practicable date, and in any event no later than 180 days following the filing of the demand by the claimant. If a related criminal proceeding is pending, the hearing shall not be held *until the conclusion of the criminal proceeding.*” Minn. Stat. § 169A.63, subd. 9(d) (emphasis added).

8. In the recent case of *Olson v. One 1999 Lexus MN License Plate No. 851LDV VIN: JT6HF10U6X0079461*, the Minnesota Court of Appeals was charged with determining the constitutionality of section 169A.63, subdivision 9(d). 910 N.W.2d 72 (Minn. Ct. App. 2018), *review granted* (Minn. June 19, 2018). On August 16, 2015, Megan Olson was arrested and charged with two counts of felony first-degree DWI. *Id.* at 74. As a result of the charges, the police also seized the vehicle that Megan was driving at the time of the arrest. *Id.* On October 7, 2015, Megan and her mother (the designated owner of the vehicle) filed a demand for judicial determination of the forfeiture, and a court trial was set for February 11, 2016. *Id.* The trial was continued or rescheduled six times pending the outcome of Megan's related criminal case. On October 12, 2016, Megan pleaded guilty to one count of felony first-degree DWI in her criminal case, and she was sentenced on February 13, 2017. *Id.* On February 23, 2017, the district court heard the Olsons' summary judgment motion in the forfeiture case. *Id.* at 75. On May 24, 2017,

the district court granted the Olson's motion, largely on the basis that the operation of section 169A.63, subdivision 9(d), denied the Olsons prompt judicial review of the seizure and violated their due-process rights. *Id.* The State appealed.

9. In reviewing the district court's decision, the appellate court first concluded that, because the Olsons failed to show that section 169A.63, subdivision 9(d), is always unconstitutional, they could not successfully challenge the statute's constitutionality on its face. *Id.* at 77. Next, turning to whether the statute was unconstitutional as applied to the Olsons, the appellate court considered the factors enumerated in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893 (1976). With respect to the factor examining whether the claimant was given a prompt and meaningful post-deprivation review, the *Olson* court found:

[B]ecause the resolution of the Olsons' forfeiture action was tied to the resolution of Megan's related criminal and implied-consent actions, pursuant to Minn. Stat. § 169A.63, subd. 9(d), no hearing was held on the validity of the initial or continued seizure of the Lexus for over 18 months. We agree with the district court's conclusion that this procedure unconstitutionally denied the Olsons prompt review of the prehearing seizure of the Lexus.

Olson, 910 N.W.2d at 79. After considering the remaining factors, the appellate court held that section 169A.63, subdivision 9(d), was unconstitutional as applied to the Olsons, and upheld the district court's decision.

Minn. Stat. § 169A.63, subd. 9(d), is unconstitutional as applied to Petitioner.

10. *Olson* is controlling in the present case.

11. The *Olson* court stated that procedural due process could be satisfied under section 169A.63, subdivision 9(d), if the claimant's related criminal matter was resolved promptly, and a hearing to address the forfeiture action was then held soon thereafter. *Id.* at 77. Petitioner does not refute this possibility, and so this Court declines to find that the statute is unconstitutional on

its face. *See SooHoo v. Johnson*, 731 N.W.2d 815, 821 (Minn. 2007) (“A facial challenge to the constitutionality of a statute requires a showing that no set of circumstances exists under which the statute would be valid.”) (quotation omitted). Consequently, the Court turns to whether section 169A.63, subdivision 9(d), is unconstitutional as applied to Petitioner.

12. Both the United States and the Minnesota constitutions guarantee that a person’s life, liberty, or property shall not be deprived “without due process of law.” U.S. Const. Amend. XIV, § 1; Minn. Const. Art. 1, § 7. When reviewing whether the government has violated a person’s right to due process, we first “identify whether the government has deprived the individual of a protected life, liberty, or property interest,” and if this is the case, whether the “procedures followed by the [government] were constitutionally sufficient.” *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012) (quoting *Swarthout v. Cooke*, 562 U.S. 216, 218, 131 S.Ct. 859, 861 (2011)).

13. In determining the constitutional sufficiency of the government’s procedure, this Court considers the factors articulated in *Mathews*:

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 administrative burdens that the additional or substitute procedural requirement would entail.

424 U.S. at 335, 96 S.Ct. at 903. Additionally, the weight given to the element of private interest depends on three factors: “(1) the duration of the revocation; (2) the availability of hardship relief; and (3) the availability of prompt post-revocation review.” *Heddan v. Dirkswager*, 336 N.W.2d 54, 60 (Minn. 1983) (citation omitted).

a. Private interest that will be affected by the seizure.

Petitioner has ownership interest in the seized vehicle. It is the Court's understanding that the vehicle is functional and has monetary value.

b. Duration of the revocation and the availability of prompt post-deprivation review.

In *Olson*, because section 169A.63, subdivision 9(d), prevents a hearing under the subdivision until after the conclusion of related criminal matters, the petitioners there did not have a hearing regarding their seized vehicle for over 18 months. The appellate court concluded that such a delay offended the Olsons' due-process rights, specifically their right to prompt post-deprivation review.

Here, Petitioner's vehicle was seized on or around March 16, 2018. On November 14, 2018, while Petitioner's criminal case was still pending, this Court heard his summary judgment motion to contest the constitutionality of the forfeiture statute. Petitioner contends that his motion was permitted to be heard because it was brought under Minn. R. Civ. P. 56 (rules governing summary judgment motions), not subdivision 9. The State does not dispute the propriety of hearing Petitioner's summary judgment motion before the conclusion of his criminal case.

As of the date of this Order, almost a year after Petitioner's arrest and seizure of his vehicle, his criminal case is still open, and a trial date has not been scheduled. Applying section 169A.63, subdivision 9(d), to Petitioner's circumstances, a hearing under the subdivision is not yet available to him, and it is unknown when it will become available. In other words, under the process established by the statute, Petitioner will have to go twelve months and counting without a post-deprivation review. Guided by the holdings in *Olson*, this Court finds that a delay of more than twelve months between the vehicle seizure and the hearing permitted under the statute does not satisfy the due-process requirement of prompt post-deprivation review.

The Minnesota Supreme Court's opinion in *Fedziuk v. Commissioner of Public Safety* is also instructive here. 696 N.W.2d 340 (Minn. 2005). In *Fedziuk*, the supreme court considered the constitutionality of the 2003 amendments to the state's implied-consent law, which removed the previous requirement that judicial review 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.* at 345-46. It answered in the negative, holding that: (1) an administrative review of the revocation, although prompt, did not constitute a sufficiently meaningful process, as it did not give the parties an opportunity to compel or cross-examine witnesses; and (2) because the amended statute did not specify a time period for judicial review, it did not provide for prompt post-revocation review. *Id.* at 347

–48. As was the issue with the amended implied-consent statute, the current forfeiture statute does not set a firm timeline for judicial review, creating situations like the one in the present case, where parties are made to wait indefinitely to address the deprivation of their valuable property.

c. The availability of hardship relief.

Section 169A.63, subdivision 4, allows the seized vehicle’s registered owner to obtain possession of the vehicle prior to final judicial determination in the forfeiture action if the owner posts a bond equal to the retail value of the vehicle, and if a disabling device is placed on the vehicle. Subdivision 5a provides that an interested person may file a petition for remission or mitigation of the forfeiture, which the State may grant under certain circumstances. Moreover, subdivision 7 enables appropriate parties to preserve their interest in the vehicle through an innocent-owner defense. It is unknown to this Court whether Petitioner pursued any of those measures, and so it cannot determine whether he could have obtained adequate hardship relief. Nonetheless, the *Olson* court affirmed that even if the petitioners there had sought such relief, it would not have remedied the denial of prompt post-deprivation judicial review. *Olson*, 910 N.W.2d at 79–80. That assessment applies here as well.

d. The risk of an erroneous deprivation of interest through the procedures used, and the probable value of additional or substitute procedural safeguards.

As discussed above, section 169A.63, subdivision 9(d), does not provide Petitioner with prompt post-deprivation judicial review. Implicit in Petitioner’s argument is that the absence of prompt judicial review increases the risk of erroneous takings, and that it will take longer to correct those errors. The State argues that Petitioner may accelerate his forfeiture action by demanding a speedy trial in his criminal case. But the Court is not persuaded that the State’s suggestion constitutes adequate protection for due-process rights, as it risks creating situations where parties facing forfeiture of their vehicles are compelled to press forward with a speedy criminal trial, and thereby forego important strategies, discovery, and proceedings.

e. The government’s interest.

The State has a significant interest in protecting the public from repeat DWI offenders. Vehicle forfeiture serves as an important remedy against the dangers posed by intoxicated drivers, and the implementation of prompt post-deprivation reviews would add more safeguards for the process at a minimal burden to the State. Indeed, Minnesota’s other forfeiture statutes already allow for prompt judicial review hearings even when related criminal matters are still pending. *See, e.g.*, Minn. Stat. § 609.5312, subd. 3 (where a vehicle is seized for a prostitution offense without a judicial order, a hearing will be held within

96 hours of the seizure); *id.*, subd. 4 (where a vehicle is seized for use in fleeing a peace officer, a hearing will be held within 96 hours of the seizure).

14. Based on the foregoing, the Court finds that the process established by section 169A.63, subdivision 9(d), would not provide Petitioner prompt review of the prehearing seizure of his vehicle, and so the statute would be unconstitutional as applied to him.¹ The government's interest, while significant, does not overcome the due-process violation arising from the lack of adequate post-deprivation review. The lack of sufficient hardship relief available to deprived parties and the risk of erroneous takings posed by the forfeiture statute in its current state further support Petitioner's constitutional challenge herein. Accordingly, it is appropriate for this Court to grant Petitioner's motion for summary judgment and order that his vehicle is not subject to forfeiture.

IT IS SO ORDERED:

1. Petitioner's motion for summary judgment is **GRANTED**.
2. Minn. Stat. § 169A.63, subd. 9(d), is deemed **UNCONSTITUTIONAL AS APPLIED**.

¹ As the Court was preparing this decision, the U.S. Supreme Court issued its opinion in *Timbs v. Indiana*, 586 U.S. ____ (2019). Tyson Timbs pleaded guilty in Indiana state court to dealing a controlled substances and conspiracy to commit theft. At the time of Timb's arrest, the police seized his vehicle that he had purchased for about \$42,000. The Indiana trial court denied the requested forfeiture of Timbs's vehicle, holding that the forfeiture of the vehicle would be grossly disproportionate to the gravity of his offense, and therefore unconstitutional under the Eighth Amendment's Excessive Fines Clause. The Indiana Supreme Court later reversed that decision, holding that the Excessive Fines Clause constrains only federal action and is inapplicable to state impositions. Upon review, the U.S. Supreme Court determined that the Excessive Fines Clause is an incorporated protection applicable to the states under the Fourth Amendment's Due Process Clause, and that the Clause is incorporated regardless of whether its application to civil *in rem* forfeitures is itself fundamental or deeply rooted. The applicability of the *Timbs* opinion to this case is uncertain because, first, the record here is closed at this point, and Petitioner's constitutional challenge primarily focused on the lack of adequate review under the process established by the forfeiture statute. The Court nonetheless notes the *Timbs* opinion as indicator of the current state of the law on forfeitures.

3. The 2008 Toyota Matrix, MN License Plate No.: [REDACTED], VIN: [REDACTED] is not subject to forfeiture and will be promptly returned to Petitioner.
4. Petitioner will not be liable for any storage fees arising from the seizure of the vehicle.
5. The City of [REDACTED] will reimburse Petitioner for the filing fees associated with this matter pursuant to Minn. Stat. § 169A.63, subd. 9(h).

LET JUDGMENT BE ENTERED ACCORDINGLY

DATED: February 20, 2019

BY THE COURT:

