

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Patricia S. Reed, Commissioner of the West Virginia Division of Motor Vehicles v. Dustin Hall

Reed v. Hall · No. 14-0342 · Decided May 22, 2015

SUMMARY

Justice Loughry concurred in the decision upholding the revocation of Dustin Hall's driver's license and disqualification from operating commercial vehicles based on his refusal to submit to a designated secondary chemical breath test. The concurrence stated that the implied-consent violation independently resolved the case, making it unnecessary to address the separate DUI-based revocation ground or the blood-test issue.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Loughry, Justice
JURISDICTION	West Virginia
DECIDED	May 22, 2015
DOCKET	14-0342
DISPOSITION	other
PROCEDURAL POSTURE	Appeal involving administrative revocation of a driver's license and disqualification from operating commercial vehicles based on refusal to submit to a designated secondary chemical breath test and alleged driving under the influence.
PRECEDENTIAL VALUE	Separate concurring opinion in a per curiam decision; precedential status not otherwise specified in the document text.
PARTIES	Patricia S. Reed, Commissioner of the West Virginia Division of Motor Vehicles v. Dustin Hall

TOPICS

[administrative law](#)[agency adjudication](#)[statutory interpretation](#)[judicial review of agency action](#)

PRACTICE AREAS

[administrative law](#)[motor vehicle law](#)[implied consent](#)[DUI license revocation](#)

QUESTIONS PRESENTED

1. Whether refusal to submit to the designated secondary chemical breath test independently supports revocation of Hall's driver's license and disqualification from operating commercial vehicles.
2. Whether the court needed to address the separate DUI and blood-test grounds for revocation when the implied-consent violation was independently dispositive.

HOLDINGS

1. A driver's refusal to submit to the designated secondary chemical breath test in violation of West Virginia Code § 17C-5-7 independently supports revocation of the driver's license and disqualification from operating commercial vehicles.
2. When the implied-consent violation independently determines the revocation and disqualification, it is unnecessary to decide the separate DUI and blood-test grounds.

KEY QUOTATIONS

“When there is no duty to speak on such issues there is a duty not to speak.” (at 3)

FACTUAL BACKGROUND

Hall was arrested for a single episode of driving under the influence on February 3, 2011. He refused to submit to the designated secondary chemical breath test requested by police. The DMV Commissioner issued administrative orders based on both the DUI allegation and the implied-consent refusal. The concurrence states that the refusal period was longer than the DUI revocation period and would count as a prior revocation for purposes of future administrative penalties.

PROCEDURAL HISTORY

The DMV Commissioner issued administrative orders identifying driving under the influence and refusal to submit to the secondary chemical breath test as separate grounds for revocation and disqualification. The Supreme Court of Appeals addressed the implied-consent issue, and Justice Loughry concurred, agreeing that the refusal independently required revocation and commercial-vehicle disqualification while stating that discussion of the separate DUI and blood-test issues was unnecessary.

DISPOSITION

other

CASES CITED

- Poulos v. State of New Hampshire, 345 U.S. 395, 414 (1953) (Frankfurter, J., concurring)

OPINION

Patricia S. Reed, Comm. W. Va. Dept. of Motor Vehicles v. Dustin Hall

PER CURIAM.

No. 14-0342 – Patricia S. Reed, Commissioner of the West Virginia Division of Motor Vehicles v. Dustin Hall

FILED

May 22, 2015

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

LOUGHRY, Justice, concurring: OF WEST VIRGINIA I completely agree with the Court's conclusion that Mr. Hall's driver's license must be revoked, and he must be disqualified from operating commercial vehicles, based upon his refusal to submit to the designated secondary chemical breath test in violation of West Virginia Code § 17C-5-7 (2010)¹ (also referred to as an "implied consent" violation). I write separately, however, to note that because of Mr. Hall's clear violation of the implied consent law, it was unnecessary for this Court to also address the DMV Commissioner's separate grounds for revocation and disqualification—the act of driving under the influence. As such, it was also unnecessary for the Court to address the blood test issue. Mr. Hall was arrested for a single episode of DUI occurring on February 3, 2011. This arrest was the reason why the police required him to submit to a secondary chemical breath test. In the administrative orders, the DMV Commissioner specified two separate legal grounds for revoking his driver's license: his act of driving under the influence and his act of refusing to submit to the secondary chemical test. Either reason, by 1 In this concurrence, I refer to the 2010 version of the DMV statutes that were in effect when Mr. Hall was arrested and refused the secondary breath test. 1 itself, provided a sufficient basis for the Commissioner to act. However, while there were two separate grounds, the Commissioner could only revoke the license once for the events of February 3, 2011. The Legislature has mandated that a period of revocation for driving under the influence shall run concurrently with a period of revocation for an implied consent violation: A revocation under this section shall run concurrently with the period of any suspension or revocation imposed in accordance with other provisions of this code and growing out of the same incident which gave rise to the arrest for driving a motor vehicle while under the influence of alcohol, controlled substances or drugs and the subsequent refusal to undergo the test finally designated in accordance with the provisions of section four of this article. West Virginia Code § 17C-5-7(a), in part. Notably, the period of revocation for Mr. Hall's refusal to submit to the breath test was longer than his period of revocation would have been for DUI. Moreover, for purposes of determining second or subsequent occurrences, an implied consent revocation counts the same as a DUI revocation. The statute that specifies what length of administrative revocation or suspension to impose for various offenses provides, in pertinent part, the following: For purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of criminal convictions or administrative suspensions or revocations shall also be regarded as suspensions or revocations under this section or section one of this article: 2

(3) Any revocation under the provisions of section

seven, article five of this chapter [the implied consent statute] for conduct which occurred within the ten years immediately preceding the date of arrest. W.Va. Code § 17C-5A-2(p) (2010). Thus, should Mr. Hall commit DUI in the future, the instant revocation for his implied consent violation will be considered when assessing additional administrative penalties based upon multiple DUI offenses. Accordingly, this Court's ruling on the implied consent issue is fully determinative of this case, and the remainder of the Court's discussion is mere surplusage. As Justice Frankfurter once observed, "[w]hen there is no duty to speak on such issues there is a duty not to speak." *Poulos v. State of New Hampshire*, 345 U.S. 395, 414 (1953) (Frankfurter, J., concurring). Nonetheless, because the Court has correctly addressed the implied consent issue, I respectfully concur. 3