

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2021 APR 15 P 4: 23

STATE OF NORTH CAROLINA

WAKE COUNTY CLERK
ASB

v.

MOTION TO DISMISS

Defendant.

NOW COMES the Defendant, _____, by and through undersigned counsel, and pursuant to N.C. Gen. Stat. §15A-954(a)(4) and (5), moves this Honorable Court for an Order dismissing the charges in the above-captioned matter for violations of Defendant’s rights under the United States and North Carolina Constitution. In support of this Motion, the Defendant shows unto this Honorable Court as follows:

BACKGROUND

1. On Saturday, February 2, 2019, Defendant was charged with Driving While Impaired by Officer W. Medlin of the Fuquay-Varina Police Department (hereinafter “Medlin”).
2. At the time of his arrest, Defendant held a valid Class “C” license issued by the North Carolina Department of Motor Vehicles (hereinafter “NCDMV”).
3. As a result of his arrest for Driving While Impaired, Defendant’s driver’s license was suspended under a Civil Revocation for thirty (30) days (from February 3, 2019 to March 5, 2019).
4. On March 5, 2019, Defendant paid his Civil Revocation fine of One Hundred and No/100 Dollars (\$100.00) and his license was reinstated.

5. After litigating (unsuccessfully) two pretrial motions in district court, Defendant pled guilty to Driving While Impaired on March 9, 2020. Defendant gave notice of appeal in open court on the same day for the purpose of relitigating the pretrial motions in Superior Court.¹

6. On March 9, 2020 the Wake County Clerk of Court duly transmitted, by electronic communication, the Notice of Appeal to NCDMV.²

7. Giving Notice of Appeal and the Clerk's Office's subsequent transmittal of this information to NCDMV should have removed and period of revocation associated with Defendant's guilty plea in Wake County District Court on March 9, 2020 in this matter.

8. In fact, Defendant retained his physical license and continued to operate his motor vehicle under the assumption NCDMV had not revoked his license because he gave Notice of Appeal and, therefore, had not been convicted of Driving While Impaired.

9. Defendant's case has been pending in Wake County Superior Court since March of 2020. In fact, Defendant has continued to litigate pretrial motions in Superior Court.

10. However, despite the fact that Defendant's case is still pending in Wake County Superior Court, NCDMV revoked Defendant's license for a conviction of Driving While Impaired in this case.³

11. Specifically, Defendant's driver's license was revoked for a conviction in this case from March 20, 2020 to March 20, 2021.

¹ See Exhibit A, certified copy of Defendant's Notice of Appeal from District Court to Superior Court in the above-captioned case.

² See Exhibit B, a partial copy of the CIPRS details page of Defendant's matter pending in Wake County available through the North Carolina Administrative Office of the Court. The undersigned attempted to both print out and email herself a complete copy of the details page but was unable to do so due to an error with the CIPRS program's ability to email/print superior court details pages. See also Exhibit C, an ACIS printout from the Wake County Clerk of Court showing an electronic record of the appeal was made to send to NCDMV.

³ See Exhibit D, a certified copy of Defendant's Driving Record.

12. Additionally, NCDMV revoked Defendant's license under an indefinite suspension for failure to complete a Substance Abuse Assessment and Recommended Treatment for his improperly recorded conviction.⁴

13. Defendant suffered irreparable harm and damage as a result of a year long suspension of his driving privileges which had no basis in law or fact once the Notice of Appeal was given in open court on March 9, 2020 and subsequently transmitted to NCDMV.

14. Defendant has spent a substantial amount of money and time on substance abuse classes in an effort to properly reinstate his driver's license resulting from the improperly issued indefinite revocation which had no basis in law or fact once the Notice of Appeal was given in open court on March 9, 2020 and subsequently transmitted to NCDMV.

15. Defendant's due process rights under the Constitution of the United States as well as the North Carolina Constitution have been flagrantly violated as a result of the failure of the State, through the NCDMV, to properly process and/or honor the Notice of Appeal or otherwise comply with the "law of the land."

ARGUMENT

16. Defendant has suffered irreparable harm arising from the illegal suspension of his driver's license without any legal authority from NCDMV to do so after March 9, 2020.

17. Section 19 of Article I of the North Carolina Constitution provides that "[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or *privileges*, or outlawed, or exiled, or in any manner deprived of his life, liberty, or *property, but by the law of the land.*"⁵

⁴ See Exhibit E, Notice of Indefinite Suspension mailed to Defendant from NCDMV for failure to complete Substance Abuse Assessment and Recommended Treatment.

⁵ N.C. CONST. art. I, § 19.

18. Defendant has, without question, been deprived of both his privileges to drive as well as his property, specifically his Class “A” driver’s license, by action of the State (through its agent, NCDMV) in failing to honor a duly issued Notice of Appeal, which should have voided Defendant’s conviction for Driving While Impaired in this case and reinstated and/or cancelled any revocations associated with said conviction.

19. The time Defendant was deprived of his license due to the error of the State is essentially a pretrial loss of his license far beyond what is allowed by statute and what has been deemed by our appellate courts as “constitutional” or permissible under the implied-consent procedures.

20. The Constitutional and statutory violations set out herein represent punishment for the above-captioned offense of Driving While Impaired prior to a conviction of the same, thus precluding further prosecution of the above-captioned matter by the State. In addition, these violations have caused Defendant irreparable harm that can only be remedied by the dismissal of this matter so that he is not twice punished for the same alleged offense.

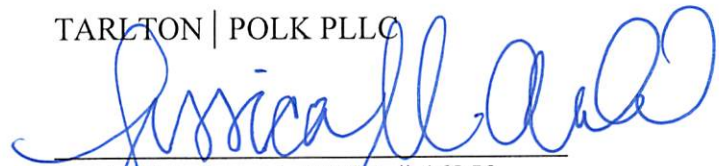
WHEREFORE, the Defendant respectfully requests the following relief:

- a. That this Court find Defendant has been irreparably harmed by the State’s failure to comply with the law of the land;
- b. That this Court find that the revocation or suspension of Defendant’s license due solely to the State’s failure to comply with the law of the land as dictated by statute is a pretrial penalty incurred by Defendant;
- c. That this Court find that Defendant has indeed been punished prior to a final judgment being entered in this matter by incurring this unlawful taking of his driver’s license;

- d. That this Court find that double jeopardy therefore applies; or alternatively, the Court find a substantial substantive and procedural violation has occurred such that Defendant's rights have been flagrantly violated; and
- e. That this Court issue and Order dismissing the case against Defendant in the above-captioned matter, with prejudice, and for further and other relief as the Court deems just and proper.

Respectfully submitted this the 15th day of April, 2021.

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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing document was served upon Ms. Ashton Slagle, Wake County Assistant District Attorney, at the address set forth below via hand delivery and/or United States Mail this the 15th day of April, 2021.

Ashton Slagle
Wake County Assistant District Attorney
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