

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

2021 APR 29 AM 11:17

WAKE CO., C.S.C.

STATE OF NORTH CAROLINA

BY



v.

ORDER

Defendant.

THIS CAUSE coming on to be heard before the undersigned judge during the April 22, 2021 session of Wake County Superior Court upon Defendant's Motion to Dismiss for Violation of the Double Jeopardy Clause of the United States Constitution and the Law of the Land Clause of the Constitution of the State of North Carolina. After considering the motion filed on behalf of the Defendant, the evidence presented and arguments by counsel for the Defendant and counsel for the State, the Court makes the following:

FINDINGS OF FACT

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. After litigating 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.

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

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

6. However, Defendant's driver's license remained revoked for a period of one (1) year from March 9, 2020 to March 9, 2021 resulting from a conviction in the above-captioned matter.

7. NCDMV failed to honor the order of the court to rescind the revocation of Defendant's driver's license. The failure to honor, or place into effect, the valid order of the court prolonged the suspension of Defendant's driver's license without lawful authority.

8. The suspension of Defendant's driver's license for one (1) year, without lawful authority, is a violation of the "Law of the Land" Clause of the North Carolina Constitution.

9. Defendant suffered a punishment to being charged with DWI by the unlawful suspension of his driver's license under N.C. Gen. Stat. § 20-17.

10. The punishment suffered by the Defendant was prior to a conviction of the charge of DWI and precludes further prosecution of this charge by the State.

11. Any further prosecution of the Defendant for the offense of DWI would violate the "Law of the Land Clause" of the Constitution of the State of North Carolina.

12. Defendant has suffered irreparable harm to his driving privileges and will suffer further irreparable harm by a prosecution of his DWI charge. Therefore, the only appropriate remedy available to this Court to address these harms is an order dismissing the Defendant's charge of DWI.

Based on the foregoing Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW

1. That this Court has subject matter jurisdiction over the parties and this matter is otherwise properly before the Court.

2. That the Defendant's due process rights related to the proper administration of the law and intended effects of N.C. Gen. Stat. § 20-17 were violated by the suspension of the Defendant's license, without lawful authority, once NCDMV was in receipt of a valid order rescinding the original revocation.


3. That the unlawful continued suspension of Defendant's license was a punishment.

4. That the continued prosecution of Defendant for the offense of DWI would potentially inflict further punishment on Defendant.

5. That the violations of Defendant's due process rights are irreparable and a continued prosecution of the Defendant's DWI charge potentially resulting in further punishment would be irreparable.

6. That the proper remedy to address the violations is the dismissal of the Defendant's DWI charge in the above-captioned matter and this charge is hereby dismissed by the Court.

This the 24th day of April, 2021.



The Honorable Bryan Collins
Superior Court Judge Presiding

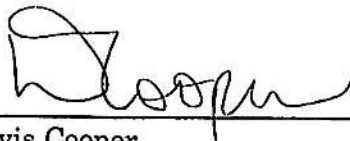
Certificate of Service

THIS IS TO CERTIFY that a copy of the foregoing Order was served upon the following parties and persons by mailing a copy thereof by postage prepaid, first class mail or by otherwise approved delivery addressed as follows:

Ashton Slagle
Assistant District Attorney
10th Prosecutorial District
Post Office Box 31
Raleigh, NC 27602

Jessica M. Arnold
Attorney for Defendant
Post Office Box 1386
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This, the 29th day of April, 2021.



Davis Cooper
Judicial Assistant
Wake County Superior Court Judges' Office