

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

████████████████████

Court File: 19WS-CV-14-286

Petitioner,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

v.

Commissioner of Public Safety,

Respondent.

The above-referenced matter came on before the undersigned Judge of District Court on July 1, 2014, at the Northern Services Center, West St. Paul, Minnesota, pursuant to Petitioner's motion for rescission of the revocation of her driver's license.

Jeffrey S. Sheridan, Attorney at Law, appeared on behalf of Petitioner.

Kristi A. Nielsen, Assistant Minnesota Attorney General, appeared on behalf of the Commissioner of Public Safety.

Counsel for both parties agreed on a briefing schedule whereby Petitioner's reply brief was due on July 16, 2014. The matter was taken under advisement by the court on July 17, 2014.

Based upon the file, the record, the proceedings herein and being duly advised in the premises, the court makes the following:

FINDINGS OF FACT

FILED
CAROLYN M. RENN, Court Administrator
DAKOTA COUNTY

JUL 24 2014

1. At issue before this court are the following:
 - a) whether probable cause existed for Petitioner's arrest;
 - b) whether a urine test was obtained in violation of the Fourth Amendment; and
 - c) whether a three-day temporary driver's license is sufficient to

satisfy due process requirements.

2. Because this Court concludes that a three-day temporary driver's license is not sufficient to satisfy due process requirements, the first two issues are not reached. (However, this Court would note parenthetically that Petitioner's refusal of the "walk-and-turn" test casts serious doubt on her alleged inability to refuse formal alcohol testing. This is especially the case given that her *refusal* of the "walk-and-turn" test occurred *prior* to consultation with her attorney, and her *consent* to formal alcohol testing occurred *after* consultation with her attorney.)

3. On December 28, 2013, Petitioner was arrested for DWI. The implied consent law was invoked. Petitioner took a urine test. The urine test result allowed the Commissioner of Public Safety to revoke Petitioner's driver's license.

4. A notice of revocation was mailed to Petitioner by the Commissioner of Public Safety. The mailing date written on the notice of revocation was February 14, 2014. (Ex. 3) The notice of revocation was not postmarked until February 18, 2014. (Ex. 4) A holiday weekend was interposed between the "mailing date" and the "postmarked date." It is uncontested that Petitioner received the notice of revocation on February 21, 2014.

5. Petitioner's driver's license was revoked starting on February 24, 2014. (Ex. 3)

6. The result was that Petitioner was given less than three days of temporary driving privileges from the time she received notice of the impending revocation until her driver's license was revoked.

Based upon the above Findings of Fact, this court makes the following:

CONCLUSIONS OF LAW

1. A “license to drive is a protected interest that cannot be deprived without procedural due process.” Riehm v. Comm’r. of Pub. Safety, 745 N.W.2d 869, 877 (Minn. Ct. App. 2008) (citation omitted).

2. When a driver is subject to immediate revocation of his or her driver’s license under the implied consent law, a seven-day temporary driver’s license must be issued to the driver. Minn. Stat. §169A.52, Subd. 7.

3. Petitioner was not a driver subject to immediate revocation of her driver’s license.

4. However, regardless of whether a revocation is immediate or delayed, one of the due process safeguards is the existence of a grace period between notice that one’s license will be revoked, and the actual revocation. This procedural due process safeguard has been described as “the availability of hardship relief.” Heddan v. Dirkswager, 336 N.W.2d 54, 60 (Minn. 1983).

5. A notice of revocation mailed by the Commissioner of Public Safety is deemed to have been received three days after being mailed. Minn. Stat. §169A.52, Subd. 6. Accordingly, Petitioner received notice of revocation on February 21, 2014. The revocation took effect on February 24, 2014. Petitioner’s driving privileges existed for less than three days from the time she received notice of the revocation until it was imposed.

6. The Minnesota Court of Appeals has held that when notice of revocation is sent by mail, six days’ notice is sufficient to preserve a driver’s procedural due process rights. Williams, et al. v. Comm’r. of Pub. Safety, 830 N.W.2d 442 (Minn. Ct. App. 2013).

7. This court concludes that less than three days’ notice, which is less than half of that

allowed to individuals whose driver's licenses are immediately revoked, is insufficient to preserve the availability of hardship relief for those drivers receiving their notices of revocation by mail.

8. Petitioner's procedural due process rights were not preserved in this instance.

9. The remedy for denial of due process in the implied consent context is rescission of the driver's license revocation. McDonnell v. Comm'r. of Pub. Safety, 473 N.W.2d 848, 855-57 (Minn. 1991).

ORDER

1. The revocation of Petitioner's driving privileges is hereby rescinded.

2. The decision to impound Petitioner's license plates is likewise rescinded.

DATED: July 23, 2014

BY THE COURT:


Shawn M. Moynihan
Judge of District Court