

**Filed 12/22/15 by Clerk of Supreme Court  
IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

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2015 ND 292

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Lynh Hong Musick,

Petitioner and Appellant

v.

Grant Levi, Director of the North Dakota  
Department of Transportation,

Respondent and Appellee

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No. 20150252

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Appeal from the District Court of Stark County, Southwest Judicial District,  
the Honorable Zane Anderson, Judge.

AFFIRMED.

Per Curiam.

Thomas F. Murtha IV (on brief), 135 Sims, Suite 217, P.O. Box 1111,  
Dickinson, ND 58602-1111, for petitioner and appellant.

Michael T. Pitcher (on brief), Office of the Attorney General, 500 North Ninth  
Street, Bismarck, ND 58501-4509, for respondent and appellee.

**Musick v. Levi**

**No. 20150252**

**Per Curiam.**

[¶1] Lynh Musick appeals from a district court judgment affirming the Department of Transportation’s decision to revoke her driving privileges. Musick was arrested for driving under the influence, and she refused blood-alcohol content testing. The Department held an administrative hearing. At the hearing, Musick attempted to “cure” her refusal under N.D.C.C. § 39-20-04(2), which prohibits a person’s driving privileges from being revoked for refusal to submit to chemical testing if, among other things, the person pleads guilty to driving under the influence or an equivalent charge. The hearing officer held she had no authority to substitute issues at the hearing but recognized Musick would have been allowed a 91-day suspension “had she been able to comply with the requirements of NDCC section 39-20-04.”

[¶2] On appeal, Musick argues the N.D.C.C. ch. 39-20 implied consent and refusal statutes are unconstitutional under various state and federal constitutional provisions. We have already considered and rejected her arguments. See, e.g., State v. Morel, 2015 ND 198, 870 N.W.2d 26; State v. Harns, 2015 ND 45, 861 N.W.2d 173; Beylund v. Levi, 2015 ND 18, 859 N.W.2d 403, cert. granted, 83 U.S.L.W. 3935 (U.S. Dec. 11, 2015) (No. 14-1507). Musick also argues the Department’s decision not to apply N.D.C.C. § 39-20-04 and “cure” her refusal violated her right to equal protection of the laws under N.D. Const. art. I, § 21. Section 39-20-04 does not “cure” a person’s refusal; it allows individuals who have refused chemical testing to subject themselves to alternative sanctions under N.D.C.C. § 39-08-01, driving under the influence, if the statutory requirements are met. Musick raised no equal protection argument at the administrative hearing, and the record at the hearing contains no evidence of statutory compliance. The issue is not before us. See Horob v. Farm Credit Services, 2010 ND 6, ¶ 23, 777 N.W.2d 611 (“This Court will not consider evidence outside the record.”). We summarily affirm under N.D.R.App.P. 35.1(a)(5) and (7).

[¶3] Gerald W. VandeWalle, C.J.  
Carol Ronning Kapsner  
Lisa Fair McEvers

Daniel J. Crothers  
Dale V. Sandstrom