
**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Supreme Court Case No. 20150326
District Court Case No. 18-2015-CR-00453

City of Grand Forks,

Plaintiff/Appellee,

v.

Nicole Louell Jacobson,

Defendant/Appellant.

CITY/APPELLEE'S BRIEF

**Appeal from Order Denying Defendant's Motion to Dismiss
Dated June 23, 2015
Grand Forks County District Court
Northeast Central Judicial District
The Honorable Don Hager**

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[¶3.] III. STATEMENT OF THE ISSUE

[¶4.] Whether the district court abused its discretion when denying Defendant's motion to dismiss her charge of Driving Under Suspension pursuant to North Dakota Century Code § 39-06-42(3)?

[¶5.] IV. STATEMENT OF THE CASE

[¶6.] Nicole Louell Jacobson ("Defendant") appeals from the district court's order denying her motion to dismiss the charge of Driving Under Suspension. On February 17, 2015, Defendant was cited for Driving Under Suspension/Revocation, in violation of Grand Forks City Code ("G.F.C.C.") § 8-0201. (Doc. ID# 1). Defendant filed a motion to dismiss on April 8, 2015. (Doc. ID# 10). The City filed its response to the motion on April 21, 2015. (Doc. ID# 13). A motion hearing was held on June 19, 2015. (App. p. 2). The district court issued its Order denying Motion to Dismiss on June 24, 2015. (App. pp. 2, 5-16). Defendant entered into a conditional plea on November 5, 2015, and a stay of sentence was entered the same day. (App. pp. 2-3, 19-20). The Defendant filed a Notice of Appeal on November 10, 2015. (App. pp. 3, 18).

[¶7.] V. STATEMENT OF THE FACTS

[¶8.] On February 17, 2015, at approximately 5:00 p.m., the Defendant was driving a motor vehicle involved in an accident. (Doc. ID# 13). At the time of the accident, the Defendant's driving privileges were revoked for three years in the state of North Dakota due to refusing a chemical test. (Doc. ID# 19). The revocation went into effect on March 5, 2012, and the Defendant was not eligible for reinstatement until March 5, 2015. (Doc. ID# 19). The Defendant's driving privileges in the state of Minnesota were also suspended.

[¶9.] The Defendant was cited for Driving Under Suspension/Revocation in violation of G.F.C.C. § 8-0201. (Doc. ID# 1). The Defendant entered a plea of not guilty to the charge of Driving Under Suspension and requested a jury trial. The matter was transferred to Grand Forks County District Court on March 4, 2015. (App. p. 1).

[¶10.] On April 8, 2015, the Defendant filed a motion requesting her Driving Under Suspension be dismissed pursuant to N.D.C.C. § 39-06-42(3). (Doc. ID# 10). The City opposed that motion arguing the court should use its discretion to deny the request based on the facts of the case. (Doc. ID# 13).

[¶11.] A hearing on the motion was held on June 19, 2015. (App. p. 2). There is no evidence in the record to indicate exactly when Defendant's North Dakota driving privileges were reinstated. As of the date of the hearing, the Defendant's North Dakota driving privileges had been reinstated. (Doc. ID# 18). Defendant's Minnesota drivers license was reinstated April 8, 2015. (Doc. ID# 18). The judge issued his order denying the Defendant's motion to dismiss on June 24, 2015. (App. pp. 2, 5-16). The Defendant filed this appeal claiming the judge erred as a matter of law by not using his discretion when denying the motion to dismiss.

[¶12.] VI. STANDARD OF REVIEW

[¶13.] "A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner." State v. Boehler, 542 N.W.2d 745, 748 (N.D. 1996) (citing State v. Daulton, 518 N.W.2d 719, 724 (N.D. 1994)). A court acts in such a manner when its "exercise of discretion is not 'the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination,' or, as alternatively stated, when it misinterprets or misapplies the law." Id.

[¶14.] Alternatively, in reviewing a district court's decision on a motion to dismiss, this Court has stated "We will not reverse a trial court's findings of fact in preliminary criminal proceedings if, after the conflicts in the testimony are resolved in favor of affirmance, there is sufficient competent evidence fairly capable of supporting the findings and if the trial court's decision is not contrary to the manifest weight of the evidence." State v. Berger, 2001 ND 44, ¶ 11, 623 N.W.2d 25 (citing State v. Tester, 1999 ND 60, ¶ 11, 592

N.W.2d 515). "This standard is identical to our review of a trial court's denial of a motion to suppress." Berger; see State v. Norrid, 2000 ND 112, ¶ 5, 611 N.W.2d 866.

[¶15.] VII. LAW AND ARGUMENT

[¶16.] **The district court did not abuse its discretion when denying Defendant's motion to dismiss her charge of Driving Under Suspension pursuant to N.D.C.C. § 39-06-42(3).**

[¶17.] North Dakota Century Code § 39-06-42(3) states as follows:

A court may dismiss a charge under this section upon motion by the defendant if the defendant's operator's license is reinstated within sixty days of the date of the offense and the defendant provides to the court satisfactory evidence of the reinstatement.

(emphasis added). The Defendant submits her North Dakota and Minnesota driver's licenses were reinstated within sixty days of her February 17, 2015, Driving Under Suspension offense. While there is insufficient evidence in the record indicating when the Defendant's privileges to drive in North Dakota were reinstated, for purposes of the appeal, the City does not dispute that Defendant's North Dakota driving privileges were listed as "record only" within sixty days of the offense date. The Defendant filed a motion with the district court asking the court to dismiss the charge pursuant to N.D.C.C. § 39-06-42(3). (Doc. ID# 10). The City opposed that motion arguing the court should use its discretion to deny the motion based on the facts of the case. (Doc. ID# 13).

[¶18.] It is the City's position the facts of this case do not support dismissing the Driving Under Suspension charge. Specifically, the Defendant was serving a three year revocation for a second offense DUI. (Doc. ID# 19). The Defendant was not eligible to get her driving privileges in the state of North Dakota reinstated until March 5, 2015, weeks after the accident. This is different than the situation in which a license is suspended because the driver forgot to pay a traffic ticket, let their insurance lapse, or did not pay child support. In those situations, the City fully supports encouraging individuals to fix the impediment that is suspending the license and getting the license reinstated.

[¶19.] The City argued to the district court that Defendant's revocation of driving privileges was a serious consequence for the serious offense of Driving Under the Influence. The City asked the court to exercise its discretion in sending a message that it is not appropriate to drive when serving a period of suspension/revocation for a DUI case. As an analogy, the City argued it is illogical for someone serving a ninety-one day suspension for a DUI to be allowed to drive after thirty days because they can get reinstated within sixty and have the court dismiss their charge. The court agreed with the City's reasoning. (App. pp. 5-16).

[¶20.] In addition, the Defendant drove knowing she was revoked due to her DUI. The Defendant admits she picked up her car from the body shop in Crookston. (Doc. ID# 10). The Defendant drove the vehicle from Crookston to Grand Forks where she was involved in an accident, rear-ending a vehicle stopped at a stoplight. (Doc. ID# 10). Defendant asked the driver of the vehicle she hit to drive around town to find a body shop rather than call the police. (Tr. p. 8). The City argued that based on all of these facts, the court should send a message by denying the Defendant's motion to have her Driving Under Suspension charge dismissed. (Tr. pp. 6-9).

[¶21.] The defense argues the district court erred as a matter of law in analyzing the history of the Driving Under Suspension statute and the legislative intent. (Def. Br. ¶ 7). The City agrees there was no need to decipher legislative intent. (Def. Br. ¶ 6). Regardless, the City sees no harm or violation because the court chose to do so. The City disputes it argued the "court only has discretion to dismiss the charge of Driving Under Suspension after the period of suspension/revocation had expired and an individual failed to apply for reinstatement." (Def. Br. ¶ 7). The City acknowledged the court had discretion to dismiss this charge. The City asked the court to exercise that discretion by denying the motion under the circumstances.

[¶22.] The City disagrees with the defense's basic argument the court did not exercise its discretion when deciding this motion. When a court exercises its discretion, the question

is whether it acted arbitrarily or in an unreasonable manner. The court engaged in a "rational mental process" to achieve a "reasoned determination." See Boehler. Judge Hager exercised his discretion by reviewing the history of this statute, by reviewing the legislative history, by comparing it to other statutes including N.D.C.C. ch. 39-20, and deciding the facts of this case did not warrant dismissal. (App. pp. 5-16). The court stated as follows: "As to driving suspensions, the reinstatement statute also allows an operator, in the court's opinion, to operate a motor vehicle without a license after the period of revocation, provided the operator has the driving privilege reinstated within sixty days of opposed-revocation period DUS charge." (emphasis added). (App. p. 10). The judge clearly stated that in his opinion, a person does have the ability to drive after revocation if they are reinstated within sixty days of the charge. Rather than simply state the facts do not support dismissing the charge, Judge Hager provided a thorough rationale why he does not believe the Driving Under Suspension/Revocation charge should be dismissed under these circumstances.

[¶23.] North Dakota Century Code § 39-06-42(3) provides individual judges with discretion to decide whether Driving Under Suspension charges should be dismissed. The statute does not say what criteria judges should use when exercising that discretion. The statute does not say the courts must dismiss Driving Under Suspension charges because someone managed to get reinstated. Judges can use whatever facts and law they deem appropriate in exercising their discretion. Judge Hager did that in this case and his order denying the motion to dismiss should be affirmed.

[¶24.] VIII. CONCLUSION

[¶25.] For the above-stated reasons, the City respectfully requests that this Court affirm the district court's Order on Motion to Dismiss and order the sentence provided in the criminal judgment be imposed.

Dated this 14th day of March, 2016.

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[¶26.] IX. CERTIFICATE OF SERVICE

[¶27.] I hereby certify that on the 14th day of March, 2016, a copy of the foregoing Appellee's Brief was electronically served on Alexander F. Reichert at the following email address:

Alexander F. Reichert
supportstaff@reichertlaw.com

[¶28.] I hereby certify that on the 14th day of March, 2016, a copy of the foregoing Appellee's Brief was electronically filed with the Supreme Court at the following email address:

Clerk of Supreme Court
supclerkofcourt@ndcourts.gov

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