No.
(COA No. 74131-4-I)

Supreme Court of the State of Washington

Stephen Chriss Johnson,

Petitioner,

v.

State of Washington Department of Licensing and **Pat Kohler,** in her official capacity,

Respondents.

Petition for Review

Kevin Hochhalter
Attorney for Petitioner

Cushman Law Offices, P.S.
924 Capitol Way South
Olympia, WA 98501
360-534-9183
WSBA # 43124

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1. Identity of Petitioner

Stephen Johnson, Plaintiff in the trial court and Appellant at the Court of Appeals, asks this Court to accept review of the Court of Appeals decision terminating review, specified below.

2. Court of Appeals Decision

Johnson v. Dep't of Licensing, No. 74131-4-I (Feb. 21, 2017). A copy of the decision is included in the Appendix.

3. Issues Presented for Review

1. An administrative agency may only act as authorized by the legislature. As of June 1, 2013, the Department of Licensing is not authorized to withhold the driving privilege from a person who failed to pay a traffic infraction for a nonmoving violation. Yet the Department continues to withhold the driving privilege from drivers who failed to pay for a nonmoving violation prior to that date. Is the Department acting outside of its authority?

2. Prior to June 1, 2013, the Department had no authority to withhold the driving privilege for a person's failure to pay a criminal fine. Since 2009, the Department has withheld Mr. Johnson's driving privilege for failure to pay a criminal fine. Is the Department acting outside of its authority?

4. Statement of the Case

4.1 The Legislature limited the Department's authority.

In 2011, the Department of Licensing was withholding the driving privilege from nearly 300,000 Washington drivers for failure to pay traffic tickets or criminal fines.[1] Suspension takes a terrible toll on these drivers, who are invariably poor.[2] Without a license, they are often left with no way to legally commute to their places of employment, particularly in rural and other areas

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[1] *See* Austin Jenkins, Northwest News Network, *Nearly 300,000 Wash. drivers suspended for failure to pay tickets*, KPLU radio broadcast (12:13 p.m., July 23, 2011) available at http://knkx.org/post/nearly-300000-wash-drivers-suspended-failure-pay-tickets (last visited March 14, 2017). The current number of such drivers cannot be known without analyzing the Department's records.

[2] American Civil Liberties Union, *In for a Penny: The Rise of America's New Debtor's Prisons*, p. 65 (October 2010) available at http://www.aclu.org/files/assets/InForAPenny_web.pdf (last visited March 14, 2017);

Alicia Bannon, et al., *Criminal Justice Debt: a Barrier to Reentry*, Brennan Center for Justice at New York University School of Law, p. 5, 13, 27 (October 2010), available at http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf (last visited March 14, 2017);

Katherine Beckett, et al., *The Assessment and Consequences of Legal Financial Obligations in Washington State*, Washington State Minority and Justice Commission, pp. 3-5 (August 2008) available at http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf (last visited March 14, 2017);

Alexes Harris, et al., *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, American Journal of Sociology, vol. 115 no. 6, p. 1777 (May 2010).

where public transportation is insufficient or nonexistent. Many lose their jobs.[3] Driving is required to participate in the modern workforce.[4] "For many, if you cannot drive, you cannot work. If you cannot work, you cannot make money. If you cannot make money, more likely than not, you cannot pay fines for tickets."[5]

In 2012, Senator Adam Kline sponsored ESSB 6284 to address this specific problem.

> Failure to be able to pay—in my neighborhood we call it "driving while poor"—it's an offense—it's **that** that we're trying to get at. And if we can get at it in a way, with the help of the police here, and the state patrol and the sheriffs, that does not actually impinge on public safety, that is exactly what we are trying to do. … [We're going to] make it safe for people who don't have a whole lot of money, to drive. They still have to pay their civil judgments… but people will be able to get to work to earn the money to pay the doggone fine.[6]

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[3] Sandra Gustitus, et al., *Access to Driving and License Suspension Policies for the Twenty-First Century Economy*, The Mobility Agenda, p. 9 (June 2008) available at http://www.mobilityagenda.org/home/file.axd?file=2008%2f9%2fDLPaperforinternet.pdf (last visited March 14, 2017).

[4] *Id.*, at 4-5; John B. Mitchell & Kelly Kunsch, *Of Driver's Licenses and Debtor's Prison*, 4 Seattle J. Soc. Just. 439, 459 (2005), available at http://digitalcommons.law.seattleu.edu/sjsj/vol4/iss1/44 (last visited March 14, 2017).

[5] Mitchell, at 459-60.

[6] Senator Adam Kline, in Senate Judiciary Committee, Jan. 25, 2012, at 00:25:10, available at http://www.tvw.org/watch/?customID=2012010169 (last visited July 22, 2016).

The bill reduced the scope of the Department's authority to withhold the driving privilege of a person who failed to respond, appear, or comply: It authorizes suspension only for moving violations. *See* Laws of 2012, ch. 82 (CP 14). The Legislature enacted the bill with an effective date of June 1, 2013. CP 9-15.

4.2 Johnson asked the Department to reinstate his license because the suspension was no longer authorized.

Stephen Johnson's driver's license was subject to two, separate suspensions. The first, initiated November 1, 2007, was for failure to pay a fine for the infraction of no valid license, a nonmoving violation. CP 29-30. The second, initiated November 12, 2009, was for failure to pay a fine for the crime of driving while license suspended in the third degree.[7] *Id.*

In light of Laws of 2012, ch. 82 (referred to hereafter as "the Act" or "the Amendments"), Johnson requested the Department of Licensing reinstate his license (and the licenses of others similarly situated), arguing that without statutory

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[7] The Court of Appeals' unpublished opinion unnecessarily sets forth a detailed history of the two suspensions; chronicles the proceedings in *State v. Johnson*, 179 Wn.2d 534, 315 P.3d 1090 (2014); and comments on Mr. Johnson's financial status. This extraneous commentary is immaterial to the outcome of this case. The simple facts set forth in the paragraph above are sufficient to address the question of whether the Department acted outside its authority when it continued to withhold Mr. Johnson's driving privilege after June 1, 2013.

authorization, his suspension would become invalid on the effective date of the Act. CP 17. The Department refused, stating that it would not release any suspensions that had been imposed prior to the effective date of the Act. CP 18.

4.3 Johnson petitioned for a writ of prohibition, styled as a class action.

After the effective date of the Act, Johnson petitioned for a writ of prohibition to order the Department to cease withholding the driving privilege after its statutory authority had ended. CP 3-5. Johnson sought relief for himself and all persons similarly situated. CP 5.

The Department moved to stay the case pending this Court's decision in *State v. Johnson*, 179 Wn.2d 534, 315 P.3d 1090 (2014). *See* RP, Sept. 13, 2013, at 3. The superior court stayed the case and did not address Johnson's motion to certify a class action. RP, Sept. 13, 2013, at 8-9.

4.4 The superior court granted the Department's motion for summary judgment dismissal.

After this Court issued its Opinion in *State v. Johnson*, the Department moved for summary judgment dismissal. CP 37. The Department conceded that the Act ended its authority to suspend for nonmoving violations (*E.g.,* CP 37, 40:3-4), but argued that the Act did not obligate the Department to release suspensions that were originally imposed prior to the effective

date of the Act (*E.g.,* CP 37). The Department framed its argument in terms of whether the Act was retroactive or only prospective. CP 45-47. The Department also argued, in the alternative, that Johnson was still properly suspended for failure to pay his criminal fine for DWLS 3rd. CP 47-48.

In response, Johnson argued that the Department was required to release prior, nonmoving violation suspensions on the effective date of the Act because the Department no longer had statutory authority. CP 105. Johnson also argued that the Amendments were remedial and therefore could properly apply retroactively to terminate prior suspensions. CP 102-04. Johnson argued that the Department's alternative grounds for dismissal failed because the statutory scheme did not authorize suspension of a driver's license for failure to pay a criminal traffic fine. CP 106-08. The parties agreed that there were no material facts in dispute and the issues could be resolved as a matter of law. RP, April 4, 2014, at 29:10-13.

The superior court determined that a writ of prohibition was available because Johnson had no other adequate remedy at law. CP 247:25-26; RP, June 27, 2014, at 32:20-33:7. However, the superior court denied the writ and dismissed the petition, holding that the suspensions were within the Department's authority. CP 248; RP, June 27, 2014, at 33:19-21, 35:19-24.

4.5 The Court of Appeals affirmed the superior court.

Johnson appealed, requesting this Court accept direct review. CP 251. This Court transferred the case to the Court of Appeals, where it was heard by Division I.

On appeal, Johnson argued that after the effective date of the Act, the Department no longer had the power to withhold the driving privilege for a nonmoving violation, no matter when the suspension may have been initiated. Br. of App. at 12-17; Reply Br. of App. at 11-15. Johnson also argued that the Department had no authority to suspend for failure to pay a criminal fine because the statutes only addressed citations for failure to appear, not failure to pay. Br. of App. at 26-30.

The Department argued that the Amendments did not require release of prior suspensions because they did not change the statutory procedures for releasing suspensions. Br. of Resp. at 14-17. The Department also argued that suspension for failure to pay a criminal fine was authorized under the "failed to comply" language of RCW 46.20.289. Br. of Resp. at 29-35.

The Court of Appeals issued an opinion on July 5, 2016, affirming the superior court decision. In this initial opinion, the Court of Appeals held that Johnson's 2007 suspension was valid because the Amendments were not retroactive and the fine had not been paid. App. 8-13. The Court of Appeals agreed with Johnson that the 2009 suspension was not authorized, but

allowed it to be retroactively cured by the Amendments' addition of "failed to comply" language in RCW 46.64.025. App. 13-15.

Johnson moved for reconsideration, noting that the court had not addressed his arguments on the Department's lack of statutory authority, resolving the issue instead on the basis of procedure. App. 18-19. Johnson emphasized that the Department cannot refuse to release a license in cases where it has no statutory authority to withhold the license at all. App. 19-20. Johnson also pointed out that the court's reasoning was inconsistent, giving the Amendments retroactive effect for the 2009 suspension, but not the 2007 suspension. App. 21-22.

The Court of Appeals denied Johnson's motion for reconsideration, but issued a new opinion on February 21, 2017, addressing some of the issues Johnson had raised. In the new opinion, the court recognized that the Act ended the Department's authority to suspend for a nonmoving violation, but upheld the 2007 suspension on the basis of procedure. App. 35-37. On the 2009 suspension, the court chose to ignore the defect in former RCW 46.64.025 and rely solely on "failed to comply" language in RCW 46.20.289. App. 37.

Johnson seeks review in this Court.

5. Argument

This Court should accept review under RAP 13.4(b)(4) because this case involves an issue of substantial public interest that should be determined by this Court. Any time a government agency acts outside of its authority is a matter of substantial public interest, but particularly where the Department's ultra vires acts unjustly restrain the liberty of as many as 300,000 Washington residents.

This petition, together with Johnson's briefs in the Court of Appeals, demonstrates, first, that as of the effective date of the Act, the Department no longer has statutory authority to continue to withhold the driving privilege for failure to pay for a nonmoving violation. Where the Department no longer has authority to withhold the privilege, its only valid choice is to release the suspension and, if appropriate, reinstate the license. Second, in 2009, the Department had no authority to suspend a driver's license for failure to pay a criminal traffic fine, making Johnson's second suspension invalid. Third, this case presents issues of substantial public interest where up to 300,000 Washington drivers have been unjustly suffering under the burden of these unauthorized suspensions when they should have been released almost four years ago.

5.1 The Department has no authority to continue to withhold the driving privilege for failure to pay a fine for a nonmoving violation.

A license to drive is an important and valuable property interest that belongs to the driver. *Bell v. Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971); *State v. Dolson*, 138 Wn.2d 773, 776-77, 982 P.2d 100 (1999). Suspension of a driver's license is a deprivation that must be authorized by statute and comport with due process. *Redmond v. Moore*, 151 Wn.2d 664, 670, 91 P.3d 875 (2004); *State v. Scheffel*, 82 Wn.2d 872, 880, 514 P.2d 1052 (1973). Suspension is a **temporary withholding** of the driving privilege. *See* RCW 46.04.580 ("'Suspend,' … means invalidation for any period less than one calendar year.").

Administrative agencies, such as the Department of Licensing, "are creatures of the Legislature," with no inherent authority. *Skagit Surveyors & Eng'rs, L.L.C. v. Friends of Skagit Cnty.*, 135 Wn.2d 542, 558, 958 P.2d 962 (1998); *Ass'n of Wash. Bus. v. Dep't of Revenue*, 155 Wn.2d 430, 445, 120 P.3d 46 (2005). Agencies have only those powers expressly granted by statute or necessarily implied from the statutory delegation of authority. *Tuerk v. Dep't of Licensing*, 123 Wn.2d 120, 124-25, 864 P.2d 1382 (1994). Agencies are not permitted to act outside of their legislatively delegated authority. *Alpine Lakes Prot. Soc'y v. Dep't of Ecology*, 135 Wn. App. 376, 394, 144 P.3d 385 (2006).

The Department's authority to withhold the driving privilege or license through suspension for failure to pay a traffic fine is set forth in RCW 46.20.291 (emphasis added):

> **The department is authorized** to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee … (5) Has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, **as provided in RCW 46.20.289;**

The Act amended RCW 46.20.289, limiting the Department's suspension authority (by way of Section 291's cross-reference) to only those cases involving *moving violations:*

> The department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(6), 46.63.110(6), or 46.64.025 that the person has failed to respond to a notice of traffic infraction **for a moving violation,** failed to appear at a requested hearing **for a moving violation,** violated a written promise to appear in court for a notice of infraction **for a moving violation,** or has failed to comply with the terms of a notice of traffic infraction or citation **for a moving violation…**

RCW 46.20.289 (emphasis added).

A suspension under RCW 46.20.289 is indefinite and coercive. It is not a part of the penalty for a crime or infraction. Rather, it is imposed to promote "the efficient administration of

traffic regulations," by coercing drivers to pay their fines. *See Redmond v. Moore*, 151 Wn.2d 664, 677, 91 P.3d 875 (2004). Just as with the coercive penalty of civil contempt, every day the driver has a new opportunity to comply. Thus, the driver holds the "key" to the "prison" of suspension. If the driver fails to pay, the suspension continues one more day.

However, as of the effective date of the Act, the Department's authority to withhold the driving privilege or license through suspension, set forth in RCW 46.20.291 and modified "as provided in RCW 46.20.289," now extends only to failure to respond, appear, comply, or pay **for a moving violation.** The Department no longer has the power to withhold the driving privilege or license for failure to respond, appear, comply, or pay **for a nonmoving violation.** In fact, the whole concept of a suspension for a nonmoving violation no longer exists in the statute. Having no authority to withhold, the Department's only valid choice was to release and reinstate.

Johnson's 2007 suspension arose from a nonmoving violation. On the effective date of the Act, the Department lost its statutory authority and should have released the suspension. The Department's continued withholding is outside of its authority and is proper grounds for a writ of prohibition.

The Court of Appeals' opinion resolves the issue not on the basis of authority, but on procedure, holding that because the

Act did not change the procedure for reinstatement, the suspension remains in effect. App. 35-37. This ignores the question of the Department's **authority.** The Department cannot refuse to reinstate a license on the basis of a procedural requirement when the Department no longer has statutory authority to withhold the license at all.

Additionally, the procedure relied on by the Court of Appeals no longer applies to nonmoving violation suspensions. By the plain language of the statute, the procedure applies to "a suspension under this section," which, under the Act, can only mean suspensions for **moving violations.** RCW 46.20.289. There is no longer anything in the statute to dictate authority or procedure for releasing nonmoving violation suspensions.

When the Act became effective, the Department immediately lost all power to withhold the driving privilege through suspension for failure to respond, appear, comply, or pay for a nonmoving violation. The only valid choice was to release and, where appropriate, reinstate. The Department's continued withholding is outside of its authority. This Court should accept review and reverse, granting the writ of prohibition.

5.2 The Department had no authority to withhold the driving privilege for failure to pay a criminal traffic fine.

Johnson's 2009 suspension was also without authority. Under RCW 46.20.289, the Department can only withhold the privilege after receiving an appropriate notice from a court under RCW 46.63.070(6) (failure to respond or appear for an infraction), RCW 46.63.110(6) (failure to pay for an infraction), or RCW 46.64.025 (failure to appear for a citation). At the time of Johnson's 2009 suspension, former RCW 46.64.025 (2006) read as follows:

> Whenever any person served with a traffic citation willfully fails to appear for a scheduled court hearing, the court in which the defendant failed to appear shall promptly give notice of such fact to the department of licensing. Whenever thereafter the case in which the defendant failed to appear is adjudicated, the court hearing the case shall promptly file with the department a certificate showing that the case has been adjudicated.

Under this statute, the court only has authority to notify the Department when a person **fails to appear** for a hearing. The court had no authority to send a notice for failure to pay a criminal fine; the Department had no authority to receive it. There was no valid notice under RCW 46.64.025 for the Department to act on under RCW 46.20.289. Johnson's 2009 suspension is invalid.

The original Court of Appeals opinion agreed. App. 14. However, in the revised opinion the court relied instead on the "failed to comply" language in RCW 46.20.289, standing alone. App. 37. However, this "failed to comply" language can only be triggered by a valid notice from a court, as noted above. Because the notice was invalid under RCW 46.64.025, the Department could not suspend for failure to pay a criminal fine.

"Failed to comply with the terms of a … citation" does not, by its plain language, include failure to pay a criminal fine. Unlike an infraction, which imposes a fine on its face, a criminal citation only requires a person to respond and appear in court, not pay a fine. CP 93-94; RCW 46.64.015. The fine is imposed only after a criminal conviction. The *Johnson* court's rationale for infractions, relying at least in part on the cross reference to RCW 46.63.110(6) (failure to pay an infraction), does not extend to failure to pay a criminal fine imposed after conviction. *See State v. Johnson*, 179 Wn.2d at 546-48. None of the cross references in Section 289 relate to criminal fines. Additional, significant differences between infractions and citations are detailed in Br. of App. at 28-30 and Reply Br. of App. at 17-19.

The Department did not have authority at the time of the 2009 suspension. It is invalid and must be released. Even if later amendments to the statutes may have given the Department authority after the fact, the invalid suspension itself cannot be

cured by retroactive application. The Department's continuation of this invalid suspension is without authority. This Court should accept review, reverse, and grant the writ of prohibition.

5.3 Up to 300,000 Washington drivers are suffering under these unauthorized suspensions, which ought to be released.

About 300,000 Washington drivers are suspended for failure to pay. Many of those suspensions arose from nonmoving violations. Many of those suspensions have been compounded by additional suspensions for failure to pay criminal fines for Driving While License Suspended in the third degree (DWLS 3). If all of the unauthorized suspensions were removed, many of the 300,000 currently suspended drivers would be entitled to current, valid driver's licenses.

As a result of the Court of Appeals' erroneous decision, hundreds of thousands of Washington drivers are suffering under the burden of suspension when they should be free to drive.[8] The Department's unauthorized suspensions are an issue of substantial public interest that should be determined by this Court.

Suspension of a driver's license is a serious deprivation of liberty in our modern society. "Losing one's driver's license is

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[8] The actual number of affected drivers cannot be known without analyzing the Department's records.

more serious for some individuals than a brief stay in jail." *Argersinger v. Hamlin*, 407 U.S. 25, 48, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972) (Powell, J., concurring). Suspension for failure to pay takes a terrible toll on these drivers.[9] Many lose their jobs.[10] "If you cannot drive, you cannot work. If you cannot work, you cannot make money. If you cannot make money, … you cannot pay fines for tickets."[11]

Indigent drivers are left with the dilemma of either 1) accepting the suspension, forgoing employment, and never being able to pay off their fines or get their license back; or 2) driving while suspended and facing the threat of criminal penalties in order to provide for themselves and their families and possibly one day to manage to pay their fines in full. Many indigent drivers choose the latter.[12]

It is only a matter of time, then, before the indigent driver is arrested for DWLS 3, convicted, jailed, and saddled with additional fines they will not be able to pay. Upon release from jail, the cycle continues. The indigent driver now has a criminal record, making it even more difficult to find work. Their license is still suspended, but they still need to earn an income, so they

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9 ACLU, at 65; Bannon, at 5, 13, 27; Beckett, at 3-5; Harris, at 1777.

10 Gustitus, at 9.

11 Mitchell, at 459-60.

12 Gustitus, at 9; Jenkins.

continue to drive, leading to repeat DWLS 3 offenses. Repeat offenses generally bring increased penalties. Interest accrues on top of the fines. The cycle of debt, suspension, and incarceration continues with little to no hope of escape.

This cycle is exactly what the Act was designed to remedy. The bill's primary sponsor, Senator Adam Kline, explained the purpose of the bill:

> Failure to be able to pay—in my neighborhood we call it "driving while poor"—it's an offense—it's **that** that we're trying to get at. And if we can get at it in a way, with the help of the police here, and the state patrol and the sheriffs, that does not actually impinge on public safety, that is exactly what we are trying to do. … [We're going to] make it safe for people who don't have a whole lot of money, to drive. They still have to pay their civil judgments… but people will be able to get to work to earn the money to pay the doggone fine.[13]

He later identified another aspect of the problem the legislature sought to solve: "We have a large population suspended, and thereby uninsured—a problem here—because they did not appear or pay."[14] Certainly this purpose—to allow people who don't have a whole lot of money to get to work to earn the money

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[13] Senator Adam Kline, in Senate Judiciary Committee, Jan. 25, 2012, at 00:25:10, available at http://www.tvw.org/watch/?customID=2012010169 (last visited March 14, 2017).

[14] Senate Judiciary Committee, Feb. 1, 2012, at 01:14:45, available at http://www.tvw.org/watch/?customID=2012021017 (last visited March 14, 2017).

to pay their fines, and to be insured as they do so—could only be accomplished if prior nonmoving violation suspensions were released. Ending prior suspensions on the effective date of the Act would have significantly reduced the large population of suspended drivers, furthering the primary purpose of the bill.

As the Senator recognized, suspensions for failure to pay work a terrible injustice. A driver who is too poor to pay the traffic fine without sacrificing their basic needs is automatically suspended. The suspension does not end until they pay the fine. Having lost their license, they cannot drive to work to earn the money to pay the fine. The result is that poor drivers can never regain their licenses. In order to earn a living, many continue to drive, illegally and uninsured. DWLS 3 clogs the district and municipal court dockets and drives up the costs of the justice system. These are the evils the legislature was attempting to remedy by passing the Act. The Act only accomplishes its purpose if it ends all nonmoving violation suspensions, both new and old. The Legislature intended this result by ending the Department's authority to withhold the driving privilege for failure to pay for nonmoving violations.

The Department's refusal to recognize the new limits on its authority is causing significant harm to hundreds of thousands of Washington drivers every day. The Department's suspension of drivers for failure to pay criminal fines is causing

additional harm. This is an issue of substantial public interest that should be determined by this Court.

6. Conclusion

The Department's refusal to release nonmoving violation suspensions, despite its lack of any statutory authority to continue to withhold the privilege, is an issue of substantial public interest that should be determined by this Court. This Court should accept review of the Court of Appeals decision under RAP 13.4(b)(4) and should reverse and remand to the trial court for further proceedings, including issuance of an appropriate writ of prohibition, a decision on Johnson's motion to certify a class action, and a jury trial on damages pursuant to RCW 7.16.260.

Respectfully submitted this 22th day of March, 2017.

/s/ Kevin Hochhalter
Kevin Hochhalter, WSBA #43124
Attorney for Appellant
kevinhochhalter@cushmanlaw.com
924 Capitol Way S.
Olympia, WA 98501

7. Appendix

CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on March 22, 2016, I caused the 7original of the foregoing document to be filed and served by the method indicated below, and addressed to each of the following:

Supreme Court Temple of Justice P. O. Box 40929 Olympia, WA 98504 supreme@courts.wa.gov	____ U.S. Mail, Postage Prepaid ____ Legal Messenger _____ Overnight Mail _____ Facsimile XX Electronic Mail
Dionne Padilla-Huddleston Assistant Attorney General OID #91020 800 Fifth Avenue, Suite 200 Seattle, WA 98104 lalseaff@atg.wa.gov	____ U.S. Mail, Postage Prepaid ____ Legal Messenger ____ Overnight Mail ____ Facsimile XX Electronic Mail

DATED this 22nd day of March, 2017.

/s/ Rhonda Davidson
Rhonda Davidson, Legal Assistant
rdavidson@cushmanlaw.com
924 Capitol Way S.
Olympia, WA 98501
360-534-9183

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STEPHEN CHRISS JOHNSON, Appellant, v. WASHINGTON STATE DEPARTMENT OF LICENSING and PAT KOHLER, in her official capacity, Respondents.	)	No. 74131-4-I DIVISION ONE UNPUBLISHED OPINION FILED: July 5, 2016

SCHINDLER, J. — This is the second appeal in this case. In 2007, the district court found Stephen Chriss Johnson committed the traffic infraction of driving without a valid license and imposed a fine. Johnson did not pay the fine. After notification from the court of the failure to comply with the terms of the infraction, the Washington State Department of Licensing (DOL) suspended his driver's license. In 2009, the district court convicted Johnson of driving while license suspended in the third degree (DWLS 3rd) and imposed a fine and court costs. Johnson did not pay the fine or court costs. After notification from the court, DOL suspended his driver's license. In 2013, Johnson filed a petition for a writ of prohibition. Johnson argued the 2012 legislative amendments to the motor vehicle code, Title 46 RCW, eliminated the authority of DOL to continue to suspend a driver's license for failure to pay a traffic infraction fine.

Johnson also asserted DOL did not have the authority to suspend his driver's license in 2009 for failure to pay the DWLS 3rd fine and court costs. We affirm summary judgment dismissal of the petition for a writ of prohibition.

FACTS[1]

2007 Traffic Infraction

Stephen Chriss Johnson's driver's license expired in 2001. In April 2007, police cited Johnson for driving without a valid driver's license and issued a notice of infraction. Johnson contested the traffic infraction. The district court found Johnson committed the infraction and imposed a $260 fine. Johnson did not pay the fine. The district court notified the Washington State Department of Licensing (DOL) of the failure to pay the fine. On September 17, DOL notified Johnson that his driver's license would be suspended for failure to pay the fine unless he provided proof of compliance with "the court's requirements." The letter states, in pertinent part:

> **On 11-01-2007 at 12:01 a.m. your driving privilege will be suspended. The Court has notified us that you failed to . . . pay . . . or comply with the terms of the citation listed below:**
>
> | **Citation Number** | **Violation Date** | **Reason for Citation** |
> |---|---|---|
> | I00038445 | 04-14-2007 | NO VALID LICENSE/I |
>
> **What do I have to do to avoid suspension of my driving privilege?**
> 1. **Contact this court to find out how to take care of this citation:**
> . . . .
> 2. **Provide proof that you have satisfied the court's requirements.** Once the requirements are met, the court will send us notice.
> . . . .
>
> **What will happen if my driving privilege is suspended?**
> Make sure that we have received notice that this matter is settled before the date shown above. If we have not, it will be illegal for you to drive and

[1] The facts are set forth in State v. Johnson, 179 Wn.2d 534, 315 P.3d 1090 (2014).

> you must surrender your license to any driver licensing office. You must pay a reissue fee and any other applicable licensing fees before a new license can be issued.

Johnson did not respond. On November 1, 2007, DOL suspended Johnson's driver's license for "[f]ailure to make required payment of fine and costs."

2009 DWLS 3rd Conviction

In September 2008, the police stopped Johnson and arrested him for DWLS 3rd in violation of former RCW 46.20.342(1)(c)(iv) (2004).[2] Former RCW 46.20.342(1)(c)(iv) states, in pertinent part:

> It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status . . . . A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because . . . the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in [former] RCW 46.20.289 [(LAWS OF 2005, ch. 288, § 5)], . . . is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

To convict Johnson of DWLS 3rd, the State had the burden of proving (1) that the defendant drove with a suspended license and (2) that the license suspension occurred because the defendant failed to comply with the terms of a notice of infraction. Former RCW 46.20.342(1)(c)(iv).

Johnson pleaded not guilty.

On September 18, 2009, the district court found Johnson guilty of DWLS 3rd, a misdemeanor.[3] The court ordered Johnson to pay a $300.00 fine and $505.50 in court costs. Johnson did not pay the fine or court costs. The district court notified DOL of the

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[2] LAWS OF 2004, ch. 95, § 5.

[3] RCW 46.20.342(1)(c).

failure to pay the fine and court costs. DOL notified Johnson that his "driving privilege will be suspended" on November 12, 2009 unless he provided proof that he "satisfied the court's requirements." The letter states, in pertinent part:

> **On 11-12-2009 at 12:01 a.m. your driving privilege will be suspended. The Court has notified us that you failed to . . . pay . . . or comply with the terms of the citation listed below:**
>
> | Citation Number | Violation Date | Reason for Citation |
> |---|---|---|
> | C00085203 | 09-19-2008 | DWLS/R 3RD DG. |

Johnson did not respond. On November 12, DOL suspended his driver's license for "[f]ailure to make required payment of fine and costs."

Johnson appealed the DWLS 3rd conviction to superior court. Johnson argued the failure to pay the traffic infraction fine did not support the DWLS 3rd conviction under former RCW 46.20.342(1)(c)(iv).[4] The superior court affirmed the DWLS 3rd conviction. On January 6, 2012, the Supreme Court granted discretionary review.

2012 Amendments

In March 2012, the legislature adopted a number of amendments to the motor vehicle code, Title 46 RCW. LAWS OF 2012, ch. 82. The legislature amended RCW 46.20.289 to remove the authority of DOL to suspend a driver's license for failure to comply with the terms of a notice of traffic infraction or citation for a nonmoving violation.[5] LAWS OF 2012, ch. 82, § 3. The 2012 amendments took effect on June 1, 2013. LAWS OF 2012, ch. 82, § 6.

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[4] Johnson also argued the DWLS 3rd conviction was invalid on constitutional grounds.

[5] The amendment also directed DOL to define a "moving violation." LAWS OF 2012, ch. 82, § 4 (codified as RCW 46.20.2891). WAC 308-104-160(10) lists "[d]riving while driving privilege suspended" as defined by RCW 46.20.342 as a moving violation. But WAC 308-104-160 does not list the traffic infraction of driving without a valid driver's license as a moving violation. See WAC 308-104-160.

Writ of Prohibition

On June 25, 2013, Johnson filed a petition for a writ of prohibition. Johnson asserted that under the 2012 amendments, DOL no longer had the authority to continue to suspend a driver's license for failure to pay a traffic infraction fine. Johnson requested the court issue an order to DOL to "terminate all current driver's license suspensions for failure to pay traffic fines and reinstate those licenses without any reinstatement fee." The court stayed the request for a writ of prohibition pending the Supreme Court decision in the appeal.

On January 9, 2014, the Supreme Court issued the opinion in State v. Johnson, 179 Wn.2d 534, 315 P.3d 1090 (2014). The court rejected the argument that the State did not prove Johnson was guilty of DWLS 3rd in violation of former RCW 46.20.342(1)(c)(iv). Johnson, 179 Wn.2d at 558. The court held the express reference to former RCW 46.20.289 (2005) means the State can charge DWLS 3rd where the underlying suspension occurs for failure to pay a court-ordered fine. Johnson, 179 Wn.2d at 548. "The plain meaning of [former RCW 46.20.342(1)(c)(iv)] contemplates a DWLS 3rd charge where the underlying suspension occurs for failure to pay a traffic fine." Johnson, 179 Wn.2d at 558. The court concluded that under former RCW 46.20.289 (2005), after DOL received notice from the court that the individual did not pay the court-ordered monetary penalty, DOL must suspend a driver's license. Johnson, 179 Wn.2d at 545. The court affirmed the DWLS 3rd conviction. Johnson,

179 Wn.2d at 551.[6]

Summary Judgment Dismissal of Writ

DOL filed a motion for summary judgment dismissal of the petition for a writ of prohibition. DOL argued the 2012 amendments were not retroactive and DOL did not act in excess of statutory authority. DOL also pointed out that Johnson's driver's license was suspended in 2009 for failing to pay the DWLS 3rd court-ordered fine and costs.

Johnson filed a cross-motion for summary judgment. Johnson argued the 2012 amendments were retroactive and invalidated all prior license suspensions for failure to pay fines for a traffic infraction. Johnson also argued DOL did not have the authority to suspend his driver's license in 2009 for the failure to pay the DWLS 3rd court-ordered fine and costs.

The court entered an order granting DOL's motion for summary judgment and dismissing the petition for a writ of prohibition.

> The Court determines that . . . 1) a Writ of Prohibition was an appropriate procedure for Petitioner to seek relief because he lacked an otherwise adequate remedy; 2) the Petitioner's suspension for non-payment of a fine resulting for the infraction of driving without a valid license (Lewis County District Court Case #I00038445) was a proper exercise of the Department's authority when initially imposed and the suspension continues to be a proper exercise of authority because Laws of 2012, ch. 82 is not retroactive; and 3) the Petitioner's suspension for non-payment of a fine resulting from a conviction for DWLS in the third degree (Lewis County District Court Case #C00085203) is a proper exercise of the Department's authority.

Johnson appeals.

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[6] The court also held Johnson was not constitutionally indigent. Johnson, 179 Wn.2d at 555. Because Johnson owned his $300,000 home free of any liens, the "equity in his home would have allowed Johnson to 'borrow money or . . . otherwise legally acquire resources' necessary to pay the $260 fine." Johnson, 179 Wn.2d at 555 (alteration in original) (quoting State v. Bower, 64 Wn. App. 227, 231-32, 823 P.2d 1171 (1992)).

ANALYSIS

Johnson contends the court erred in granting summary judgment dismissal of his petition for a writ of prohibition.

Standard of Review

We review summary judgment de novo. Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015); Retired Pub. Emps. Council of Wash. v. Charles, 148 Wn.2d 602, 612, 62 P.3d 470 (2003). Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. CR 56(c); Keck, 184 Wn.2d at 370.

The authority of an administrative agency is " 'limited to that which is expressly granted by statute or necessarily implied therein.' " Conway v. Dep't of Soc. & Health Servs., 131 Wn. App. 406, 419, 120 P.3d 130 (2005) (quoting McGuire v. State, 58 Wn. App. 195, 198, 791 P.2d 929 (1990)); Wash. Indep. Tel. Ass'n v. Wash. Utilities & Transp. Comm'n, 148 Wn.2d 887, 901, 64 P.3d 606 (2003). The court has the authority to issue a writ of prohibition to "arrest[ ] the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person." RCW 7.16.290.

A writ of prohibition is a "drastic measure." Skagit County Pub. Hosp. Dist. No. 304 v. Skagit County Pub. Hosp. Dist. No. 1, 177 Wn.2d 718, 722, 305 P.3d 1079 (2013). A court can issue a writ of prohibition "only when two conditions are met: '(1) [a]bsence or excess of jurisdiction, and (2) absence of a plain, speedy, and adequate remedy in the course of legal procedure.' " Skagit County Pub. Hosp., 177 Wn.2d at

722-23[7] (quoting Kreidler v. Eikenberry, 111 Wn.2d 828, 838, 766 P.2d 438 (1989)). The absence of either of these two conditions " 'precludes the issuance of the writ.' " Skagit County Pub. Hosp., 177 Wn.2d at 722-23 (quoting Kreidler, 111 Wn.2d at 838).

2007 Driver's License Suspension

Johnson does not dispute DOL had the authority to suspend his driver's license in 2007 for failure to pay the fine imposed for driving without a valid license. Johnson asserts that under the 2012 amendments, DOL no longer has the statutory authority to continue to suspend his driver's license. Johnson claims the 2012 amendments apply retroactively and eliminate the authority of DOL to continue to suspend a driver's license for failure to pay a fine imposed for a nonmoving traffic infraction. DOL argues the 2012 amendments are not retroactive and the amendments did not change the requirement to release a driver's license that was suspended before the effective date of the 2012 amendments. We agree with DOL.

A statutory amendment applies only prospectively unless the legislature indicates the amendment is to operate retroactively. Landgraf v. USI Film Prods., 511 U.S. 244, 264-66, 114 S. Ct. 1522, 128 L. Ed. 2d 229 (1994); State v. T.K., 139 Wn.2d 320, 329, 987 P.2d 63 (1999); State v. McClendon, 131 Wn.2d 853, 861, 935 P.2d 1334 (1997); In re Estate of Burns, 131 Wn.2d 104, 110, 928 P.2d 1094 (1997); Adcox v. Children's Orthopedic Hosp. & Med. Ctr., 123 Wn.2d 15, 30, 864 P.2d 921 (1993); In re Dissolution of Cascade Fixture Co., 8 Wn.2d 263, 272, 111 P.2d 991 (1941). We may "turn to the statute's purpose and language, legislative history, and legislative bill reports to analyze

[7] Alteration in original.

retroactivity." Barstad v. Stewart Title Guar. Co., 145 Wn.2d 528, 537, 39 P.3d 984 (2002).[8]

An exception to the prospective application of a statute exists "if the statute is remedial and applies to practice, procedure, or remedies and does not affect a substantive or vested right." State v. Blank, 131 Wn.2d 230, 248, 930 P.2d 1213 (1997). "Remedial statutes generally 'afford a remedy, or better or forward remedies already existing for the enforcement of rights and the redress of injuries.' " Bayless v. Cmty. Coll. Dist. No. XIX, 84 Wn. App. 309, 312, 927 P.2d 254 (1996) (quoting Haddenham v. State, 87 Wn.2d 145, 148, 550 P.2d 9 (1976)). " 'A statute operates prospectively when the precipitating event for [its] application . . . occurs after the effective date of the statute.' " Blank, 131 Wn.2d at 248[9] (quoting Aetna Life Ins. Co. v. Wash. Life & Disability Ins. Guar. Ass'n, 83 Wn.2d 523, 535, 520 P.2d 162 (1974)).

It is well established that a statute does not operate retroactively " 'merely because it relates to prior facts or transactions where it does not change their legal effect. It is not retroactive because some of the requisites for its actions are drawn from a time antecedent to its passage.' " Blank, 131 Wn.2d at 248 (quoting State v. Scheffel, 82 Wn.2d 872, 879, 514 P.2d 1052 (1973)).

We review questions of statutory interpretation de novo. W. Plaza, LLC v. Tison, 184 Wn.2d 702, 707, 364 P.3d 76 (2015). The fundamental objective is to ascertain and carry out the legislature's intent. Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Statutory interpretation begins with the plain language of

[8] Footnotes omitted.

[9] Alterations in original.

the statute. Rest. Dev., Inc. v. Cananwill, Inc., 150 Wn.2d 674, 682, 80 P.3d 598 (2003). In determining the plain meaning of a statute, we look to "all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." Campbell & Gwinn, 146 Wn.2d at 11.

Former RCW 46.20.291(5) (2007)[10] gives DOL the authority to suspend a driver's license. Former RCW 46.20.291(5) states, in pertinent part:

> **Authority to suspend—Grounds.** The department is authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee . . . [h]as failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289.

Former RCW 46.63.110(6)(b) (2007)[11] directed the court to notify DOL when a person who committed a traffic infraction failed to pay a court-ordered "monetary penalty, fee, cost, [or] assessment." Former RCW 46.63.110 provided, in pertinent part:

> (1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. . . .
>
> . . . .
>
> (6) Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation is imposed by a court under this chapter it is immediately payable. . . .
>
> . . . .
>
> (b) If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court shall notify the department of the delinquency. The department shall suspend the person's driver's license or driving privilege until all monetary obligations have been paid, including those imposed under subsections (3) and (4) of this section, or until the person has entered into a payment plan under this section.[12]

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[10] Laws of 2007, ch. 393, § 2.

[11] LAWS OF 2007, ch. 356, § 8.

[12] Emphasis added.

Former RCW 46.20.289 (2005)[13] sets forth the two-step process that DOL must follow to suspend and then reinstate an individual's driver's license. First, under former RCW 46.20.289 (2005), the court must notify DOL of the failure to "comply with the terms of a notice of traffic infraction or citation." After DOL receives notice from a court, DOL "shall suspend all driving privileges." Former RCW 46.20.289 (2005). The plain and unambiguous language of the statute then states that the suspension shall remain in effect until DOL "has received a certificate from the court showing that the case has been adjudicated." Former RCW 46.20.289 (2005). Former RCW 46.20.289 (2005) provided, in pertinent part:

> **Suspension for failure to respond, appear, etc.** The department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(6), 46.63.110(6), or 46.64.025 that the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation . . . . A suspension under this section takes effect pursuant to the provisions of RCW 46.20.245, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated, and until the person meets the requirements of RCW 46.20.311.[14]

In 2012, the legislature amended RCW 46.20.289 to remove the authority of DOL to suspend a driver's license for the failure to pay an infraction or citation for a nonmoving violation. LAWS OF 2012, ch. 82, § 3.[15] The amendment to RCW 46.20.289 limited the suspension of driving privileges for failing to comply with the terms of a notice of traffic infraction or citation to only a moving violation. LAWS OF 2012, ch. 82, § 3. But of significance, the legislature did not change the requirements DOL must follow

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[13] LAWS OF 2005, ch. 288, § 5.

[14] Emphasis added.

[15] The legislature recently amended RCW 46.20.289 but the amendment does not affect our analysis. ENGROSSED SUBSTITUTE H.B. 2700, 64th Leg. Reg. Sess. (Wash. 2016).

to reinstate a driver's license that had been suspended before the effective date of the 2012 amendments. Specifically, the legislature did not change the language that states the suspension shall remain in effect until DOL has received a certificate from the court. Former RCW 46.20.289 (2012) states, in pertinent part:

> **Suspension for failure to respond, appear, etc.** The department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(6), 46.63.110(6), or 46.64.025 that the person has failed to respond to a notice of traffic infraction for a moving violation, failed to appear at a requested hearing for a moving violation, violated a written promise to appear in court for a notice of infraction for a moving violation, or has failed to comply with the terms of a notice of traffic infraction or citation for a moving violation . . . . A suspension under this section takes effect pursuant to the provisions of RCW 46.20.245, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated, and until the person meets the requirements of RCW 46.20.311.[16]

Consistent with the amendment to RCW 46.20.289, the legislature also amended RCW 46.63.110(6)(b) to require the court to notify DOL of the failure to pay a traffic infraction fine for only a moving violation. LAWS OF 2012, ch. 82, § 1. As amended, RCW 46.63.110(6)(b) states, in pertinent part:

> If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court may refer the unpaid monetary penalty, fee, cost, assessment, or other monetary obligation to a collections agency until all monetary obligations have been paid, including those imposed under subsections (3) and (4) of this section, or until the person has entered into a payment plan under this section. For those infractions subject to suspension under RCW 46.20.289, the court shall notify the department of the person's delinquency, and the department shall suspend the person's driver's license or driving privileges. [17]

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[16] Emphasis added.

[17] Emphasis added.

We hold the 2012 amendments are not retroactive in this case. The precipitating and triggering event took place in 2007 when, after notification from the district court, DOL suspended Johnson's driver's license for failure to pay the fine. The 2012 amendments did not direct DOL to reinstate drivers' licenses previously suspended for failure to pay fines for nonmoving traffic infractions. The plain and unambiguous language of RCW 46.20.289 states suspension of a driver's license shall "remain[ ] in effect until the department has received a certificate from the court showing that the case has been adjudicated, and until the person meets the requirements of RCW 46.20.311."

There is also no indication that the legislature intended the 2012 amendments to apply retroactively. Nothing in the language of the 2012 amendments indicates an intent to apply the amendments retroactively, and Johnson does not point to any legislative history to show such intent.

Because the record establishes Johnson has not paid the fine and DOL has not received a certificate from the district court showing Johnson's case is adjudicated, under the plain language of the statute, the 2007 suspension remains in effect.

2009 Driver's License Suspension

Johnson also asserts the court erred in dismissing the writ of prohibition because DOL had no authority to suspend his driver's license for failure to pay the DWLS 3rd court-ordered fine. Johnson claims the nonpayment of a traffic fine for DWLS 3rd is not a "fail[ure] to comply with the terms of a notice of traffic infraction or citation."[18] In Johnson, the Supreme Court held that under former RCW 46.20.289 (2005), the phrase

[18] Former RCW 46.20.289 (2005).

"failed to comply with the terms of a notice of traffic infraction or citation" includes the failure to pay a fine imposed by a court. Johnson, 179 Wn.2d at 546, 548, 551.

However, as Johnson correctly notes, the cross-reference in former RCW 46.20.289 to the statute directing the court to notify DOL of an individual's failure to pay a fine imposed as part of a criminal citation, former RCW 46.64.025 (2006),[19] did not include the "failed to comply" language. Former RCW 46.64.025 (2006) directed the court to notify DOL only if an individual failed to appear for a scheduled court hearing for a traffic citation.

Former RCW 46.64.025 (2006) stated:

> **Failure to appear—Notice to department.** Whenever any person served with a traffic citation willfully fails to appear for a scheduled court hearing, the court in which the defendant failed to appear shall promptly give notice of such fact to the department of licensing. Whenever thereafter the case in which the defendant failed to appear is adjudicated, the court hearing the case shall promptly file with the department a certificate showing that the case has been adjudicated.

However, in 2012, the legislature amended RCW 46.64.025 to make clear the court must notify DOL of the failure to comply with the terms of a notice of traffic citation for a moving violation, such as DWLS 3rd. LAWS OF 2012, ch. 82, § 5.[20] As amended, former RCW 46.64.025 (2012) states, in pertinent part:

> Whenever any person served with a traffic citation willfully fails to appear at a requested hearing for a moving violation or fails to comply with the terms of a notice of traffic citation for a moving violation, the court in which the defendant failed to appear shall promptly give notice of such fact to the department of licensing.

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[19] LAWS OF 2006, ch. 270, § 4.

[20] The legislature recently amended RCW 46.64.025 to include a person who is served with "a traffic-related criminal complaint." ENGROSSED SUBSTITUTE H.B. 2700, 64th Leg. Reg. Sess. (Wash. 2016). This amendment does not affect our analysis.

Therefore, even if DOL erred in suspending Johnson's driver's license in 2009, after the 2012 amendments, DOL had the mandatory obligation to suspend Johnson's driver's license for failure to pay the court-ordered DWLS 3rd fine and costs.

We affirm summary judgment dismissal of the petition for a writ of prohibition.

Schindler, J.

WE CONCUR:

Cox, J.

Becker, J.

No. 74131-4-I

Court of Appeals, Div. I,
of the State of Washington

Stephen Chriss Johnson,

Appellant,

v.

State of Washington Department of Licensing and **Pat Kohler,** in her official capacity,

Respondents.

Motion for Reconsideration

Kevin Hochhalter
Attorney for Appellant

Cushman Law Offices, P.S.
924 Capitol Way South
Olympia, WA 98501
360-534-9183
WSBA # 43124

1. Identity of Moving Party

Stephen Johnson, Appellant, seeks the relief set forth in Part 2.

2. Relief Requested

Reconsideration of the Unpublished Opinion filed July 5, 2016.

3. Facts Relevant to Motion

The facts relevant to this motion are set forth in the briefing and in this Court's July 5 Unpublished Opinion. Johnson offers the following clarification: this was not the second appeal in this case. While this case—Johnson's petition for a writ of prohibition—relates to many of the same statutes as *State v. Johnson*, 179 Wn.2d 534, 315 P.3d 1090 (2014), it is by no means the same case.

State v. Johnson arose from Johnson's defense against criminal charges of driving while license suspended in 2008. **This case** arose from amendments to the license suspension statutes that took effect in June 2013, removing the Department's authority to suspend a driver's license for failure to comply with the terms of a notice of infraction or citation for a nonmoving violation. *State v. Johnson* was about guilt or innocence; **this case** is about the authority of a state agency. The first sentence of the opinion mistakenly conflates the two cases.

4. Grounds for Relief and Argument

Johnson believes the Court overlooked or misapprehended the facts or law or portions of his arguments on appeal. First, the unpublished opinion does not address Johnson's arguments about authority. Second, the opinion inconsistently gives the amendments retroactive effect to cure a defective suspension after having held that the amendments are not retroactive.

4.1 The unpublished opinion does not address Johnson's arguments about authority.

In his Brief of Appellant, Johnson framed the issues on appeal in terms of authority (whether the Department is "without jurisdiction"). Br. of App. at 4. Johnson argued that by amending the scope of suspensions under RCW 46.20.289, the 2012 Act also amended the Department's authority under RCW 46.20.291. Br. of App. at 13-14. Johnson argued that because the Department no longer had authority to suspend (or withhold) the driving privilege on the basis of failure to comply for a nonmoving violation, all such suspensions necessarily became invalid on the effective date of the Act—that is, the Department could not continue a prior nonmoving violation suspension past the effective date of the Act, when the Act had removed all statutory authority for that type of suspension. *See* Br. of App. at 15-17.

Johnson did not argue that the Act should have retroactive effect. Johnson did not ask the court to invalidate suspensions going back to their inception. Rather, Johnson argued that prior nonmoving violation suspensions should end on the effective date of the Act—a purely prospective effect based on the Department's authority ending as of that date. *See* Br. of App. at 14-19; oral argument at 3:15-3:48. A coercive suspension for failure to pay or comply is not a single, completed, past act; it is a continuing act. Ending that continuing act on the effective date of the amendments is a prospective effect and is the correct effect of the termination of the Department's authority. Johnson argued retroactivity only in the alternative—that even if the Court took the position that this was a retroactive effect, it was still the proper result because the amendments were remedial. *See* Br. of App. at 19-24; oral argument, Jan. 6, 2016, at 1:10-1:51 and at 4:01-4:28.

The unpublished opinion resolves the issue not on the basis of authority, but on procedure, holding that because the Act did not change the procedure for reinstatement, the suspension remains in effect. *Johnson v. Dep't of Licensing*, No. 74131-4-I, slip op. at 12-13 (July 5, 2016). This reasoning does not address the question of authority. How can the Department refuse to reinstate a license on the basis of a

procedural statute, when the Department no longer has statutory authority for the suspension?

The procedural statute does not even apply to nonmoving violation suspensions anymore. The amended statute tells the Department to suspend all driving privileges when the Department receives notice from a court that the person has failed to comply "for a moving violation." RCW 46.20.289. "A suspension **under this section**"—that is, a suspension for a moving violation—"remains in effect until the department has received a certificate from the court." *Id.* (emphasis added). By its own terms, this procedural section applies only to moving violations, not to prior nonmoving violation suspensions.

Thus, the legislature actually **did** change the language stating that a suspension shall remain in effect—by limiting that language to moving violations. Section 289 cannot preserve authority for nonmoving violation suspensions after the effective date of the Act because Section 289 no longer applies to nonmoving violations at all. *See also* Reply Br. of App. at 13-14. In fact, there is no longer any statute providing either authority or procedural direction for nonmoving violation suspensions.

The unpublished opinion does not identify where the court finds statutory authority for the Department to maintain prior nonmoving violation suspensions. Johnson continues to believe there is no authority. As the opinion notes, the former authority

has been removed. Slip op. at 11. It no longer exists. Without authority, the suspensions became invalid on the effective date of the Act. Johnson asks this Court to reconsider its decision.

4.2 The unpublished opinion inconsistently gives the amendments retroactive effect.

The unpublished opinion holds, in the context of Johnson's 2007 suspension for a nonmoving violation infraction, that the 2012 amendments do not apply retroactively. Slip op. at 8, 13. But then, in the context of Johnson's 2009 suspension for failure to pay a criminal fine, the opinion applies the 2012 amendments to RCW 46.64.025 to retroactively cure the defect in Johnson's 2009 suspension. Slip op. at 14-15.

The court acknowledges that Johnson was correct in arguing that the Department did not have authority in 2009 to suspend his license for failure to pay his criminal fine for DWLS 3rd. *Id.* However, the court allows the suspension to remain, without any consequence or remedy for the invalidity of the original act or the four years between the original suspension and the effective date of the 2012 amendments (2009-2013). Applying language that became effective in 2013 to justify a suspension that took place in 2009 is giving the amendments a retroactive effect, even though the opinion states, just two pages earlier, that there is "no indication that the legislature intended the 2012 amendments to apply retroactively."

The opinion also overlooks or misapprehends the significance of the distinctions between civil traffic infractions and criminal citations. *See* Br. of App. at 27-30. Johnson requests the Court reconsider its decision.

5. Conclusion

The opinion overlooks Johnson's arguments regarding authority. It misapprehends the nature of a coercive suspension as a continuing act. It resolves the issue on procedure without addressing the effect of the change in the Department's authority.

The opinion is inconsistent with itself. It changes its reasoning to fit the situation and justifies the actions of the State at the expense of the people. It has the effect of supporting the oppression of poor drivers that the 2012 amendments were designed to alleviate. The 2012 amendments were specifically designed to get people's licenses back so they could earn the money to pay their fines:

> Failure to be able to pay—in my neighborhood we call it "driving while poor"—it's an offense—it's **that** that we're trying to get at. And if we can get at it in a way, with the help of the police here, and the state patrol and the sheriffs, that does not actually impinge on public safety, that is exactly what we are trying to do. ... [We're going to] make it safe for people who don't have a whole lot of money, to drive. They still have to pay their civil judgments...

> but people will be able to get to work to earn the money to pay the doggone fine.[1]

Johnson requests the Court reconsider its opinion and reverse the trial court decision.

If the Court declines to change the outcome, Johnson asks in the alternative that the Court clarify the opinion to identify the source of the Department's authority to maintain prior nonmoving violation suspensions after the 2012 amendments became effective.

Respectfully submitted this 22th day of July, 2016.

/s/ Kevin Hochhalter
Kevin Hochhalter, WSBA #43124
Attorney for Appellant
kevinhochhalter@cushmanlaw.com
924 Capitol Way S.
Olympia, WA 98501

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[1] Senator Adam Kline, in Senate Judiciary Committee, Jan. 25, 2012, at 00:25:10, available at http://www.tvw.org/watch/?customID=2012010169 (last visited July 22, 2016).

CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on July 22, 2016, I caused the original of the foregoing document to be filed and served by the method indicated below, and addressed to each of the following:

Court of Appeals, Division I 600 University Street Seattle, WA 98101	____ U.S. Mail, Postage Prepaid ____ Legal Messenger ____ Overnight Mail ____ Facsimile XX Electronic Mail
Dionne Padilla-Huddleston Assistant Attorney General OID #91020 800 Fifth Avenue, Suite 200 Seattle, WA 98104 lalseaff@atg.wa.gov	____ U.S. Mail, Postage Prepaid ____ Legal Messenger ____ Overnight Mail ____ Facsimile XX Electronic Mail

DATED this 22nd day of July, 2016.

/s/ Rhonda Davidson
Rhonda Davidson, Legal Assistant
rdavidson@cushmanlaw.com
924 Capitol Way S.
Olympia, WA 98501
360-534-9183

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STEPHEN CHRISS JOHNSON, Appellant, v. WASHINGTON STATE DEPARTMENT OF LICENSING and PAT KOHLER, in her official capacity, Respondents.	)	No. 74131-4-I ORDER DENYING MOTION FOR RECONSIDERATION AND WITHDRAWING AND SUBSTITUTING OPINION

The appellant Stephen Chriss Johnson filed a motion to reconsider the opinion filed on July 5, 2016. Respondents Washington State Department of Licensing and Pat Kohler filed an opposition to the motion. The panel has determined that the motion should be denied but the opinion filed on July 5, 2016 shall be withdrawn and a substitute opinion filed. Now, therefore, it is hereby

ORDERED that appellant's motion for reconsideration is denied and the opinion filed on July 5, 2016 shall be withdrawn and a substitute opinion shall be filed.

DATED this 21st day of February, 2017.

Schindler, J.

Becker, J.

Cox, J

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STEPHEN CHRISS JOHNSON, Appellant, v. WASHINGTON STATE DEPARTMENT OF LICENSING and PAT KOHLER, in her official capacity, Respondents.	)	No. 74131-4-I DIVISION ONE UNPUBLISHED OPINION FILED: February 21, 2017

SCHINDLER, J. — Stephen Chriss Johnson appeals summary judgment dismissal of his petition for a writ of prohibition challenging the authority of the Washington State Department of Licensing (DOL) to suspend his driver's license for failure to pay traffic fines. In 2007, the district court found Johnson committed the traffic infraction of driving without a valid license and imposed a fine. Because Johnson did not comply with the terms of the traffic infraction and pay the fine, DOL suspended his driver's license. In 2009, the district court convicted Johnson of driving while license suspended in the third degree (DWLS 3rd) and imposed a fine and court costs. Because Johnson did not pay the fine or court costs, DOL suspended his driver's license. In 2013, Johnson filed a petition for a writ of prohibition. Johnson alleged the 2012 legislative amendments to the motor vehicle code, Title 46 RCW, eliminated the authority of DOL to continue to

suspend a driver's license for failure to pay the fine imposed for a traffic infraction. Johnson also argued DOL did not have the authority to suspend his driver's license in 2009 for failure to pay the DWLS 3rd fine and court costs. We affirm summary judgment dismissal of the petition for a writ of prohibition.

FACTS[1]

2007 Traffic Infraction

Stephen Chriss Johnson's driver's license expired in 2001. In April 2007, police cited Johnson for driving without a valid driver's license and issued a notice of infraction. Johnson contested the traffic infraction. The district court found Johnson committed the infraction and imposed a $260 fine. Johnson did not pay the fine. The district court notified the Washington State Department of Licensing (DOL) of the failure to pay the fine. On September 17, DOL notified Johnson that his driver's license would be suspended for failure to pay the fine unless he provided proof of compliance with "the court's requirements." The letter states, in pertinent part:

> **On 11-01-2007 at 12:01 a.m. your driving privilege will be suspended. The Court has notified us that you failed to . . . pay . . . or comply with the terms of the citation listed below:**
>
> | **Citation Number** | **Violation Date** | **Reason for Citation** |
> |---|---|---|
> | I00038445 | 04-14-2007 | NO VALID LICENSE/I |
>
> **What do I have to do to avoid suspension of my driving privilege?**
> 1. **Contact this court to find out how to take care of this citation:**
> . . . .
> 2. **Provide proof that you have satisfied the court's requirements.** Once the requirements are met, the court will send us notice.
> . . . .
>
> **What will happen if my driving privilege is suspended?**
> Make sure that we have received notice that this matter is settled before the date shown above. If we have not, it will be illegal for you to drive and

[1] The underlying facts are set forth in State v. Johnson, 179 Wn.2d 534, 315 P.3d 1090 (2014).

> you must surrender your license to any driver licensing office. You must pay a reissue fee and any other applicable licensing fees before a new license can be issued.

Johnson did not respond to the notice or provide proof of compliance. On November 1, 2007, DOL suspended Johnson's driver's license for "[f]ailure to make required payment of fine and costs."

2009 DWLS 3rd Conviction

In September 2008, the police stopped Johnson and arrested him for driving with a suspended license in violation of former RCW 46.20.342(1)(c)(iv) (2004).[2] Former RCW 46.20.342(1)(c)(iv) states, in pertinent part:

> It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status . . . . A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because . . . the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in [former] RCW 46.20.289 [(LAWS OF 2005, ch. 288, § 5)], . . . is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

The State charged Johnson with driving while license suspended in the third degree (DWLS 3rd) in violation of former RCW 46.20.342(1)(c)(iv). Johnson pleaded not guilty.

To convict Johnson of DWLS 3rd, the State had the burden of proving (1) that the defendant drove with a suspended license and (2) that the license suspension occurred because the defendant failed to comply with the terms of a notice of infraction. Former RCW 46.20.342(1)(c)(iv). On September 18, 2009, the district court found Johnson

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[2] LAWS OF 2004, ch. 95, § 5.

guilty of DWLS 3rd, a misdemeanor.[3] The court ordered Johnson to pay a $300.00 fine and $505.50 in court costs.

Johnson appealed the DWLS 3rd conviction to superior court. Johnson argued the failure to pay the traffic infraction fine did not support the DWLS 3rd conviction under former RCW 46.20.342(1)(c)(iv). The superior court affirmed the DWLS 3rd conviction.

Johnson did not pay the fine or court costs imposed by the court for the DWLS 3rd conviction. The district court notified DOL of the failure to pay the fine and court costs. DOL notified Johnson that his "driving privilege will be suspended" on November 12, 2009 unless he provided proof that he "satisfied the court's requirements." The letter states, in pertinent part:

> **On 11-12-2009 at 12:01 a.m. your driving privilege will be suspended. The Court has notified us that you failed to . . . pay . . . or comply with the terms of the citation listed below:**
>
> | Citation Number | Violation Date | Reason for Citation |
> |---|---|---|
> | C00085203 | 09-19-2008 | DWLS/R 3RD DG. |

Johnson did not respond to the notice. On November 12, DOL suspended his driver's license for "[f]ailure to make required payment of fine and costs."

Johnson filed a motion for discretionary review of his DWLS 3rd conviction. The Supreme Court granted discretionary review to address whether the reasons for license suspension under former RCW 46.20.342(1)(c)(iv) "encompass the failure to pay the fine for a traffic infraction."[4]

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[3] RCW 46.20.342(1)(c).

[4] Johnson, 179 Wn.2d at 541.

2012 Amendments to Motor Vehicle Code

In March 2012, the legislature adopted a number of amendments to the motor vehicle code, Title 46 RCW. LAWS OF 2012, ch. 82. The legislature amended RCW 46.20.289 to remove the authority of DOL to suspend a driver's license for failure to comply with the terms of a notice of traffic infraction or citation for a nonmoving violation. LAWS OF 2012, ch. 82, § 3. The 2012 amendments took effect on June 1, 2013. LAWS OF 2012, ch. 82, § 6.

Writ of Prohibition

On June 25, 2013, Johnson filed a petition for a writ of prohibition. Johnson asserted that under the 2012 amendments, DOL no longer had the authority to continue to suspend a driver's license for failure to pay a traffic infraction fine. Johnson requested the court issue an order to DOL to "terminate all current driver's license suspensions for failure to pay traffic fines and reinstate those licenses without any reinstatement fee." The court stayed the request for a writ of prohibition pending the Supreme Court decision.

On January 9, 2014, the Supreme Court issued the opinion in State v. Johnson, 179 Wn.2d 534, 315 P.3d 1090 (2014). The court rejected the argument that the State failed to prove DWLS 3rd because "[t]he plain meaning of the statute contemplates a DWLS 3rd charge where the underlying suspension occurs for failure to pay a traffic fine." Johnson, 179 Wn.2d at 558.[5] The court held the plain and unambiguous language of the DWLS 3rd statute, former RCW 46.20.342(1)(c)(iv), states the failure to

[5] The court also rejected the argument that Johnson was constitutionally indigent. Johnson, 179 Wn.2d at 555. Because Johnson owned his $300,000 home free of any liens, the "equity in his home would have allowed Johnson to 'borrow money or . . . otherwise legally acquire resources' necessary to pay the $260 fine." Johnson, 179 Wn.2d at 555 (alteration in original) (quoting State v. Bower, 64 Wn. App. 227, 231-32, 823 P.2d 1171 (1992)).

" 'comply with the terms of a notice of traffic infraction or citation, as provided in [former] RCW 46.20.289 [(2005)],' " supports the DWLS 3rd conviction. Johnson, 179 Wn.2d at 544.[6]

Summary Judgment Dismissal of Writ

DOL filed a motion for summary judgment dismissal of the petition for a writ of prohibition. DOL argued the 2012 amendments were not retroactive and DOL did not act in excess of statutory authority. DOL also pointed out that Johnson's driver's license was suspended in 2009 for failing to pay the DWLS 3rd court-ordered fine and costs.

Johnson filed a cross motion for summary judgment. Johnson argued the 2012 amendments were retroactive and invalidated all prior license suspensions for failure to pay fines for a traffic infraction. Johnson also argued DOL did not have the authority to suspend his driver's license in 2009 for the failure to pay the DWLS 3rd court-ordered fine and costs.

The court entered an order granting DOL's motion for summary judgment and dismissing the petition for a writ of prohibition.

> The Court determines that . . . 1) a Writ of Prohibition was an appropriate procedure for Petitioner to seek relief because he lacked an otherwise adequate remedy; 2) the Petitioner's suspension for non-payment of a fine resulting for the infraction of driving without a valid license (Lewis County District Court Case #I00038445) was a proper exercise of the Department's authority when initially imposed and the suspension continues to be a proper exercise of authority because Laws of 2012, ch. 82 is not retroactive; and 3) the Petitioner's suspension for non-payment of a fine resulting from a conviction for DWLS in the third degree (Lewis County District Court Case #C00085203) is a proper exercise of the Department's authority.

Johnson appeals.

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[6] Emphasis in original, first alteration in original.

ANALYSIS

Johnson contends the court erred in granting summary judgment dismissal of his petition for a writ of prohibition.

We review summary judgment de novo. Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015); Retired Pub. Emps. Council of Wash. v. Charles, 148 Wn.2d 602, 612, 62 P.3d 470 (2003). Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. CR 56(c); Keck, 184 Wn.2d at 370.

A writ of prohibition is a "drastic measure." Skagit County Pub. Hosp. Dist. No. 304 v. Skagit County Pub. Hosp. Dist. No. 1, 177 Wn.2d 718, 722, 305 P.3d 1079 (2013). The court has the authority to issue a writ of prohibition to "arrest[ ] the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person." RCW 7.16.290. A court can issue a writ of prohibition "only when two conditions are met: '(1) [a]bsence or excess of jurisdiction, and (2) absence of a plain, speedy, and adequate remedy in the course of legal procedure.' " Skagit County Pub. Hosp., 177 Wn.2d at 722-23[7] (quoting Kreidler v. Eikenberry, 111 Wn.2d 828, 838, 766 P.2d 438 (1989)). The absence of either of these two conditions " 'precludes the issuance of the writ.' " Skagit County Pub. Hosp., 177 Wn.2d at 722-23 (quoting Kreidler, 111 Wn.2d at 838). The authority of an administrative agency is " 'limited to that which is expressly granted by statute or necessarily implied therein.' " Conway v. Dep't of Soc. & Health Servs., 131 Wn. App. 406, 419, 120 P.3d 130 (2005) (quoting McGuire v. State, 58 Wn.

[7] Alteration in original.

App. 195, 198, 791 P.2d 929 (1990)); Wash. Indep. Tel. Ass'n v. Wash. Utilities & Transp. Comm'n, 148 Wn.2d 887, 901, 64 P.3d 606 (2003).

Contrary to his position below, in his motion for reconsideration, Johnson clarified that on appeal he does not contend the 2012 amendments apply retroactively. Johnson does not dispute DOL had the authority to suspend his driver's license in 2007 for failure to pay the fine imposed for driving without a valid license. Johnson claims that under the 2012 amendments, DOL no longer has the authority to continue to suspend a driver's license for failure to pay fines imposed for traffic infractions. DOL argues the 2012 amendments did not change the requirements that must be met before DOL may reinstate the suspension of a driver's license. We agree with DOL.

We interpret statutes de novo. Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The fundamental objective is to ascertain and carry out the legislature's intent. Campbell & Gwinn, 146 Wn.2d at 9. Statutory interpretation begins with the plain language of the statute. Rest. Dev., Inc. v. Cananwill, Inc., 150 Wn.2d 674, 682, 80 P.3d 598 (2003). We determine the plain meaning of a statute " 'from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.' " Gorre v. City of Tacoma, 184 Wn.2d 30, 37, 357 P.3d 625 (2015) (quoting Tingey v. Haisch, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007)). "If the statute is unambiguous after a review of the plain meaning, the court's inquiry is at an end." Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). We must give effect to the plain meaning as an expression of legislative intent. Brown v. Dep't of

Commerce, 184 Wn.2d 509, 532, 359 P.3d 771 (2015); Campbell & Gwinn, 146 Wn.2d at 9-10.

The plain and unambiguous language of former RCW 46.20.291(5) (2007)[8] gives DOL the authority to suspend a driver's license on a number of grounds including failure "to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289." Former RCW 46.20.291(5) states, in pertinent part:

> **Authority to suspend—Grounds.** The department is authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee . . . [h]as failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289.

Former RCW 46.20.289 (2005)[9] provided, in pertinent part:

> **Suspension for failure to respond, appear, etc.** The department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(6), 46.63.110(6), or 46.64.025 that the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation . . . . A suspension under this section takes effect pursuant to the provisions of RCW 46.20.245, and remains in effect until the department has received a certificate from the court showing that the case

[8] Laws of 2007, ch. 393, § 2.

[9] LAWS OF 2005, ch. 288, § 5.

> has been adjudicated, and until the person meets the requirements of RCW 46.20.311.[10]

Former RCW 46.20.289 (2005) sets forth the two-step process that DOL must follow to suspend and then reinstate an individual's driver's license. First, under former RCW 46.20.289 (2005), the court must notify DOL of the failure to "comply with the terms of a notice of traffic infraction or citation." After DOL receives notice from a court, DOL "shall suspend all driving privileges." Former RCW 46.20.289 (2005). Second, the plain and unambiguous language of the statute states that the suspension shall remain in effect until DOL "has received a certificate from the court showing that the case has been adjudicated." Former RCW 46.20.289 (2005).

In 2012, the legislature amended RCW 46.20.289 to remove the authority of DOL to suspend a driver's license for the failure to pay an infraction or citation for a nonmoving violation. LAWS OF 2012, ch. 82, § 3.[11] The amendment to RCW 46.20.289 limited the suspension of driving privileges for failing to comply with the terms of a

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[10] Former RCW 46.63.110(6)(b) (LAWS OF 2007, ch. 356, § 8) directed the court to notify DOL when a person who committed a traffic infraction failed to pay a court-ordered "monetary penalty, fee, cost, [or] assessment." Former RCW 46.63.110 provided, in pertinent part:

> (1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. . . .
>
> . . . .
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> (6) Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation is imposed by a court under this chapter it is immediately payable. . . .
>
> . . . .
>
> (b) If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court shall notify the department of the delinquency. The department shall suspend the person's driver's license or driving privilege until all monetary obligations have been paid, including those imposed under subsections (3) and (4) of this section, or until the person has entered into a payment plan under this section.

[11] The legislature recently amended RCW 46.20.289 but the amendment does not affect our analysis. ENGROSSED SUBSTITUTE H.B. 2700, 64th Leg. Reg. Sess. (Wash. 2016).

notice of traffic infraction or citation to only a moving violation.[12] LAWS OF 2012, ch. 82, § 3. But of significance, the legislature did not change the requirements DOL must follow to reinstate a driver's license that had been suspended before the effective date of the 2012 amendments. Specifically, the legislature did not change the language that states the suspension shall remain in effect until DOL has received a certificate from the court. Former RCW 46.20.289 (2012) states, in pertinent part:

> **Suspension for failure to respond, appear, etc.** The department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(6), 46.63.110(6), or 46.64.025 that the person has failed to respond to a notice of traffic infraction for a moving violation, failed to appear at a requested hearing for a moving violation, violated a written promise to appear in court for a notice of infraction for a moving violation, or has failed to comply with the terms of a notice of traffic infraction or citation for a moving violation . . . . A suspension under this section takes effect pursuant to the provisions of RCW 46.20.245, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated,[13] and until the person meets the requirements of RCW 46.20.311.[14]

Because the undisputed record establishes Johnson did not pay the fine and DOL has not received a certificate from the district court showing Johnson complied

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[12] The legislature also amended RCW 46.63.110(6)(b) to require the court to notify DOL of the failure to pay a traffic infraction fine for only a moving violation. Laws of 2012, ch. 82, § 1. As amended, RCW 46.63.110(6)(b) states, in pertinent part:

> If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court may refer the unpaid monetary penalty, fee, cost, assessment, or other monetary obligation to a collections agency until all monetary obligations have been paid, including those imposed under subsections (3) and (4) of this section, or until the person has entered into a payment plan under this section. For those infractions subject to suspension under RCW 46.20.289, the court shall notify the department of the person's delinquency, and the department shall suspend the person's driver's license or driving privileges.

[13] A court will issue a certificate showing that a case has been adjudicated when the person whose license has been suspended pays the obligation in full or enters into a payment plan with the court and makes an initial payment. See RCW 46.63.110(6)(b).

[14] (Emphasis added.) RCW 46.20.311(3)(a) provides:

> Whenever the driver's license of any person is suspended pursuant to . . . RCW . . . 46.20.289 . . . , the department shall not issue to the person any new or renewal license until the person pays a reissue fee of seventy-five dollars.

We note subsection (3)(a) of RCW 46.20.311 has not changed since 2005. LAWS OF 2005, ch. 314, § 308.

with the terms of the 2007 traffic infraction, under the plain language of the statute, the 2007 suspension remains in effect.

Johnson also argues DOL did not have the authority to suspend his driver's license in 2009 for failure to pay the DWLS 3rd court-ordered fine and costs. We disagree.

Former RCW 46.20.289 (2005) addresses civil traffic infractions and criminal traffic citations. The plain and unambiguous language of the statute gives DOL the authority to suspend a driver's license for failure to pay a criminal traffic citation. Former RCW 46.20.289 (2005) (authorizing DOL to suspend a driver's license for "fail[ure] to comply with the terms of a notice of traffic infraction or citation");[15] see also Johnson, 179 Wn.2d at 544, 558 (failure to " 'comply with the terms of a notice of traffic infraction or citation, as provided in [former] RCW 46.20.289 [(2005)],' " supports DWLS 3rd conviction under former RCW 46.20.342(1)(c)(iv)).[16]

We affirm summary judgment dismissal of the petition for a writ of prohibition.

Schindler, J.

WE CONCUR:

Cox, J.

Becker, J.

[15] Emphasis added.

[16] Emphasis in original, first alteration in original.