

Randle Man's Case Heard at Supreme Court

Statewide Consequences: 64-Year-Old Stephen Johnson Appealing Driving While License Suspended Conviction in Case That Could Have Broad Impacts



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OLYMPIA — The Washington State Supreme Court on Tuesday morning heard arguments regarding the case of a Lewis County man's driving while license suspended conviction.

It is a case attorneys on both sides say could have statewide consequences if the Supreme Court rules in the 64-year-old Randle man's favor.

While it will likely take several more months for the nine justices to rule on the case, Tuesday marked what could be the end of Stephen Johnson's five-year fight against what he describes as the state's crime of "driving while poor."

Third-degree driving while license suspended (DWLS III) is the most charged crime in Washington, and the majority of cases end in convictions. If Johnson wins his appeal, many of the 300,000 drivers in Washington who have suspended licenses due to unpaid traffic tickets could get their driving privileges back.

"Of course I feel I'm going to win," he said after Tuesday's hearing.

In a 46-page brief filed with the state supreme court last July, Johnson's Olympia-based attorney, Kevin Hochhalter, argued that the crime of DWLS III disproportionately affects poor people, and criminally punishes them for not being able to pay traffic infractions.

Statewide, 33 percent of all misdemeanor criminal cases are related to a suspended or revoked driver's license. For Lewis County, which has one of the highest unemployment rates in the state, that percentage is nearly double.

In the brief, Hochhalter wrote that Johnson's suspension, along with thousands of others, is unconstitutional because the state imposed a criminal sanction on an individual for failing to pay a fine without making an inquiry into the financial situation of the individual.

"The person is a debtor, not a criminal," Hochhalter told the justices Tuesday.

The majority of Tuesday's appeal hearing, however, did not focus on that issue, but rather on the specific language of the state's DWLS III law. Throughout the 40-minute hearing, the justices asked both attorneys a number of questions about their interpretations of the statute and their relating arguments.

Hochhalter argued that the law states a person's driving privilege can be suspended for four reasons: failure to respond to the traffic infraction, failure to appear at a requested hearing, violation of a written promise to appear in court and failure to comply with the terms of a notice of traffic infraction or citation.

The statute does not say explicitly that a person's license can be suspended due to an unpaid traffic infraction, he said.

Shane O'Rourke, the Lewis County deputy prosecutor handling the case against Johnson, argued that the "failure to comply with the terms of a notice of traffic infraction" incorporates two other Washington State laws, which does specifically authorize the suspension of a person's who failed to pay the fee assigned to them by the court.

O'Rourke also briefly argued that driving in general comes with several additional costs — such as gas and insurance — that can amount to much more than a traffic infraction fee. He also said the courts have historically upheld the argument that driving is a privilege, not a right, and that the state has an interest in collecting fines for traffic violations.

Furthermore, O'Rourke argued, the criminal punishment comes as a result of the individual who has a suspended license and chooses to drive anyway, thus breaking the law. They are not arrested because they are too poor to pay for the infraction, he said.

"We have one interpretation and Mr. Johnson had another," O'Rourke said after the hearing. "That's why we're here. To have them settle it."

The case began when Johnson was pulled over in 2007 and received an infraction for driving without a valid license. Johnson went to court and contested the ticket, and the \$538-fee was reduced to \$260.

Even at the reduced rate, however, Johnson, who is disabled, currently homeless, and has not had steady employment since 1976, said he could not afford to pay it — so he didn't.

As a result, the Department of Licensing suspended his license, even though he did not technically have one, making it a crime for him to drive.

Since Johnson lives in a rural area about five miles from the nearest bus stop, the only way he could be mobile, he said, was to drive. One year later, while driving in Lewis County, he was pulled over by a deputy. He was arrested and booked into jail where he spent four days.

After his 2008 arrest, he demanded a trial in district court and was ultimately convicted. He then appealed his conviction to Lewis County Superior Court and lost again. He again appealed his conviction to the state's court of appeals. A court commissioner declined to accept his petition for review, and when Johnson petitioned yet again, a panel of judges found that his underlying conviction was proper and declined to review it a second time.

Johnson, who was initially assigned a court-appointed attorney before hiring his own, then appealed his case to the state supreme court, also known as the court of last resort. The state supreme court receives thousands of petitions a year to review the judgement of criminal and civil cases. They only accept about one out of every ten.

After Tuesday's hearing, Johnson said the justices asked both sides "tough questions" and appeared to be critical of both the state's arguments as well as those of his attorney, unlike the lower level judges who, Johnson said, disregarded his arguments and requests for appeal.

Though Johnson said he is confident he will be successful in this appeal, he added that if he isn't, he would try taking the case to the U.S. Supreme Court.