

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

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2017 FEB 21 AM 8:46

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 The panel has determined that the motion should be denied but the opinion filed on July 5, 2016 shall be withdrawn and a substitute opinion filed.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ORDERED that appellant's motion for reconsideration is denied and the opinion filed on July 5, 2016 shall be withdrawn and a substitute opinion shall be filed.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 21<sup>st</sup> day of February, 2017.

John W. Baker, Jr.  
Baker, J.  
COX, J

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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WASHINGTON STATE DEPARTMENT	)	UNPUBLISHED OPINION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

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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<sup>1</sup>

#### 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:**

<u>Citation Number</u>	<u>Violation Date</u>	<u>Reason for Citation</u>
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

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<sup>1</sup> 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).<sup>2</sup> 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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<sup>2</sup> LAWS OF 2004, ch. 95, § 5.

guilty of DWLS 3rd, a misdemeanor.<sup>3</sup> 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:**

<u>Citation Number</u>	<u>Violation Date</u>	<u>Reason for Citation</u>
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."<sup>4</sup>

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<sup>3</sup> RCW 46.20.342(1)(c).

<sup>4</sup> 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.<sup>5</sup> 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

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<sup>5</sup> 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.<sup>6</sup>

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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<sup>6</sup> 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<sup>7</sup> (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.

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<sup>7</sup> 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)<sup>8</sup> 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)<sup>9</sup> 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

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<sup>8</sup> Laws of 2007, ch. 393, § 2.

<sup>9</sup> LAWS OF 2005, ch. 288, § 5.

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

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.<sup>11</sup> 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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<sup>10</sup> 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. . . .

....  
(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.

<sup>11</sup> 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.<sup>12</sup> 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,<sup>[13]</sup> and until the person meets the requirements of RCW 46.20.311.<sup>[14]</sup>

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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<sup>12</sup> 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.

<sup>13</sup> 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).

<sup>14</sup> (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.

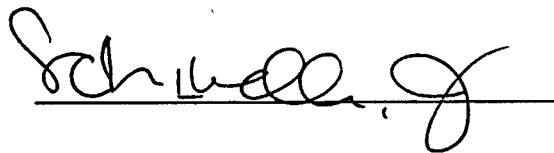
We note subsection (3)(a) of RCW 46.20.311 has not changed since 2005. LAWS OF 2005, ch. 314, § 308.

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

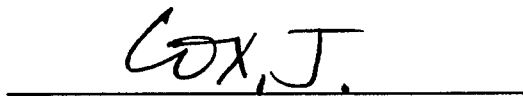
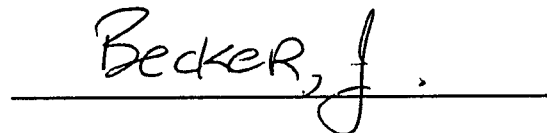
Johnson also argues DOL did not have the authority to suspend his driver's license in 2009 for failure to pay the DWLS 3rd court-ordered fine and costs. We disagree.

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");<sup>15</sup> 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)).<sup>16</sup>

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

A handwritten signature in cursive script, appearing to read "Schneider", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Cox, J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Becker, J.", written over a horizontal line.

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<sup>15</sup> Emphasis added.

<sup>16</sup> Emphasis in original, first alteration in original.