

No. A06-2291

STATE OF MINNESOTA

IN COURT OF APPEALS

Harold Andrew Riehm,

Appellant,

vs.

Commissioner of Public Safety,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

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LEGAL ISSUE

- I. Did the trial court abuse its discretion by scheduling Appellant's implied consent hearing pursuant to the Ramsey County Fast-Track Program?

The lower court ruled in the negative.

Rice Park Properties v. Robins, Kaplan, Miller & Ciresi, 532 N.W.2d 556 (Minn. 1995);

Bendorf v. Commissioner of Public Safety, 727 N.W.2d 410 (Minn. 2007);

Fedziuk v. Commissioner of Public Safety, 696 N.W.2d 340 (Minn. 2005);

Szczech v. Commissioner of Public Safety, 343 N.W.2d 305 (Minn. Ct. App. 1984).

STATEMENT OF THE CASE AND FACTS

This is an appeal from a trial court order sustaining the revocation of Appellant Harold Andrew Riehm's driver's license under Minn. Stat. §§ 169A.50-.53, the implied consent law. It arises out of Appellant's October 27, 2005, DWI arrest in Ramsey County, after which the arresting officer served a Notice and Order of Revocation upon Appellant. F.F.1.¹ Appellant's driver's license revocation took effect on November 3, 2005, after expiration of the seven-day temporary license.

On November 11, 2005, Appellant filed a Petition for Judicial Review with Ramsey County Court Administration, challenging the license revocation. F.F.2. Ten days later, on November 21, 2005, Ramsey County Court Administration sent Appellant a letter which included a copy of that district's Standing Order regarding scheduling of implied consent hearings. F.F.3. The letter informed Appellant that in accordance with the Second Judicial District's DWI Fast-Track Program, ("Fast-Track Program"), Appellant could immediately seek--upon written request to the court--a judicially ordered stay of the balance of the revocation (*i.e.*, "temporary reinstatement") pending a hearing on the merits pursuant to Minn. Stat. §169A.53, subd. 2(c)(2005). F.F.3; *see also* Second

¹ "F.F." references are to the Findings of Fact made by the trial court in its Order filed November 21, 2005, a copy of which is reproduced in Respondent's Appendix at RA1-RA3.

Judicial District Implied Consent Letter for Implied Consent Cases,² reproduced in Respondent's Appendix at RA4; and Minn. Stat. § 169A.53, subd. 2(c) (2005) (providing that, "[t]he reviewing court may order a stay of the balance of the revocation or disqualification if the hearing is not conducted within 60 days..."). Despite the fact that Appellant had the opportunity to receive a judicial stay of the balance of the revocation period,³ Appellant declined this procedural due process protection, choosing instead to let his revocation period continue to run while his judicial hearing was pending. F.F.4. After Appellant had resolved his criminal DWI case, Ramsey County Court Administration scheduled the present implied consent matter for trial on May 8, 2006, but after Respondent Commissioner of Public Safety sought a continuance, it was continued to July 17, 2006. *See* Trial Court Order, reproduced in Respondent's Appendix at RA1-RA3. Appellant did not object to the continuance.

² Included in the Second Judicial District's DWI Fast-Track Program and the letter sent to Appellant is a specific provision that:

If necessary, a hearing pursuant to Minn. Stat. 169A.53s3 will be scheduled immediately upon resolution of the criminal case, which should be within 45 days of the first appearance. If the petitioner chooses to request a stay of the balance of the revocation period pursuant to Minn. Stat. 169A.53s2c, that judicial stay would be granted and revocation of petitioner's driving privileges will be stayed pending resolution of the criminal and the Implied Consent hearings. Such a request, in writing including the implied consent file number, should be directed to Sharman Newman,

Second Judicial District Implied Consent Letter for Implied Consent Cases, reproduced in Respondent's Appendix at RA4.

³ A stay of the balance of the revocation includes removal of the implied consent notation from the individual's driving record pending receipt of a hearing on the merits.

This matter was heard before the Honorable James H. Clark, Jr., Judge of District Court, on July 17, 2006 at the Ramsey County Courthouse, in St. Paul, Minnesota. *See* Trial Court Order, reproduced in Respondent's Appendix at RA1-RA3. Appellant waived all substantive issues and went forward solely on his procedural argument, that his license revocation must be rescinded because his implied consent hearing was not set and held within 60 days of the filing date of the petition. *See* Trial Court Order, reproduced in Respondent's Appendix at RA1-RA3.

The trial court took the matter under advisement for briefing by the parties. The trial court subsequently issued an order dated October 3, 2006, rejecting Appellant's claims and sustaining his license revocation. *See generally* Trial Court Order, reproduced in Respondent's Appendix at RA1-RA3. As part of its analysis, the trial court found that Appellant was offered--but declined to accept--a stay of the balance of his license revocation pursuant to both Minn. Stat. § 169A.53, subd. 2(c) (2005) and the Fast-Track Program. F.F.4. From that Order, Appellant has taken this appeal.

ARGUMENT

I. STANDARD OF REVIEW.

In the instant case, Appellant challenges the trial court's conclusion that the scheduling of his implied consent hearing, under the requirements of the Fast-Track Program, did not violate either procedural due process or the implied consent statute. *See generally* Appellant's Brief at 2-15. Appellant essentially challenges the scheduling practices employed by the trial court pursuant to its Fast-Track Program. *See* Appellant's Brief at 2-15. In general, a district court has, "considerable discretion in scheduling

matters and in furthering what it has identified as the interests of judicial administration and economy.” *Rice Park Properties v. Robins, Kaplan, Miller & Ciresi*, 532 N.W.2d 556, 556 (Minn. 1995). A district court’s scheduling decision will therefore be reversed only upon a showing that the court abused its discretion. *See id.*

To the degree that Appellant attempts to establish an abuse of discretion in this case based upon claims that the scheduling of hearings under the Fast-Track Program violates either procedural due process or the implied consent statute itself, both questions involve the application of law to undisputed facts, which is subject to *de novo* review. *See Bendorf v. Commissioner of Public Safety*, 727 N.W.2d 410, 413 (Minn. 2007)(constitutional questions); *Berge v. Commissioner of Public Safety*, 374 N.W.2d 730, 732 (Minn. 1985)(statutory questions).

II. CONSISTENT WITH THE SUPREME COURT'S CONTROLLING DECISION IN *BENDORF*, THE TRIAL COURT'S IMPLICIT FINDING THAT THE RAMSEY COUNTY FAST-TRACK PROGRAM VIOLATES NEITHER THE IMPLIED CONSENT STATUTE NOR PROCEDURAL DUE PROCESS IS CORRECT.

Appellant frames his entire argument as an outright challenge to the scheduling of all hearings under the Fast-Track Program. *See* Appellant’s Brief at 2-15. Appellant implies in his framing of the issue that *all* drivers whose hearings are scheduled pursuant to the Fast-Track Program are denied their right to a reasonably prompt hearing. Specifically, Appellant argues that the Fast-Track Program, “does not comply with either the statutory requirement that the review hearing be held at the earliest practicable date and in any event no later than sixty days or with the constitutional requirement of a prompt hearing.” Appellant’s Brief at 5.

Respondent submits that Appellant's arguments are without merit because they are based upon flawed premises. For example, contrary to Appellant's argument, the Implied Consent statute does not require a hearing within 60 days, rather the statute requires that *either* a hearing is set within 60 days (§ 169A.53, subd. 3(a)), *or* a stay of the revocation is made available for hearings set beyond 60 days (§ 169A.53, subd. 2(c)). As will be discussed more fully in Section II. B. below, § 169A.53, subd. 3(a)'s 60-day hearing timeframe has previously has been found to be directory, and not mandatory because the statute offers an alternative means by which to protect a driver's private interest in his license through § 169A.53, subd. 2(c)'s provision allowing for a stay of the revocation pending a hearing on the merits. *See Szczech v. Commissioner of Public Safety*, 343 N.W.2d 305, 307 (Minn. 1984).

Likewise contrary to Appellant's arguments, procedural due process does not require a hearing within 60 days, but rather procedural due process requires that *either* a hearing is set within 60 days *or* a stay of the revocation is made available for hearings set beyond 60 days. As will be discussed more fully in Section II. C. below, the Supreme Court recently held that the availability of a stay of the balance of the revocation where a hearing is not scheduled within 60 days of the filing of the petition minimizes any prejudice caused by the delay, and thereby "compels the conclusion that the driver's right to procedural due process has not been violated." *Bendorf v. Commissioner of Public Safety*, 727 N.W.2d 410, 416-17 (Minn. 2007).

Accordingly, Appellant's arguments fail as they cannot be reconciled with prior controlling precedents holding that a stay of the balance of the revocation adequately

protects a driver's private interest by providing an acceptable alternative remedy for both statutory and constitutional purposes. *See Szczech*, 343 N.W.2d at 307; *Bendorf*, 727 N.W.2d at 416-17. For these reasons, Respondent submits that the trial court properly concluded that Appellant could not establish either a due process violation or a statutory violation where Appellant had the opportunity to have his driving privileges fully returned and to have all references to the revocation removed from his driving record pending a hearing on the merits. Respondent further submits that the decision below is consistent with established canons of statutory construction, judicial administrative discretion, and procedural due process jurisprudence. Moreover, the decision below is a reasonable interpretation of law which fairly balances the competing interests of individual motorists (maintenance of driving privileges pending a hearing), with public safety (maintenance of the proven effective pre-hearing revocation process) and efficient court administration (maintenance of judicial economy despite increased court filings and limited judicial resources). The trial court's order should therefore be affirmed.

A. Because He Has Failed To Demonstrate Any Injury-In-Fact Resulting From The Scheduling Of His Implied Consent Hearing Under The Ramsey County Fast-Track Program, Appellant Lacks Standing To Challenge That Program In General.

Despite the fact that it is elementary that a litigant must base his claims on his own particular facts, and not hypothetical injuries that might someday be suffered by people in other cases, Appellant nonetheless devotes his entire brief to an attack on the Fast-Track Program in general, notably ignoring any analysis of his own specific facts. *See*

Appellant's Brief at 2-15. Respondent submits that Appellant lacks standing here because he cannot demonstrate that he has suffered any injury-in-fact as a result of the delay in scheduling his hearing under the Fast-Track Program.

It is well-established that a party needs to demonstrate standing before he may invoke the jurisdiction of the court to decide a question. When a party does not have standing, a court does not have jurisdiction to hear the matter. *See Annandale Advocate v. City of Annandale*, 435 N.W.2d 24, 27 (Minn. 1989); *see also* Minnesota Rule of Civil Procedure 12.08(c) (the court shall dismiss an action whenever it appears that the court lacks subject matter jurisdiction). "Because it goes to the existence of a cause of action, standing is essential to the court's exercise of jurisdiction and may be raised at any time...." *Runia v. Marguth Agency, Inc.*, 437 N.W.2d 45, 49 (Minn. 1989).

Minnesota has adopted an "injury-in-fact" test for standing. *See Snyder's Drug Stores, Inc. v. Minnesota State Board of Pharmacy*, 301 Minn. 28, 32, 221 N.W.2d 162, 165 (1974). The litigant must have a direct interest in the litigation and must articulate more than a mere abstract concern. *See State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 495 (Minn. 1996). The litigant also must demonstrate an injury or imminent threat of such injury via prejudice to a legally recognized interest. *See Envall v. Independent School District No. 704*, 399 N.W.2d 593, 596 (Minn. Ct. App. 1987), *review denied* (Minn. Mar. 25, 1987). Moreover, the litigant must be attempting to "do more than vindicate [his] own value preferences through the judicial process." *Sierra Club v. Morton*, 405 U.S. 727, 740, 92 S.Ct. 1361, 1369 (1972)(footnote omitted).

Here, Appellant cannot identify any injury-in-fact he has suffered as a result of his hearing being scheduled under the Fast-Track Program.⁴ Any attempt by Appellant to claim otherwise is without merit because Appellant had the option to avoid any prejudice or injury by requesting a stay, which would have returned his full driver's license to him and removed the revocation from his driving record pending his hearing. F.F.4.

While Appellant may not like the Fast-Track Program, his dislike does not constitute an injury-in-fact, and instead is merely an "abstract concern" insufficient to establish standing. *See Philip Morris*, 551 N.W.2d at 495. Indeed, Appellant seeks to use the judicial process to substitute his own scheduling preferences for the administrative discretion of the trial court in scheduling hearings pursuant to the Fast-Track Program. However such mere individual desire for another practice, in the absence of a prejudicial injury-in-fact, is insufficient to establish standing and invoke the court's jurisdiction. *See Sierra Club*, 405 U.S. at 740, 92 S.Ct. at 1369.

B. The Fast-Track Program Does Not Violate The Implied Consent Statute.

In general, Appellant argues he has been harmed because his implied consent hearing was not scheduled within 60 days, which Appellant characterizes as a statutory violation that requires rescission of his revocation. *See* Appellant's Brief at 5-12. More specifically, Appellant points out that the implied consent statute provides that implied consent hearings "must be held at the earliest practicable date, and in any event, no later

⁴ Appellant seems to assume that, but for the Fast-Track Program, his hearing would have been scheduled sooner. There is, however, no evidence in the record supporting such an assumption.

than 60 days following the filing of the petition for review.” Appellant’s Brief at 4 (quoting Minn. Stat. § 169A.53, subd. 3(a) (2005)). Appellant then concludes that the Fast-Track Program does not comply with the statute because it “virtually ensures that the hearing will not occur until later than sixty days and completely ignores any consideration of ‘earliest’ practicability in scheduling.”⁵ Appellant’s Brief at 5.

As will be discussed more fully below, Respondent submits that Appellant’s statutory violation argument is fatally flawed in that it conflicts with both this Court’s controlling decision in *Szczech v. Commissioner of Public Safety*, 343 N.W.2d 305 (Minn. Ct. App. 1984), and also established canons of statutory construction. Accordingly, Appellant’s statutory violation argument lacks merit and should be rejected.

1. *Szczech* remains controlling and the 60-day language is directory, not mandatory.

The most obvious problem with Appellant’s argument is that it does not comport with the express language of this Court’s controlling decision in *Szczech*. In *Szczech*, this Court was asked to construe language in the 1982 version of the implied consent statute which provided that implied consent hearings “shall be held at the earliest practicable date, and in no event no later than 60 days following the filing of the petition for review.” *Id.* at 306-07. The motorist argued that if the hearing is held outside the 60-day timeframe, the revocation must be rescinded. *See id.* This Court disagreed, in large part based on the fact that the statute provided for a stay of the balance of the license revocation should the hearing not be held within 60 days. *See id.* at 307-08. Specifically,

⁵ Again, Appellant provides no evidence supporting his blanket assumptions.

this Court held that a stay of the revocation, rather than rescission, was better public policy:

If revocations are to be automatically rescinded whenever a court, for whatever reason, schedules a hearing more than sixty days after a petition is filed, the effectiveness of the statute is largely nullified, with adverse consequences to public safety. By suggesting ways for district administrators to hold hearings quickly, the Legislature indicated the intent was to secure order, uniformity, system and dispatch.

Id. at 308-09. Respondent submits that the Fast-Track Program, which attempts to resolve criminal DWI cases quickly, is entirely consistent with this Court's rationale from 1984.

In response, Appellant attempts to sidestep *Szczech* by arguing that "the holding in *Szczech* that the statutory time period for review hearings is directory, not mandatory, was implicitly rejected in *Fedziuk*." Appellant's Brief at 9. This argument is wholly without merit. The Supreme Court in *Bendorf* explicitly put an end to that argument when it observed that, in *Fedziuk*, "[w]e did not, however, discuss, much less overrule, *Szczech* or hold that the 60-day timeframe in Minn. Stat. § 169A.53, subd. 3, is mandatory." See also *Rubey v. Vannett*, 714 N.W.2d 417, 421-22 (Minn. 2006) (holding that the 60-day timeframe set forth in Minnesota Rule of Civil Procedure 59.03 for conducting a hearing on a motion for new trial was a directory, procedural timeframe). In short, the holding in *Szczech*, that the 60-day language is directory not mandatory,

remains good law.⁶

2. Appellant's statutory violation claim is directly contrary to established canons of statutory construction.

In addition to lacking support in the *Fedziuk* and *Bendorf* decisions themselves, Appellant's argument alleging a statutory violation is also contrary to the rules of statutory construction. For example, Appellant's position directly conflicts with Minn. Stat. § 645.16 (2006), which states that:

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to *all* its provisions.

Id. (emphasis added).

Appellant's argument alleging a statutory violation here would thus create a result opposite to that required by law. By focusing exclusively upon the implied consent statute's 60-day hearing timeframe provision (§ 169A.53, subd. 3(a)), while giving no effect to the stay of the balance of the revocation provision (§ 169A.53, subd. 2(c)), Appellant's argument directly conflicts with the rule requiring that laws be interpreted to give effect to *all* their provisions. See Minn. Stat. § 645.16 (2006); Minn. Stat. § 645.17(2) (2006); see also *State v. Larivee*, 656 N.W.2d 226, 229 (Minn. 2003) (denying

⁶ Appellant's reliance on *Lord v. Frisby*, 260 Minn. 70, 77, 108 N.W.2d 769, 773 (1961), is similarly misplaced. See Appellant's Brief at 9-10. *Lord* stands only for the general proposition that courts should try to comply with the directory language of statutes, and should be particularly mindful of directory timeframes where the delay beyond the timeframe results in some prejudice to the parties. See *id.* That general holding is consistent with the more specific applications in *Szczech* and *Bendorf*, thus *Lord* actually supports Respondent's position, rather than Appellant's.

motorist's claim of statutory entitlement to an additional, independent alcohol concentration test because motorist's proposed construction of statute gave no effect to provision requiring that such a "second test" is only available *after* first submitting to a state-administered test, thus conflicting with the rule that, "[a] statute should be interpreted, whenever possible, to give effect to all of its provisions, and 'no word, phrase, or sentence should be deemed superfluous, void, or insignificant.'" (*internal citations omitted*). In fact, this is exactly what the Supreme Court did in *Bendorf* when it construed the 60-day timeframe in § 169A.53, subd.3(a), in conjunction with the stay provision contained in § 169A.53, subd. 2(c). *See Bendorf*, 727 N.W.2d at 416-17.

Appellant's argument also affronts Minn. Stat. § 645.17 (5), as it favors the private interest of the individual motorist over the public interest of the public at large by mandating rescission for all cases scheduled pursuant to the Fast-Track Program without regard to the merits of the individual case. *See id.* This last point is further supported by ample case law recognizing that statutes intended for the protection of the public are remedial in nature and are to be liberally construed to that end. *See Szczech*, 343 N.W.2d at 305-306. In this regard, the public interest in eliminating the dangers posed by impaired drivers compels a nonrestrictive construction of the implied consent statute so that it can be an effective tool for the removal of those drivers from our highways. *See id.* The implied consent laws must therefore be liberally construed in favor of protecting the driving public and must be given, "the broadest possible effect." *State, Department of Public Safety v. Juncewski*, 308 N.W.2d 316, 319 (Minn.1981).

Given the obvious conflicts between Appellant's statutory violation claim and the established rules of statutory construction discussed above, Appellant's argument lacks merit and must be rejected.

C. The Fast-Track Program Does Not Violate Procedural Due Process.

Appellant also claims that the Fast-Track Program violates procedural due process. *See* Appellant's Brief at 3-5, 12-15. As will be discussed more fully below, Respondent submits that Appellant's arguments in this regard are contrary to both the Supreme Court's controlling decision in *Bendorf* and the well-recognized administrative discretion possessed by trial courts to schedule cases and otherwise manage their own dockets. Accordingly, the trial court correctly concluded that Appellant failed to establish a procedural due process violation, and its order should be affirmed.

1. Appellant's procedural due process claim is impossible to reconcile with the Supreme Court's decision in *Bendorf*.

Appellant argues that the Fast-Track Program, "does not comply with... ..the constitutional requirement of a prompt hearing." Appellant's Brief at 5. Respondent submits that, despite Appellant's attempt to frame his argument as an attack on the Fast-Track Program in general, Appellant cannot assert a procedural due process claim without first establishing that he has suffered a "direct and personal harm" resulting from the alleged denial of his constitutional rights. *Davis v. Commissioner of Public Safety*, 509 N.W.2d 380, 391 (Minn. Ct. App. 1993), *aff'd* 517 N.W.2d 801 (Minn. 1994) (quoting *City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 392 (Minn. 1980)). Here, Appellant cannot show any such harm or prejudice, as any prejudice associated with the

delay in receiving a hearing could have been alleviated upon Appellant's mere request for a stay of the revocation. *See* Trial Court Order at RA.4.

Moreover, even assuming Appellant could establish that he has suffered a direct and personal harm, any claim that Appellant's specific procedural due process rights were violated must fail as it cannot be reconciled with the Supreme Court's recent controlling decision in *Bendorf*. Indeed, as will be discussed more fully below, Appellant's constitutional challenge is conceptually identical to the one rejected in *Bendorf*, which found no procedural due process violation on facts materially similar to Appellant's own. *See Bendorf*, 727 N.W.2d at 417.

It is well-settled that procedural due process, "is flexible and calls for such procedural protections as the particular situation demands." *See id.* at 415 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481, S. Ct. 2593, 2600 (1972)). In light of this flexibility, the Supreme Court in *Bendorf* noted that the "appropriate inquiry" in a procedural due process case is, "what level of prejudice has the driver suffered?" *See Bendorf*, 772 N.W.2d at 417. Respondent submits that examination of *Bendorf*, and other similar cases involving prehearing takings, reveals that Appellant here has failed to demonstrate a level of prejudice sufficient to constitute a procedural due process

violation.⁷

In *Bendorf*, the motorist did not receive a hearing until 94 days after the filing of his petition. *See Bendorf*, 727 N.W.2d at 412. The motorist had to file a motion and pay a \$55 motion filing fee in connection with his request for a stay of the balance of his revocation. *See id.* The motorist suffered 9 days of license revocation before he was able to receive the stay. *See id.* In weighing the motorist's private interest against the public and governmental interests, the Supreme Court in *Bendorf* concluded that:

Bendorf was deprived of his driving privileges for only nine days, and he availed himself of relief by obtaining a stay that allowed him to maintain his driving privileges throughout the process of judicial review. This minimal impact does not outweigh the state's compelling interest in maintaining an administrable system to keep its highways free from impaired drivers. We hold that the prejudice Bendorf suffered does not rise to the level of a violation of his right to procedural due process.

Bendorf, 727 N.W.2d at 417.

Respondent submits that, just as in *Bendorf*, balancing Appellant's private interest in maintaining his driver's license against the relevant public and governmental interests likewise reveals only a "minimal impact" that does not rise to the level of a procedural due process violation. In fact, Appellant is actually in a better position than the motorist

⁷ Rather than address the problems posed by the *Bendorf* decision head-on, Appellant instead bases his arguments on the decision in *Fedziuk*. *See* Appellant's Brief at 4-5; 13-15. Unfortunately, Appellant's reliance on *Fedziuk* is procedurally misplaced. While *Bendorf* involved the question of whether an individual driver was so prejudiced as to warrant a due process violation, *Fedziuk* involved two certified questions arising from a declaratory judgment action, and there was no examination of whether the individual driver there suffered prejudice sufficient to violate procedural due process. *Bendorf* thus controls because it is not only the more recent of the two decisions, but it is also factually more similar.

in *Bendorf*, because Appellant had the option of obtaining a stay of his revocation upon mere request to the court--without need to file a motion or pay a motion filing fee. F.F.4; *see also* Fast-Track Program letter, reproduced in Respondent's Appendix at RA4. Indeed, Appellant could have received an immediate stay--even as early as the same day his petition was filed--without need to wait for a motion hearing date or until 60 days of revocation had elapsed. *See* Fast-Track Letter, reproduced in Respondent's Appendix at RA4.

Accordingly, Appellant's attempts to distinguish the Supreme Court's decision in *Bendorf* fail on the merits because the same stay of the balance of the revocation that operated in *Bendorf* to result in only minimal prejudice associated with the delayed hearing in that case was also available to Appellant here. F.F.4; *see Bendorf*, 727 N.W.2d at 417. Accordingly, Appellant's procedural due process claim must fail because Appellant here suffered even less than the "minimal prejudice" that the Supreme Court found insufficient to violate procedural due process in *Bendorf*. F.F.4; *see Bendorf*, 727 N.W.2d at 417.

This conclusion, that a stay of the revocation pending a hearing on the merits satisfies procedural due process, is also consistent with a prior decision of the United States Supreme Court. In *Jennings v. Mahoney*, 404 U.S. 25, 92 S. Ct. 180 (1971), after a motorist was involved in a motor vehicle collision, the State of Utah immediately suspended the motorist's driver's license prior to a hearing based on a state law requiring motorists to either carry liability insurance or post security to show financial responsibility. *See id.*, 404 U.S. at 25, 92 S. Ct. at 181. On appeal, the motorist argued

that the statutory scheme did not afford sufficient procedural due process protections because it: (1) did not require an automatic stay of the suspension pending hearing on the merits; and (2) did not provide a sufficiently meaningful hearing by failing to mandate a trial at which the motorist could offer evidence and cross-examine witnesses. *See id.* The United States Supreme Court rejected these claims, noting that the motorist simply could not establish that a procedural due process violation occurred in that case, since, “[the district] court stayed the Director’s suspension order pending completion of judicial review, and conducted a hearing at which [the motorist] was afforded the opportunity to present evidence and cross-examine witnesses.” *Id.* at 404 U.S. 26-27, 92 S. Ct. at 181.

A similar conclusion was previously reached by this Court, even in a case involving a significantly longer delay between filing the petition and the judicial hearing. In *State v. Johnson*, 356 N.W.2d 388 (Minn. Ct. App. 1984), this Court concluded that even a delay of 4 years did not violate procedural due process, because the driver in that case, “retained his driver's license throughout the long delay.” *See id.* at 390. Accordingly, as Appellant here had the opportunity to regain his driving privileges and remove all references to the revocation from his driving record by merely requesting a stay of the revocation from the Court, it is impossible to reconcile Appellant’s claim with this Court’s prior holding that even a four-year delay does not violate due process where the motorist keeps his license. *See Johnson*, 356 N.W.2d at 390.

Indeed, even the *Fedziuk* decision itself specifically noted that, in a situation where drivers facing license revocations retained their licenses while awaiting hearing, the delay in the hearing did not cause prejudice sufficient to violate procedural due

process. *See Fedziuk*, 696 N.W.2d 340, 347, n.9 (citing to *Heller v. Wolner*, 269 N.W.2d 31 (Minn. 1978)); *see also Neal v. Fields*, 429 F.3d 1165, 1167 (8th Cir. 2005) (holding that licensing board did not deprive nurse of procedural due process because she retained her nursing license during investigative process).

Just like the individuals in *Bendorf*, *Jennings*, *Johnson*, *Heller*, and *Fields*, Appellant here was not deprived of procedural due process because he had the option to obtain a stay of the balance of his revocation pending his hearing on the merits. F.F.4. Accordingly, just as in the prior controlling precedents discussed above, so too should this Court find that the availability of a stay of the revocation here minimizes any prejudice associated with the delayed hearing and satisfies procedural due process.

Moreover, in addressing what due process protections are necessary in the implied consent context, the Supreme Court has repeatedly discussed the availability of hardship relief in the form of a limited license as being a critical factor. *See Bendorf*, 727 N.W.2d at 416; *Fedziuk*, 696 N.W.2d 340, 344-45; *see also* Minn. Stat. § 171.30, subd. 2a(1) (2006) (setting forth 15-day limited license waiting period for first-time DWI offenders). But here, Appellant had the option upon mere request to immediately regain his full driving privileges and have all references to the revocation removed from his driving record. F.F.4. Indeed, Appellant could conceivably have received a stay of the revocation in this case even *before* his 7-day temporary driving privileges expired. *See* Minn. Stat. § 169A.53, subd. 2(c) (2005); *see also* Ramsey County Fast-Track Letter, reproduced in Respondent's Appendix at RA4. Accordingly, Appellant must reconcile how the availability of a *limited license* 15 days after a revocation satisfies due process,

but the availability of a *full license* in even less time does not. Respondent submits that Appellant cannot establish prejudice here, and therefore Appellant's due process claim should be rejected.

By attempting to distinguish his constitutional claim from the one rejected in *Bendorf*, Appellant tries to draw a legal distinction where none exists. Indeed, Appellant even acknowledges *Bendorf's* holding that temporary reinstatement relieves any prejudice associated with the delayed hearing. *See* Appellant's Brief at 12-13. Despite this concession, Appellant nonetheless tries to distinguish his own case by relying exclusively upon footnote 10 in *Bendorf*, in which the Supreme Court indicated that it was not addressing arguments concerning the procedures used in other counties which allegedly did not make any effort to schedule hearings within 60 days, because those facts were not before the Court in that case. *See* Appellant's Brief at 13, citing *Bendorf*, 727 N.W.2d 410, 417, n.10.

Appellant further tries to distinguish the holding in *Bendorf* from his own facts by claiming that, "[t]he statutory provision for the stay of a revocation is clearly intended only as a safety net for those petitioners whose cases *could not* be heard at the earliest practicable date...." Appellant's Brief at 6 (emphasis in original). Appellant thus in effect argues that the Legislature and the Supreme Court intended that it was *only* appropriate for a trial court to *occasionally* use a stay of the balance of the revocation to remedy any prejudice associated with a delayed hearing; and this *only* after the trial court has exhausted all other possible alternatives to delaying the hearing date.

Respondent submits that, contrary to Appellant's arguments, nowhere in either *Fedziuk* or *Bendorf* does it say that a hearing cannot be postponed beyond 60 days without being rescinded *unless* the stay is only used infrequently, or *unless* all other attempts to schedule the hearing within 60 days have failed. *See Fedziuk*, 696 N.W.2d at 340-349; *Bendorf*, 727 N.W.2d at 410-417. In fact, established case law has long indicated that the proper remedy for scheduling hearings more than 60 days after filing of the petition is a temporary stay of the balance of the revocation period. *See id*; *see also Szczech*, 343 N.W.2d at 307-08.

Nor does the implied consent statute contain any language limiting a court's ability to grant a stay when a hearing is delayed. Indeed, Minn. Stat. § 169A.53 subd. 2(a) (2005), instead provides that, "[t]he judicial district administrator shall establish procedures to ensure efficient compliance with this subdivision." *Id.* Since the term "efficient" is not defined in the statute, it is given its ordinary meaning, which is "productive without waste." *See* Minn. Stat. § 645.08 (1) ("words and phrases are construed according to rules of grammar and according to their common and approved usage"); *Webster's Ninth New Collegiate Dictionary* 401 (9th ed. 1988) (defining "efficient" as "productive without waste"). Thus, contrary to Appellant's arguments, the implied consent statute specifically authorizes courts to establish scheduling policies which take judicial economy into consideration. Ramsey County appears to have done just that as part of its Fast-Track Program.

Respondent submits that if, as Appellant suggests, the Supreme Court had intended a stay of the revocation to be used only sparingly and as a last possible resort,

then at the very least the Court would have made mention of its intent and discussed the policies and authorities justifying such a requirement. Given the notable absence of any such discussions in *Fedziuk* and *Bendorf*, and the contrary indications contained in the implied consent law itself, Appellant cannot convincingly argue that the Supreme Court and the Legislature intended to veer from over 20 years of settled case law holding that a stay of the revocation may be used to satisfy the flexible concept of procedural due process in favor or a requirement that a stay can only be used sparingly and as a last resort when a hearing cannot be held within 60 days. Appellant cannot demonstrate such an intent, and has thus failed to distinguish his case from *Bendorf*.

2. The scheduling of hearings pursuant to the Fast-Track Program is within the sound administrative discretion of the trial court.

Appellant's procedural due process claim also ignores the fact that "the district court has considerable discretion in scheduling matters and in furthering what it has identified as the interests of judicial administration and economy." *Rice Park Properties v. Robins, Kaplan, Mille & Ciresi*, 532 N.W.2d 556, 556 (Minn. 1995); see also Minnesota Rule of Civil Procedure 40 ("[t]he judges of the court may, by order or by rule of court, provide for the setting of cases for trial upon the calendar, the order in which they shall be heard, and the resetting thereof.").

One appellate court has aptly noted the broad discretion which must be afforded to trial courts trying to manage their complex dockets:

We realize that a court must not let its zeal for a tidy calendar overcome its duty to do justice... ..Nonetheless, the fact remains that the calendars of the Southern District court are clogged and justice is being delayed or perhaps impaired as a result. In order to reduce this choking congestion, the

district courts must be permitted to exercise their discretion in appropriate ways that will ensure justice to all who seek it. We will not interfere with the conscientious judge who will not accept the *status quo* of calendar congestion. The task of updating calendars is arduous, complicated and burdensome. Since the trial judge must be entrusted with the power to alleviate calendar congestion, we shall not put obstacles in his way when he exercises his judgment wisely in achieving the desired goal.

Davis v. United Fruit Co., 402 F.2d 328, 331-332 (C.A.N.Y. 1968).

The Minnesota Supreme Court has likewise long recognized that trial courts are empowered with broad discretion to address their congested dockets:

In these times of overcrowded court calendars, excessive and inexcusable delays in the disposition of a case seriously affect the disposition of other cases ready for trial and, in many other ways, disrupt the fair administration of justice. Thus a broad measure of discretion must be left to trial judges to enforce calendar rules, to prevent unnecessary and inexcusable delays, and to promote the public interest in keeping court dockets free of stale claims.

Firoved v. General Motors Corporation, 277 Minn. 278, 152 N.W.2d 364 (1967).

Indeed, the same concerns about crowded calendars and wasteful use of limited court resources remain present today, even in Appellant's own case. For example, after being initially set on for hearing and then continued once prior to the actual hearing date, Appellant here, once his case was called, waived all substantive issues and proceeded only on his procedural claim. An unfortunate byproduct is that Appellant's spot on the court's calendar was tied up, thereby preventing another petitioner from having his or her day in court. Circumstances such as this are an apt example of why judges and court administrators continue to seek creative means by which to efficiently schedule cases so that the courts can both protect individual rights and be productive without waste.

CONCLUSION

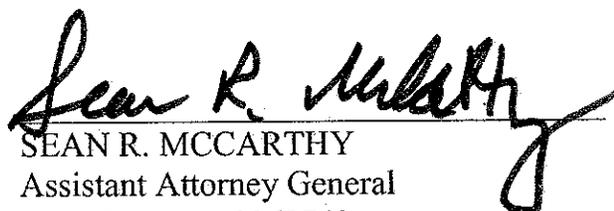
Because the trial court has both broad discretion in scheduling hearings in general, as well as specific authorization in Minn. Stat. § 169A.53, subd. 2(a), to adopt scheduling policies that balance the relevant interests of drivers against concerns for public safety and efficient handling of court calendars, Appellant has failed to establish that the trial court clearly abused its discretion in the scheduling of his case. Moreover, the trial court correctly concluded that, consistent with the recent controlling decision in *Bendorf*, any prejudice which Appellant may have suffered as a result of the failure to schedule his hearing within 60 days could have been minimized--if not entirely alleviated--by the availability of an immediate stay of the balance of the revocation period and removal of the revocation from Appellant's driving record pending final resolution of the implied consent hearing on the merits pursuant to Minn. Stat. § 169A.53, subd. 2(c), and the Second Judicial District's DWI Fast-Track Program. Because Appellant had this opportunity to receive a stay pending his hearing, his property interest in maintaining his driving privileges was sufficiently protected despite not receiving his hearing within 60 days. The trial court therefore properly applied prior controlling precedents, correctly determined that the 60-day statutory directive is not mandatory, and found that Appellant's statutory and procedural due process rights were sufficiently protected by the availability of a stay of the revocation pending a hearing on the merits.

For the foregoing reasons, Respondent respectfully asks that the decision of the trial court below be affirmed.

Dated: 5-29-07

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