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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1921**

Dennis Raymond Christian, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed May 5, 2014
Affirmed
Kirk, Judge**

Anoka County District Court
File No. 02-CV-10-7494

Daniel Paul Repka, Giancola-Durkin, P.A., Anoka, Minnesota (for appellant)

Lori Swanson, Attorney General, Jeffrey S. Bilcik, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Worke, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

KIRK, Judge

In this appeal from the district court's order sustaining the revocation of his driver's license, appellant argues that the district court violated his procedural due process rights by failing to give him a meaningful opportunity to be heard. We affirm.

FACTS

On September 25, 2010, respondent Minnesota Commissioner of Public Safety notified appellant Dennis Raymond Christian that his driver's license was revoked for 90 days. Appellant petitioned for judicial review of the revocation. At a hearing in February 2011, the parties and district court entered into a written stipulation where they agreed to continue the case until a decision was reached in the pending source code litigation because the issues in the case would be conclusively affected by that litigation. *See In re Source Code Evidentiary Hearings*, 816 N.W.2d 525, 529-30 (Minn. 2012). The stipulated agreement also provided “[t]hat all other issues which could be dispositive in this action are either hereby expressly waived or have already been decided by a District Court Judge.” The district court scheduled a review hearing in July.

At the July hearing, the district court took the matter under advisement because the source code litigation had not yet been resolved. In August, the district court stayed the case and scheduled a review hearing for May 2012.

In June 2012, the Minnesota Supreme Court issued a decision resolving the source code litigation. *In re Source Code*, 816 N.W.2d at 527-28. After rescheduling twice, the district court held an implied consent hearing in this case in August 2013. During the hearing, appellant's counsel requested that he be permitted to raise a challenge to the search of appellant's breath under *Missouri v. McNeely*, 133 S. Ct. 1552 (2013). The district court denied appellant's request, finding that the stipulation was enforceable, and sustained the revocation of appellant's driver's license. This appeal follows.

DECISION

Appellant argues that the district court violated his right to procedural due process by failing to provide him with an opportunity to be heard in a meaningful way and refusing to apply the new rule announced in *McNeely* retroactively. This court reviews de novo whether an individual has been afforded procedural due process. *Plocher v. Comm'r of Pub. Safety*, 681 N.W.2d 698, 702 (Minn. App. 2004). We will not reverse a district court's findings of fact unless they are clearly erroneous. Minn. R. Civ. P. 52.01.

The United States and Minnesota Constitutions provide that a person may not be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. 1, § 7. “A license to drive is a protected interest that cannot be deprived without procedural due process.” *Riehm v. Comm'r of Pub. Safety*, 745 N.W.2d 869, 877 (Minn. App. 2008), *review denied* (Minn. May 20, 2008). “Due process requires a prompt and meaningful postrevocation [judicial] review.” *Fedziuk v. Comm'r of Pub. Safety*, 696 N.W.2d 340, 346 (Minn. 2005). At a minimum, “due process requires that the petitioner be given the right to compel witnesses to attend the hearing and to cross-examine persons who prepared [the] reports.” *Id.* at 348.

As an initial matter, the commissioner argues that appellant may not argue for the first time on appeal that the district court violated his due process rights. In general, this court will not consider issues that were not argued to and decided by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). This includes constitutional arguments raised for the first time on appeal. *Constans v. Comm'r of Pub. Safety*, 835 N.W.2d 518, 526 (Minn. App. 2013). Appellant never argued this issue to the district

court and the district court did not decide whether appellant's due process rights were violated. At the February 2011 hearing, appellant expressly waived all issues other than the source code issue. And at the August 2013 hearing, appellant raised a challenge to the search of his breath, but he never raised a procedural due process argument. Therefore, we conclude that appellant waived his due process argument.

Moreover, even if we consider the merits of appellant's argument, the district court did not violate appellant's due process rights. Appellant does not contend that he did not have notice of any of the three implied consent hearings the district court held, and he was represented by counsel throughout these proceedings. At the first hearing in February 2011, appellant voluntarily entered into a stipulation with the commissioner and waived his right to a speedy trial and to raise any issues other than the source code issue. The Minnesota Supreme Court has consistently held that a defendant may waive his fundamental constitutional rights. *See State v. Blom*, 682 N.W.2d 578, 617 (Minn. 2004). Appellant had the opportunity to raise any additional issues at that hearing, yet he chose to enter into the stipulation. The district court held two more hearings: one in July 2011 and the final one in August 2013. At the August 2013 hearing, appellant requested to raise an issue under *McNeely*, but the district court declined his request due to the stipulated agreement. The record establishes that appellant had a prompt and meaningful review of the revocation of his driver's license.

Affirmed.