

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES EDWARD BEZAK, JR.,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES,
Respondent.

No. 82042-COA

FILED

OCT 20 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

ORDER DISMISSING APPEAL

Charles Edward Bezak, Jr. appeals from a district court order denying a petition for judicial review in a driver's license revocation matter. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

On May 4, 2019, Bezak was pulled over by Nevada Highway Patrol Trooper Derek Simmons and arrested for driving under the influence of alcohol. After arresting Bezak and placing him in the patrol vehicle, Trooper Simmons requested that Bezak submit to an evidentiary test to detect the presence of alcohol, pursuant to Nevada's implied consent law under NRS 484C.160.¹ Bezak was warned that a failure to submit would result in the revocation of his license. In response, Bezak requested to speak with counsel. Trooper Simmons then repeated the warning that a refusal to submit would result in an automatic revocation of his license. Bezak did not respond. A search warrant was later obtained for a blood draw, to which Bezak submitted, and the result revealed a 0.149 percent blood alcohol concentration.

The State of Nevada Department of Motor Vehicles (DMV) revoked Bezak's driving privilege for one year because of his failure to

¹We do not recount the facts except as necessary for our disposition.

submit to the evidentiary test, as well as an additional 90 days because the blood test result demonstrated an alcohol concentration greater than 0.08 percent. In a hearing before the DMV, an administrative law judge (the ALJ) upheld both revocation periods. Bezak filed a petition for judicial review of the ALJ's decision, challenging the one-year revocation of Bezak's license for his failure to submit to the evidentiary test. The district court denied Bezak's petition for judicial review because substantial evidence supported the ALJ's finding that Bezak refused to submit, and Bezak had received sufficient notice that his license would be revoked if he failed to submit. This appeal followed.

On appeal, Bezak contends that the ALJ erred because Trooper Simmons should have informed Bezak that (1) he did not have a right to counsel prior to submitting to the evidentiary test, (2) requesting counsel was tantamount to a refusal, (3) remaining silent would be considered a refusal, and (4) he needed to audibly state that he would submit to the evidentiary test. Bezak further argues that he was cooperative and compliant, actions not indicative of a failure to submit. Alternatively, Bezak contends that his constitutional right to due process was violated because Nevada's implied consent statutes do not inform a motorist what constitutes a failure to submit to an evidentiary test, including most notably that requesting to speak to counsel constituted a refusal, and that the statutes' use of "fails to submit," NRS 484C.160(2), is unconstitutionally vague. DMV counters that the ALJ properly upheld Bezak's license revocation per the statute and that his decision should be affirmed.

After the appeal was filed, DMV filed a motion to dismiss the appeal as being moot, given that Bezak's license has been reinstated and his driving privileges restored. Bezak counters that collateral consequences

resulting from the revocation period create a real controversy and, in the alternative, that the issues presented in this appeal qualify for the “capable of repetition, yet evading review” exception to the mootness doctrine. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). The motion to dismiss was denied without prejudice by the Nevada Supreme Court, permitting this court to consider mootness on appeal.

Under Nevada law, “[a] moot case is one which seeks to determine an abstract question which does not rest upon existing facts or rights.” *NCAA v. Univ. of Nev., Reno*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981). “Cases presenting real controversies at the time of their institution may become moot by the happening of subsequent events.” *Id.*


According to the record before us, DMV issued Bezak a driver’s license on April 19, 2021. Thus, his driver’s license revocation period has expired. In *Langston v. State, Department of Motor Vehicles*, the Nevada Supreme Court has already considered and rejected the argument that after the driver’s license revocation period has expired, the court is able to grant any effective relief on appeal. 110 Nev. 342, 343-44, 871 P.2d 362, 363 (1994). Thus, despite potential collateral consequences to Bezak, the appeal should be dismissed as being moot. *See id.*


We are also not persuaded that Bezak’s issues are of sufficient public interest to warrant our exercise of discretion in utilizing the “capable of repetition, yet evading review” exception to the mootness doctrine. *Personhood Nev.*, 126 Nev. at 602, 245 P.3d at 574 (“Even when an appeal is moot, however, we may consider it if it involves a matter of widespread importance that is capable of repetition, yet evading review.”). It appears that Bezak’s issues, including his due process concerns, are related to the specific circumstances under which Trooper Simmons and Bezak interacted

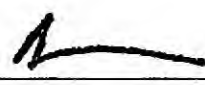
and therefore turn on facts unique to this case. *See Langston*, 110 Nev. at 344, 871 P.2d at 363 (concluding that factually specific issues are “not of the character considered capable of repetition”).

Finally, should an identical or substantially similar issue arise in the future, Bezak, or any Nevada driver, will be able to utilize available procedures in order to bring a real controversy before the appellate courts so that a decision on the merits may be determined before the restoration of driving privileges occurs and the decision becomes moot. *See, e.g.*, NRAP 8(a)(1)-(2) & (2)(D) (describing typical pipeline for securing a stay at this court, as well as providing that “[i]n an exceptional case in which time constraints make consideration by a panel impracticable, the motion may be considered by a single justice or judge”). Here, a motion for stay was denied by the district court, and Bezak failed to contest that denial or request a stay from this court. Therefore, the appeal is now moot and we

ORDER this appeal DISMISSED.


_____, J.
Tao


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Bourassa Law Group, LLC
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk