Not So Fast: Dismissal of DWI Charges for Failure to Schedule Trial in 30 Days

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Categories : Motor Vehicles, Procedure

Tagged as : DWI, motions to dismiss, vehicle forfeiture

Date : March 18, 2015

Defendants who drive while impaired while their licenses are revoked for another impaired driving offense or who drive while impaired without a license and without car insurance risk more than criminal prosecution. The vehicles they drive must be seized, and, if they are convicted, will be ordered forfeited. To speed up the forfeiture process, DWI cases involving vehicle forfeitures must be scheduled within 30 days of the offense. But they rarely, if ever, are. Are defendants entitled to relief when the statutory scheduling directive is ignored? And can that relief come in the form of the dismissal of criminal charges?

The law. To expedite the determination of whether a motor vehicle seized pursuant to G.S. 20-28.3 is subject to forfeiture, G.S. 20-28.3(m) requires that district court trials of impaired driving offenses involving forfeiture of motor vehicles be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever comes first.

Once scheduled, the case must not be continued unless the following conditions are met:

(1) a written motion for a continuance is filed with notice given to the opposing party before the motion is heard;

(2) the judge makes a finding of a compelling reason for the continuance; and

(3) the motion and finding are attached to the court case record.

The practice. The trial priority provisions frequently are ignored. DWI cases, like other criminal matters, are routinely calendared for trial more than 30 days after the offense. Compliance with the continuance rules in G.S. 20-28.3(m) is no more robust. Indigent defendants who qualify for court-appointed counsel typically present their affidavits of indigency at the first setting of the case. Obviously, an attorney who has not even been appointed, much less entered an appearance in the case, cannot be armed at that first setting with a written motion for a continuance. Nevertheless, such cases are continued, as they must be to preserve defendants' rights to be represented by counsel.

I doubt that compliance with the written continuance motion requirement is significantly higher among defendants who have hired counsel before the first setting of the case. Instead counsel typically orally requests a continuance, which the State does not oppose. The trial court then sets a mutually agreed upon date for trial.

The issue. A motor vehicle owned by and seized from a DWI defendant may only be returned to that defendant before trial if the defendant files a petition with the clerk and thereafter demonstrates that his license was not revoked for an impaired driving revocation or (if this is the basis for the seizure) that he had a valid driver's license and/or insurance at the time of the offense. G.S. 20-28.3(e2).

If a defendant cannot make such a showing, she may only regain possession of the seized motor vehicle following acquittal or a post-trial forfeiture hearing.

DWI defendants whose trials are scheduled without regard to the trial priority provisions in G.S. 20-28.3(m), sometimes

move for dismissal of the criminal DWI charges. The argument made in support of such relief is that, while no remedy is provided by statute, the court must fashion some relief to provide an incentive for compliance. This argument invokes the rationale for suppressing chemical testing results that are obtained without statutory compliance. *See* State v. Shadding, 17 N.C. App. 279, 282-83 (1973) ("Such rights of notification, explicitly given by statute, would be meaningless if the breathalyzer test results could be introduced into evidence despite non-compliance with the statute."). These motions sometimes are made by defendants who themselves have participated in the noncompliance by moving in open court to continue the case without the support of a written motion.

The authority to dismiss. Dismissal of charges is drastic relief--to be sparingly granted. *See* Official Commentary to G.S. 15A-954. No statute authorizes dismissal of charges for a mere statutory violation. And while a line of cases beginning with State v. Knoll, 322 N.C. 535 (1988), contemplates dismissal of impaired driving charges for the violation of statutory rights related to pre-trial release, neither *Knoll* nor its progeny extends such relief to cases involving other types of statutory violations. Indeed, the common remedy for statutory violations related to the gathering of evidence in criminal cases is suppression of the gathered evidence, not dismissal of the underlying charges. *See* G.S. 15A-974(a)(2); *Shadding*, 17 N.C. App. at 282-83; State v. White, ___ N.C. App. ___, 753 S.E.2d 698, 704 (2014) (deeming suppression an appropriate remedy for violation of statutory requirements governing checkpoints); *see also* State v. Wilson, __ N.C. App. __, 736 S.E.2d 614 (reversing trial court's dismissal of DWI charges when no basis for dismissal under G.S. 15A-954(a) existed).

Why it doesn't apply here. The trial priority provisions in G.S. 20-28.3(m) appear to be aimed at ensuring a prompt determination of the forfeiture issue. If such prompt determinations were to occur (and they seldom do) the property interests of the party entitled to the motor vehicle or its proceeds would be protected. Most of the time the entity whose property interest is devalued as a result of the delayed trial is not the defendant-motor-vehicle-owner. Instead it is the county schools, who receive the proceeds of any motor vehicle ordered forfeited.

Moreover, it is hard to imagine how the lack of compliance with G.S. 20-28.3(m) would ever prejudice the defense of the criminal matter. And in none of the circumstances I've heard about has the defendant argued she was so prejudiced.

Thus, given the drastic nature of the relief sought, the lack of any authority in the statutes or case law to grant such relief, and the lack of prejudice to the defendant, dismissal of criminal charges does not appear to be an appropriate remedy for violations of G.S. 20-28.3(m).

Are we left without a remedy? Perhaps so. And, since neither the defendant nor the State typically is harmed by the noncompliance (and both are complicit in it), that may be fine with everyone. In the rare case in which a defendant's interests are harmed by the delayed forfeiture hearing (which could occur if the statutory requirements for seizure did not exist) and the defendant was not complicit in the delay, it may be appropriate for the court to fashion some form of relief related to the return of the motor vehicle.