

North Carolina Court of Appeals

Docket Sheet

Lee v Gore

Case Number: 09-370

As of: 04/30/2024

Case Closed: Yes

Close Date: 02-08-2010

Case Type: Civil (Civil_othr)

Mediation: No

RICHARD JAMES LEE,
Petitioner,

V

WILLIAM C. GORE, JR., as
Commissioner of the Division
of Motor Vehicles, North
Carolina Department of
Transportation,
Respondent.

Docket Date: 03-25-2009

File Date: 03-20-2009

File Time: 11:21

Acquired Date: 03-20-2009

Bond Collected: Yes

Docket Fee: Yes

Pauper: No

Print Deposit: No

State Appeals: No

History

Venue: Wilkes (34)

Heard In: Superior Court

To SC:

From SC:

Lower Court Number(s)

Location: Wilkes (34)

Judge: Henry Frye

Case #: 07CVS2486

Tracking/Argue

Argue Date: 10-13-2009 (No oral argument by Rule 30(f))

Opinion

Opinion Date: 01-19-2010

Cert Date: 02-08-2010

Author: Honorable Linda M. McGee

Decision: Vacated and remanded

Opinion Notes:

Opinion Pages: 9

Opinion Cost: \$ 1.80

Cite: 202 NC App 133

Slip Opinion: <https://appellate.nccourts.org/opinions/?c=2&pdf=5453>

Documents

Document	Date Recvd	Cert of Service	Rec/Brf Due	Resp. Due	Resp. Recvd	Mailed Out	Ruling	Ruling Date
(1) RECORD	03-20-2009	03-19-2009				03-27-2009		
(2) APPELLANT BRIEF	04-28-2009	04-24-2009				05-04-2009		
(3) INFORM SHT	04-28-2009	04-24-2009						
(4) MOTION	05-20-2009	05-20-2009					Allowed	05-21-2009
(5) APPELLEE BRIEF	06-26-2009							
(6) APPELLEE BRIEF	06-29-2009	06-29-2009				07-14-2009		
(7) M-GEN	06-30-2009	06-29-2009					Allowed	06-30-2009
(8) M-GEN	07-27-2009	07-23-2009					Denied	08-20-2009
(9) M-GEN	08-05-2009	08-04-2009					Allowed	08-20-2009
(10) M-GEN	08-19-2009	08-13-2009					Allowed	08-20-2009
(11) ADDENDUM	08-21-2009	08-21-2009				09-01-2009		
(12) COURT ORDER	09-23-2009						Special Order	09-23-2009
(13) M-GEN	09-29-2009	09-25-2009					Allowed	10-01-2009
(14) M-GEN	10-06-2009	10-01-2009					Allowed	10-06-2009
(15) REPLY	10-14-2009	10-09-2009				10-19-2009		
(16) PET-REHEAR	02-23-2010	02-23-2010					Allowed	03-19-2010
(17) M-GEN	03-08-2010	03-02-2010					Dismissed	03-18-2010
(18) APPELLEE BRIEF	04-21-2010					04-22-2010		
(19) IN	04-21-2010							
(20) APPELLANT BRIEF	05-18-2010	05-17-2010				05-24-2010		

1 - RECORD

Filed: 03-20-2009 @ 11:21:00
FOR: Petitioner Richard J. Lee
BY : Mr. Richard J. Lee

2 - APPELLANT BRIEF

Filed: 04-28-2009 @ 07:58:00
FOR: Petitioner Richard J. Lee
BY : Mr. Richard J. Lee

3 - AIS INFORM SHT

Filed: 04-28-2009 @ 07:58:00
FOR: Petitioner Richard J. Lee
BY : Mr. Richard J. Lee

4 - MOTION (Allowed) - 05-21-2009

Filed: 05-20-2009 @ 12:00:00
FOR: Respondent William C. Gore, Jr. ex rel
BY : Mr. Christopher W. Brooks

The following order was entered:

The motion filed in this cause on the 20th day of May 2009 and designated Motion to Extend Time for Filing the Respondent-Appellee's Brief is allowed. Respondent-appellee's brief shall be filed on or before 26 June 2009.

By order of the Court this the 21st day of May 2009.

5 - APPELLEE BRIEF
Filed: 06-26-2009 @ 11:06:59
FOR:
BY : Mr. Jess D. Mekeel

6 - APPELLEE BRIEF
Filed: 06-29-2009 @ 12:31:00
FOR:
BY : Mr. Jess D. Mekeel

7 - MOTION RESPONDENT-APPELLEE'S MOTION TO SUBSTITUTE AND DEEM TIMELY FILED NEW BRIEF FOR RESPONDENT-APPELLEE, OR ALTERNATIVELY, MOTION TO AMEND RESPONDENT-APPELLEE'S ORIGINAL BRIEF (Allowed) - 06-30-2009
Filed: 06-30-2009 @ 08:30:12
FOR:
BY : Mr. Jess D. Mekeel

The following order was entered:

The motion filed in this cause on the 30th of June 2009 and designated 'Respondent-Appellee's Motion to Substitute and Deem Timely Filed New Brief for Respondent-Appellee, or Alternatively, Motion to Amend Respondent-Appellee's Original Brief' is allowed. Respondent-appellee's brief is stricken, and the attached brief shall be substituted and printed.

By order of the Court this the 30th of June 2009.

8 - MOTION PETITIONER-APPELLANT'S MOTION TO STRIKE PORTIONS OF RESPONDENT-APPELLEE'S BRIEF (Denied) - 08-20-2009
Filed: 07-27-2009 @ 08:31:14
FOR: Petitioner Richard J. Lee
BY : Mr. Richard J. Lee

The following order was entered:

The motion filed in this cause on the 27th of July 2009 and designated 'Petitioner-Appellant's Motion to Strike Portions of Respondent-Appellee's Brief' is denied.

By order of the Court this the 20th of August 2009.

9 - MOTION RESPONDENT-APPELLEE'S MOTION TO AMEND BRIEF (Allowed) - 08-20-2009
Filed: 08-05-2009 @ 14:23:11
FOR:
BY : Mr. Jess D. Mekeel

The following order was entered:

The motion filed in this cause on the 5th of August 2009 and designated 'Respondent-Appellee's Motion to Amend Brief' is allowed contingent upon counsel filing an addendum to the brief which contains the requested deletion on page seven on or before 4 September 2009. The addendum shall then be printed.

By order of the Court this the 20th of August 2009.

10 - MOTION PETITIONER-APPELLANT'S MOTION TO AMEND HIS MOTION TO STRIKE PORTIONS OF RESPONDENT-APPELLEE'S BRIEF (Allowed) - 08-20-2009
Filed: 08-19-2009 @ 08:59:30
FOR: Petitioner Richard J. Lee
BY : Mr. Richard J. Lee

The following order was entered:

The motion filed in this cause on the 19th of August 2009 and designated 'Petitioner-Appellant's Motion to Amend His Motion to Strike Portions of Respondent-Appellee's Brief' is allowed. The attached table of contents and table of cases and authorities shall be added to the motion.

By order of the Court this the 20th of August 2009.

11 - APPELLEE BRIEF ADDENDUM
Filed: 08-21-2009 @ 10:06:00
FOR:
BY : Mr. Jess D. Mekeel

12 - CT_ORDER COURT ORDER (Special Order) - 09-23-2009
Filed: 09-23-2009 @ 15:55:22
FOR: For the Court
BY : Ms. Lois Dixon

The following Order was entered:

The judges on the panel to whom this case has been referred have concluded that the case shall be decided on the records and briefs.

Pursuant to Rule 30 (f) of the Rules of Appellate Procedure, IT IS ORDERED that this case be decided without oral argument.

Counsel for the parties are hereby notified not to appear for oral argument

13 - MOTION PETITIONER-APPELLANT'S MOTION FOR LEAVE TO FILE A REPLY BRIEF (Allowed) - 10-01-2009
Filed: 09-29-2009 @ 10:10:53
FOR: Petitioner Richard J. Lee
BY : Mr. Richard J. Lee

The following order was entered:

The motion filed in this cause on the 29th of September 2009 and designated 'Petitioner-Appellant's Motion for Leave to File a Reply Brief' is allowed.

By order of the Court this the 1st of October 2009.

14 - MOTION PETITIONER-APPELLANT'S MOTION TO EXTEND TIME TO HEAR CASE (Allowed) - 10-06-2009
Filed: 10-06-2009 @ 08:59:59
FOR: Petitioner Richard J. Lee
BY : Mr. Richard J. Lee

The following order was entered:

Petitioner-Appellant's Motion to extend time to hear case is allowed as follows: the matter is continued until 27 October 2009. Petitioner-Appellant may file a reply brief pursuant to the North Carolina Rules of Appellate Procedure.

By order of the Court this the 6th of October 2009.

15 - APPELLANT BRIEF REPLY
Filed: 10-14-2009 @ 08:18:00
FOR: Petitioner Richard J. Lee
BY : Mr. Richard J. Lee

16 - PET-REHEAR (Allowed) - 03-19-2010
Filed: 02-23-2010 @ 17:02:17
FOR:
BY : Mr. Jess D. Mekeel
N.C. DEPARTMENT OF JUSTICE

The following order was entered:

Respondent-Appellee timely filed a Petition for Rehearing in this matter on 23 February 2010. After consideration of the Petition for Rehearing, this Court hereby grants a rehearing, pursuant to N.C. R. App. P. 31 (2010).

The briefs shall be addressed solely to the points specified in the order granting the petition to rehear. The petitioner's brief shall be filed within thirty days after the case is certified for rehearing, and the opposing party's brief, within thirty days after petitioner's brief is served. Filing and service of the new briefs shall be in accordance with the requirements of Rule 13. No reply brief shall be received on rehearing.

N.C. R. App. P. 31(d). The new briefs on rehearing shall be limited to the following issues set forth in Respondent's petition for rehearing:

I. Statutory Construction of N.C. Gen. Stat. Â§ 20-16.2: Does the statute control Respondent's authority to revoke Petitioner's North Carolina driving privileges, or just Respondent's authority to notify Petitioner that his driving privileges have been revoked.

II. Standard of Review: Whether this Court appropriately addressed and considered the findings of fact made by the Hearing Officer.

III. Officer Ratliff's Affidavit: Whether this Court properly considered the DHHS 3908 submitted with Officer Ratliff's affidavit in our determination that the materials sent by officer Ratliff were insufficient to vest Respondent with the authority to revoke Petitioner's North Carolina driving privileges.

IV. Evidence of Refusal Before the Magistrate: Whether there was evidence before the magistrate that Petitioner willfully refused chemical analysis, and, if so, what impact that would have on the authority of Respondent to revoke Petitioner's North Carolina driving privileges.

The parties shall comply fully with the provisions of N.C. R. App. P. 31(d) for reconsideration solely upon the record on appeal, the petition to rehear, and new briefs of both parties.

By order of the Court this the 19th of March 2010.

The above order is therefore certified to the Clerk of the Superior Court, Wilkes County.

17 - MOTION PETITIONER-APPELLANT'S MOTION TO STRIKE RESPONDENT APPELLEE'S PETITION FOR REHEARING (Dismissed) - 03-18-2010
Filed: 03-08-2010 @ 09:17:34
FOR: Petitioner Richard J. Lee
BY : Mr. Richard J. Lee

The following order was entered:

The motion filed in this cause on the 8th of March 2010 and designated 'Petitioner-Appellant's Motion to Strike Respondent Appellee's Petition for Rehearing' is dismissed.

By order of the Court this the 18th of March 2010.

18 - APPELLEE BRIEF
Filed: 04-21-2010 @ 09:04:24
FOR: North Carolina Division of Motor Vehicles
BY : Ms. Kathryn E. Hathcock

19 - IN
Filed: 04-21-2010 @ 16:04:04
FOR: North Carolina Division of Motor Vehicles
BY : Ms. Kathryn E. Hathcock

20 - APPELLANT BRIEF
Filed: 05-18-2010 @ 13:23:00
FOR: Petitioner Richard J. Lee
BY : Mr. Richard J. Lee

Receipts

Date Charged	Charge Type	Amount Charged	Amount Paid	Document	Pages	Receipt #	Date Paid
03-20-2009	Docket Fee	10.00	10.00			R032050809	03-25-2009
03-20-2009	Bond	250.00	250.00			R032050809	03-25-2009
03-27-2009	Printing	357.00	357.00	RECORD	204	R032052409	03-27-2009
05-04-2009	Printing	127.75	129.50	APPELLANT BRIEF	73	R052002109	05-04-2009
10-19-2009	Printing	49.00	49.00	APPELLANT BRIEF	28	R112001409	11-05-2009
05-24-2010	Printing	70.00	70.00	APPELLANT BRIEF	40	R062006010	06-07-2010
05-27-2010	Printing	45.50	45.50	APPELLEE BRIEF	26	R052071510	05-27-2010
11-06-2009	Printing	85.75	85.75	APPELLEE BRIEF	49	R122014209	12-10-2009
11-06-2009	Printing	7.00	7.00	APPELLEE BRIEF	4	R122025609	12-10-2009
01-19-2010	Assess	552.75	552.75			R012018611	01-12-2011

Payments

Payment Date	Payment Type	Amount	Check Number
01-27-2011	Disburse	793.75	35498

Exhibits**Parties**

Party Name	Role
Gore, William C. (Jr.)	Respondent-Appellee
NC Department Of Transportation	Respondent-Appellee
Richard J. Lee	
William C. Gore, Jr. ex rel	
Lee, Richard James	Petitioner-Appellant
Division of Motor Vehicles	Respondent-Appellee

Attorneys**Attorney for Petitioner - Richard J. Lee**

Mr. Richard J. Lee [Primary Attorney]

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