

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10194
Summary Calendar

PETER T. COLE

Plaintiff - Appellant

v.

CITY OF DALLAS

Defendant - Appellee

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:00-CV-1723-M
- - - - -

November 9, 2001

Before KING, Chief Judge, and HIGGINBOTHAM and BENAVIDES, Circuit Judges.

PER CURIAM:*

Peter T. Cole appeals the district court's denial of his civil rights complaint in which he requested injunctive and declaratory relief, damages, attorneys' fees, and costs. The City of Dallas (City) denied Cole's request for a wrecker driver's permit pursuant to chapter 48A-13(a)(7)(A)(xiii), which prohibits the issuance of a wrecker driver's permit to a person who has been convicted of a crime involving a violation of the Controlled Substances Act, or a comparable state or federal law,

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

that is punishable as a felony for which less than five years have elapsed since the date of conviction or the date of confinement for the last conviction, whichever is the later date. The district court concluded that chapter 48A of the Dallas city code, which regulates the towing services industry in Dallas, has not been preempted by 49 U.S.C. § 14501(c). Cole argues that 49 U.S.C. § 14501(c) preempts chapter 48A and that the safety exemption of § 14501(c)(2) does not apply to municipalities.

In a supplemental letter brief filed after our decision in Stucky v. City of San Antonio, 260 F.3d 424 (5th Cir. 2001), the City of Dallas states that "[a]s [chapter] 48A-13(a)(7)(A)(xiii) is a motor vehicle safety regulation, the City acknowledges that Stucky prohibits a city from enacting or enforcing such a law." The City then puts forward several arguments for the reconsideration of Stucky. Only the en banc court can reconsider Stucky. We are bound by it. The City's concession decides this case. Accordingly, the district court's judgment is VACATED, and the case is REMANDED to the district court for further consideration consistent with this opinion.