

constitutional rights. *Morrissey v. Brewer supra*; *Gagnon v. Scarpelli supra*; *Belton v. Vitek supra*; see *Wolff v. McDonnell*, 418 U.S. 539 (1974).

The policy of our law is to give great weight to the decision of a commission or board (*See* RSA 541:13) and a long line of cases under the appeal statute follows this course. Furthermore, on petition for habeas corpus, review is necessarily restricted, and the action of the parole board must be upheld unless shown as a matter of law to have been arbitrary or capricious, or void for lack of the requisite statutory process.

Remanded.

Carroll
No. 6584

STATE OF NEW HAMPSHIRE

v.

KENNETH CRAIGUE

May 30, 1975

Warren B. Rudman, attorney general, and *James L. Kruse*, attorney (Mr. Kruse orally), for the State.

William P. Shea, by brief and orally, for the defendant.

MEMORANDUM OPINION

Defendant was found guilty of operating under the influence of intoxicating liquor in a jury-waived trial, and his exception to the court's failure to dismiss for failure to prove a prima facie case was transferred by *Dunfey, J.*

The arresting officer who appeared on the scene within fifteen minutes of receiving a call found the defendant behind the wheel of a truck, the motor of which was running and from which came the odor of a burning clutch. The vehicle was alongside the traveled part of a public highway with its tires buried in sand. Tire skid marks led from one side of the road to the other directly to the position of the truck. The only other person at the scene was a local resident who was preparing to bring his own vehicle from nearby to assist in pulling the truck out.

This case is governed by *State v. Costello*, 110 N.H. 182, 263 A.2d 671 (1970), and *State v. Allen*, 114 N.H. 682, 327 A.2d 715 (1974). Not only could it be found that the defendant drove the truck on the public highway to the location where he was found, but the brief lapse of time that it took the officer to arrive would support a finding that defendant's degree of intoxication had not materially changed.

Exception overruled.

KENISON, C.J., did not sit.