

Kittell v. Commonwealth of Pennsylvania, Department of Transportation

*Drivers' License- Suspension- Effect of Out-of-State Pre-conviction Diversionary  
Program*

1. Under Maryland law, the Probation Before Judgment program is not viewed as a conviction.
2. Under 75 Pa. C.S. section 6146, the Secretary of Transportation of the Commonwealth is authorized to enter into the Driver License Compact and other agreements to suspend or revoke the operating privileges of Pennsylvania drivers who are convicted in another state of traffic offenses similar to those carrying such a penalty in Pennsylvania.
3. For determining the circumstances warranting suspension or revocation, Pennsylvania law defines conviction as including a guilty plea, a plea of nolo contendere, or a finding of guilt by a court. 75 Pa. C.S. section 6501 (a).
4. In order to enter the Probation Before Judgment program in Maryland, a driver must plead guilty to the offense, although the plea is stricken after successful completion of the program.
5. Where a driver enters a plea of guilty to a traffic offense in another state, which would warrant the suspension or revocation of his or her license in Pennsylvania under a Pennsylvania plea, the Department of Transportation may suspend or revoke the license even if the plea is subsequently stricken in the other state.

*Stephen D. Kulla, Esquire, Counsel for Petitioner*  
*Matthew X. Haeckler, Esquire, assistant Counsel Department of  
Transportation*

#### OPINION AND ORDER OF COURT

Herman, J., March 27, 1996:

The petitioner appeals the one year suspension of his driver's license. By letter dated July 21, 1995, the petitioner was notified by the Department of Transportation, Bureau of Drivers Licensing that the suspension was to commence on August 25, 1995. His operating privileges were restored pending appeal. A hearing was held December 19, 1995, and this matter is ready for decision.

On June 16, 1995, petitioner was convicted in Maryland of driving under the influence on April 26, 1995. On September 29, 1995, Maryland sent Pennsylvania certification of the conviction. On October 6, 1995, the Pennsylvania Department of

## THANK YOU

"I want to thank my friends and  
Colleagues who called the LCL Helpline  
over their concern for my well-being.

I also want to thank LCL for being  
there and for assisting my friends and  
colleagues in getting me into treatment.

I owe my life, my happiness and  
my career to them

Thank you."

Anonymous Attorney

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Transportation certified that the petitioner's driving record and record of conviction were received. The petitioner claims that on November 7, 1995, Maryland admitted him to the Probation Before Judgment Program which permits drivers convicted of a vehicle offense to avoid having a conviction on their records by completing a probationary program. Pennsylvania Transportation authorities were not notified of the change in petitioner's status under Maryland law. By the time the petitioner was allegedly admitted to the Probation Before Judgment Program in Maryland, Pennsylvania had already taken action to suspend his license for one year.

Petitioner argues that admittance to the Probation Before Judgment Program does not constitute a conviction in Maryland and should not be considered as such by Pennsylvania under the terms of the Drivers License Compact, Article 16-701 of the Annotated Code of Maryland to which Pennsylvania is a party. This Compact is designed to promote reciprocal licensing procedures between states.

Article 27, Section 641 (a)(1)(i) of the Annotated code of Maryland pertains to Probation Before Judgment in Maryland. It provides:

Whenever a person accused of a crime pleads guilty or nolo contendere or is found guilty of an offense, a court exercising criminal jurisdiction, if satisfied that the best interests of the person and the welfare of the people of the State would be served thereby, and with the written consent of the person after determination of guilt or acceptance of a nolo contendere plea, may stay the entering of judgment, defer further proceedings, and place the person on probation subject to reasonable terms and conditions as appropriate...

(c) Upon fulfillment of the terms and conditions of probation, the court shall discharge the person from probation. The discharge is final disposition of the matter. Discharge of a person under this section shall be without judgment of conviction and is not a

conviction for purposes of any disqualification or disability imposed by law because of conviction of crime.

The update for Section 641A(a)(1) provides: "Upon entering a judgment of conviction, the court having jurisdiction may suspend the imposition or execution of sentence and place the defendant on probation upon such terms and conditions as the court deems proper." To avoid the stigma of having a criminal conviction on one's record, a driver admitted to the Probation Before Judgment Program must fulfill the terms and conditions of his probation. *Myers v. State*, 303 Maryland 639, 496 A.2d 312, 316 (1985). While the driver is on probation, Maryland does not view his admission into the program as being a conviction.

Under 75 Pa.C.S. 6146 entitled "Enforcement Agreements", the Secretary of the Pennsylvania Department of Transportation is authorized to: "enter into agreements...including...(1) The Driver License Compact...and [agreements] to suspend or revoke the operating privilege of Pennsylvania licensed drivers who are convicted in another state of any offense essentially similar to those [relating to serious traffic offenses]..." Section 6501 (a) provides: "For the purposes of this title, a conviction includes a plea of guilty, a plea of nolo contendere [or] a finding of guilt by a court..."

The Commonwealth cites *Casey v. Commonwealth Department of Transportation*, 132 Pa. Commw. 332, 572 A.2d 865 (1990), in which the petitioner was arrested for driving under the influence in Delaware, and later admitted to Delaware's First Offender program. The petitioner argued that the disposition of his case in Delaware was not the equivalent of a conviction and therefore Pennsylvania could not suspend his license. The Commonwealth Court affirmed the trial court's dismissal of Casey's appeal, noting that he had admitted his guilt by signature on a sentencing order introduced into the record. Pursuant to Section 6501(a) of the Pennsylvania Motor Vehicle Code, the Court held: "thus, even if Casey elected Delaware's probationary program and was not in fact formally convicted of the D.U.I. charges, his election was an admission and guilty plea,

tantamount to conviction for purposes of this license suspension proceeding.” *Id.* at 336.

At the hearing on December 19, 1995, the Commonwealth introduced evidence in the form of Sub-Exhibit #2 to Exhibit #1 which was a notification from the state of Maryland to the Pennsylvania Department of Transportation that the petitioner had been convicted of driving while intoxicated on June 16, 1995. During the petitioner’s case, he identified a document from the District Court of Maryland Traffic Citation System identified as Petitioner’s Exhibit #1 dated January 10, 1996 also indicating a plea of guilty and an ultimate disposition of Probation Before Judgment on November 7, 1995.

On cross-examination by the Commonwealth the petitioner acknowledged that in fact he had pled guilty on June 16, 1995. Petitioner argues that since the guilty verdict was stricken by the Probation Before Judgment disposition on November 7, 1995 and that notice of this disposition was or should have been given to the Pennsylvania Department of Transportation the defendant does not have a conviction of record and therefore the suspension imposed by the Department of Transportation should be rescinded.

The instant case is remarkable similar to *Casey*, supra, with regard to the nature of the diversionary program and the evidence that the petitioner in both cases pled guilty. We find that *Casey* is controlling and that the petitioner did in fact plead guilty to the offense of driving under the influence in the state of Maryland on June 6, 1996 which is a sufficient basis for the Pennsylvania Department of Transportation to suspend his privilege to operate.

In light of the foregoing discussion, an appropriate Order of Court will be entered as part of this Opinion.

#### **ORDER OF COURT**

NOW this 27th day of March, 1996, the petitioner’s appeal from the suspension of his driver’s license is hereby **DISMISSED**. The suspension is hereby **REINSTATED**.

## **DENIAL**

**Denial is the state of mind of a chemically dependent person which prevents them from seeing the truth about their use of alcohol or other drug.**

**Denial allows the alcoholic or addict to keep using their drug of choice despite adverse consequences.**

**Denial allows the disease of addiction to progress causing increasingly more harm to the person's physical and emotional health and their personal and professional lives.**

**The disease of addiction will eventually lead to divorce, disbarment and early death.**

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