

JOHN J. FIGNAR, Plaintiff vs. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, Defendant, C.P. Franklin County Branch, Civil Action - Law, Appeal from Motor Vehicle Operator's License Suspension, Misc. 1999 - 40027

Fignar v. Commonwealth of Pennsylvania, Dept. of Trans.

Reinstatement of Driver's License Suspension - Appeal - Supersedeas - Unreasonable Delay

1. A licensee may appeal a reinstatement of a driver's license suspension if the appeal is based upon the argument of unreasonable delay.
2. To prevail on appeal, a licensee must prove by clear and convincing evidence that there was an unreasonable delay in the reinstatement of the license suspension and that the licensee suffered prejudice as a result.
3. Due to a supersedeas, PennDOT cannot reinstate a driver's license suspension while the matter is on appeal.
4. Six (6) months is not an unreasonable delay in the reinstatement of a driver's license suspension.

Shawn D. Meyers, Esquire, Counsel for Appellant
George H. Kabusk, Esquire, Counsel for Department of Transportation

OPINION AND ORDER

WALKER, P.J., July 7, 1999:

Factual and Procedural Background

On March 10, 1995 the petitioner was charged with a violation of Section 3345A of the Vehicle Code for passing a school bus. After a summary hearing, he was then convicted on June 5, 1995. The Pennsylvania Department of Transportation (PennDOT) thereafter notified the petitioner that five (5) points were going to be assessed to his driving record and that his operator's license would be suspended for sixty (60) days to begin August 2, 1995. However, the petitioner appealed both the license suspension and the summary conviction. Because the license suspension was on appeal, PennDOT did not revoke the petitioner's license following the conviction because of the

operation of a supersedeas provided for in Section 1550(b) of the Vehicle Code.

The petitioner was granted a continuance of the license suspension hearing on September 7, 1995, pending the outcome of the summary conviction appeal. After a de novo hearing in the Court of Common Pleas on October 19, 1995, the petitioner was convicted of violating Section 3345A of the Vehicle Code. Over two (2) years later, with knowledge that the license suspension hearing was still unresolved, PennDOT contacted the petitioner by letter regarding the matter on April 20, 1998. At this time petitioner's license was still not revoked, pursuant to Section 1550(b) of the Vehicle Code. Later on July 21, 1998, the prothonotary gave notice to both parties that the case would be terminated for lack of docket activity unless the parties were able to show good cause otherwise. Finally on August 19, 1998, the petitioner filed a praecipe to discontinue the matter because he did not prevail in his summary conviction appeal.

With the license suspension hearing finally concluded by way of the petitioner's discontinuance, PennDOT then sent the petitioner a notice of reinstatement of the suspension on January 27, 1999. The petitioner then filed this appeal of the reinstatement of the suspension, and a hearing was held before this Court on June 10, 1999.

Discussion

A licensee may appeal a reinstatement of a driver's license suspension if the appeal is based upon the argument of unreasonable delay. *Rinck v. Commonwealth*, 59 Pa. Commw. 328, 429 A.2d 1255 (1981). To prevail on the appeal, a licensee must prove by clear and convincing evidence that there was (1) an unreasonable delay in the issuance of the suspension, and (2) that the licensee suffered prejudice as a result of the delay. *Davis v. Department of Transp.*, 122 Pa. Commw. 392, 552 A.2d 338 (1988); *Walsh v. Department of Transp.*, 137 Pa. Commw. 549, 586 A.2d 1034 (1991); *Rea v. Department of Transp., Bureau of Driver Licensing*, 132 Pa. Commw. 145, 575 A.2d 236 (1990).

With the traffic offense occurring in 1995 and the license suspension finally reinstated in 1999, this court recognizes the

obvious delay and possible frustration of the petitioner. However, what this court must determine is whether the delay is attributable to PennDOT or other factors outside its province. If the delay of the license suspension reinstatement was caused by factors in the control of PennDOT, then this court believes the delay is inherently unreasonable. A licensee cannot be expected to oversee the management of the vast bureaucracy that is PennDOT. If the Department drops the ball, a licensee should not have to suffer as a result. Conversely, if the delay is in fact caused by the licensee, that licensee should have no right to a revocation of a license suspension.

In the instant matter, both the petitioner and PennDOT have provided the court with arguments which in effect point fingers at the other party as the source of the delay. The petitioner argues that the watershed point at which the sands begin to fall through the hourglass occurred when the petitioner was convicted in the Court of Common Pleas in October of 1995. He further argues that the source of the delay is a mysterious missing letter from PennDOT to the Franklin County Clerk of Courts office. The petitioner argues that the contents of the letter instructed the office to no longer forward convictions of summary appeals to PennDOT on the standard form used at the time. Therefore, the reasoning follows, petitioner's conviction was not sent to PennDOT per its own instructions, and thus the delay rests squarely on the Department's shoulders.

While this argument is truly engrossing, this court finds it incredible to believe that PennDOT would fashion such a protocol. Without notice of convictions from the various Clerk of Courts offices throughout the Commonwealth, PennDOT would have no knowledge of the dispositions of any appeal made to the Courts of Common Pleas. This court has great difficulty accepting the petitioner's argument that the existence of such an asinine procedure is the product of PennDOT, especially without physical evidence of the letter. Moreover, while the petitioner's argument is fantastic, it is deficient initially in that it does not recognize the existence of the supersedeas and its limitations on PennDOT's options.

The petitioner argues that PennDOT should have timely reinstated the suspension after the conviction that followed the summary appeal in October of 1995. However, a somewhat more careful examination of the matter would show that the petitioner was on two judicial tracks. Following his summary conviction and notice of suspension, the petitioner first appealed the summary conviction and then also filed a license suspension appeal. Upon the petitioner's appeal of the license suspension, PennDOT *could not* suspend the petitioner's license due to the effect of a supersedeas in operation pursuant to Section 1550(b) of the Vehicle Code.

1550. Judicial Review.

(b) Supersedeas.

Except as provided in subparagraphs (ii) and (iii), filing and service of a petition for appeal from a suspension or revocation shall operate as a supersedeas until final determination of the matter by the court vested with the jurisdiction of such appeals.

75 Pa. C.S.A. 1550.

While there was a final determination of the summary conviction appeal in October of 1995, the disposition of the license suspension appeal was still outstanding. So long as the petitioner's appeal on the license suspension was not finalized, PennDOT had no ability to reinstate the license suspension. Two months prior to the summary conviction appeal hearing and conviction in the Court of Common Pleas, the petitioner was granted, at his request, a continuance on the license suspension appeal. At that point, the petitioner had the ability to move the matter forward to a final disposition. However, a significant time passed while the license suspension appeal was still unresolved at the petitioner's request. Finally, in August of 1998 the petitioner was prompted to discontinue the matter when given notice that the matter would be stricken for lack of docket activity. It was at this point that PennDOT had to reinstate the suspension without unreasonable delay. In January of 1999, six months later,

PennDOT did inform the petitioner that his license suspension was to be reinstated effective March 3, 1999. This court finds that six months is not an unreasonable delay in the reinstatement of a license suspension.

At the hearing the petitioner testified that he suffered prejudice as a result of the delay in the reinstatement of his license suspension. He testified that he applied for a job with United Airlines at Dulles Airport as a baggage handler, and was denied that employment opportunity based on his driving record. It appears that the petitioner may have had difficulty in determining how to accurately and truthfully answer some of the thorny questions on the job application. The job application contained questions that pertained to ownership of a valid driver's license, the number of traffic violations within the past three years of completion of the application, and whether the applicant had any driver's license suspensions within the past seven years. In a technical and strict interpretation of the questions, the petitioner may have answered affirmatively to the first and negatively to the last two given the disposition of this matter. While these answers would be less than forthcoming, they would be accurate in that his license suspension had still not been finalized and he currently had a valid driver's license. The petitioner cannot be prejudiced simply because he was confounded with the questions on a job application, especially when the delay that ensnared him was of his own creation. Passing a school bus is a violation of the law for which the petitioner was convicted in summary court and in the Court of Common Pleas. A person is not prejudiced by being appropriately sanctioned for violating the law and being held accountable for his acts.

Order of Court

July 7, 1999, after consideration of the briefs submitted to the court and the arguments made by counsel, this court finds that there is was no unreasonable delay or prejudice in the reinstatement of the petitioner's license suspension. The petitioner's appeal is denied and the sixty-day license suspension shall be reinstated.

THE DREAM TEAM

LIST 10 LAWYERS YOU KNOW (INCLUDE YOURSELF)
TO CREATE THE PERFECT LAW FIRM,
SPORTS TEAM OR GOOD TIME GROUP:

- | | |
|----------|-----------|
| 1. _____ | 6. _____ |
| 2. _____ | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

THE NATIONAL AVERAGE FOR THE DISEASE OF
ALCOHOLISM/ADDICTION IS NEARLY 1 OUT OF 10.
ANYBODY YOU KNOW NEED HELP?

- LCL -

Lawyers Concerned For Lawyers of Pennsylvania, Inc.
LAWYERS' CONFIDENTIAL HELPLINE

1-800-472-1177

7 Days a Week - 24 Hours a Day

- CONFIDENTIAL -