

COMMONWEALTH OF PENNSYLVANIA V. CARL LEWIS
SNYDER, C.P., Franklin County Branch, No. Misc. BB-144

Driver License Suspension Appeal- Request for Continuance

1. The Pennsylvania Supreme Court's decision in *Commonwealth v. Wolf*, 534 Pa. 283, 632 A.2d 864 (1993) spells out the limitations on the Court's discretion to grant a supersedeas of a suspension order pursuant to Section 1550 of the Motor Vehicle Code. [75 Pa.C.S. Section 1550]. It is clear that under the current law it is not appropriate for the Court to even consider evidence of the likelihood of the petitioner's success on appeal to the Superior Court.

Matthew X. Haeckler, Esquire, Attorney for the Department of
Transportation

H. Anthony Adams, Esquire, Attorney for the Defendant

OPINION AND ORDER

HERMAN, J., November 7, 1994:

OPINION

The petitioner, Carl Lewis Snyder, has appealed from an Order of the Director of the Bureau of Driver Licensing suspending his license for a period of one year for a conviction of driving under the influence. The petitioner was convicted by a jury on July 26, 1994, and subsequently filed an appeal to the Superior Court of Pennsylvania. On November 3, 1994, this Court held a hearing on the petitioner's appeal from the Suspension Order. At the hearing the Commonwealth established that the petitioner's conviction by introducing into evidence the appropriate court records of the defendant's conviction and the proper notices provided by the Bureau of Driver Licensing concerning the Department of Transportation Suspension Order. This evidence was admitted without objection from the defendant.

At the close of the evidence and after argument, counsel for the defendant made a specific request that the Court continue the proceeding without a finding of whether or not the Commonwealth met its burden of showing that the aggrieved party is actually the person whose operating privilege is subject to suspension. Counsel for the defendant acknowledged that the purpose of this request was to allow the petitioner to maintain his operating privileges during the pendency of the appeal before the

Superior Court. Counsel for the Department of Transportation inquired as to the likelihood of the petitioner's success on appeal to the Superior Court. The defendant offered that he had been convicted under §A(1) of Section 3731 based on evidence of a blood test indicating a blood alcohol level of .08 and some evidence which could be construed as unsafe driving. Counsel for the Department of Transportation then entered a formal objection to the defendant's request for a continuance of this proceeding.

Essentially the defendant has requested the Court to de facto enter a stay of the Suspension Order of the Department of Transportation by granting a continuance of the instant appeal proceeding. The defendant does not request and does not argue that this Court has discretion to grant a supersedeas of the Suspension Order upon a showing of a reasonable likelihood of successful prosecution of an appeal to the Superior Court. Indeed, the Pennsylvania Supreme Court's recent decision in *Commonwealth v. Wolf*, 534 Pa. 283, 632 A.2d 864 (1993) spells out the limitations on the Court's discretion to grant a supersedeas of a suspension order pursuant to Section 1550 of the Motor Vehicle Code. [75 Pa.C.S. Section 1550]. It is clear that under the current law it is not appropriate for the Court to even consider evidence of the likelihood of the petitioner's success on appeal to the Superior Court.

We realize that this discretion is not the same discretion involved in deciding whether or not to grant a request for a continuance. In view of the fact that the defendant offered no other reason for his request, in essence, he is requesting a supersedeas. For the Court to grant a continuance under these circumstances would simply be a method of shortcutting the law. Therefore we will enter an Order denying the defendant's request for a continuance and find that the Commonwealth has met its burden of establishing that Carl Lewis Snyder is actually the person whose operating privilege is subject to suspension in this case as a result of conviction for driving under the influence.

The court will issue an appropriate order.

ORDER OF COURT

NOW this 7th day of November, 1994, the Court having held a hearing on the petitioner's appeal from the Order of the Director of the Bureau of Drivers Licensing, Pennsylvania Department of Transportation finds that the Commonwealth has met its burden of proving that the petitioner is the person who is subject to suspension of operating privileges due to a conviction for driving under the influence on July 26, 1994, **THE COURT HEREBY ORDERS THAT** the defendant's request for a continuance of this proceeding is **DENIED** and the petitioner's appeal is dismissed and the Order of the Department of Transportation suspending the petitioner's license is reinstated.

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