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Colangelo v. Department of Transportation

DANIEL ANTHONY COLANGELO v. COMMONWEALTH DEPARTMENT OF TRANSPORTATION, BUREAU OF DRIVER LICENSING

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action-Misc. No. 3432 of 2000

Appeal Nunc Pro Tunc-Civil Appeal of License Suspension

1. Appeal of underlying criminal summary conviction does not act as a supersedeas of civil license suspension.
2. An appeal of a driver's license suspension is granted as of right under 75 Pa.C.S.A. § 1550. Appeals must be filed within thirty days of the mailing of the Department of Transportation's notification of suspension.
3. An appeal nunc pro tunc is only granted when the cause of the untimely appeal is due to fraud or an administrative breakdown.
4. The Clerk of Courts Office is not required to notify or advise drivers of the necessity to file a civil appeal of their license suspension.
5. Pro se litigants assume the risk or inability to understand the procedural aspects of a license suspension appeal.

Appearances:

Robert E. Graham Jr., Esq., *Counsel for Petitioner*

George H. Kabusk, Esq., *Counsel for the Respondent*

OPINION

Van Horn, J., November 15, 2000

Background

Daniel Anthony Colangelo, petitioner, brings this action under a Rule to Show Cause why he should not have leave to file his statutory appeal nunc pro tunc of the Department of Transportation, Bureau of Drivers Licensing's (PennDot) one-year suspension of his driving privileges due to a violation of 75 Pa. C.S.A. § 1543(a) (driving while suspended).

Petitioner was charged with driving while suspended and found guilty of this summary offense on June 29, 2000. On July 10, 2000, petitioner received notification that his driver's license was suspended effective September 6, 2000. Acting pro se, petitioner filed a timely appeal of his criminal summary conviction with the Clerk of Courts on July 25, 2000. Petitioner failed to file a civil appeal of his license suspension within thirty days of the mailing date of notification of suspension or August 9, 2000. He was unaware of the necessity to file a civil appeal of the license suspension in addition to the criminal summary

conviction appeal in order to be granted a supersedeas under 75 Pa.C.S.A. § 1550 until he received a letter from the Department on August 23, 2000.

A hearing was held on October 31, 2000, on the Rule to Show Cause at which time counsel for the Department made an oral motion to quash petitioner's appeal as untimely.

Discussion

Petitioner was the recipient of several notices from PennDot regarding the suspension of his driving privileges.^[1] While these notices could be the source of petitioner's confusion regarding the status of his driving privileges and this confusion ultimately led to his conviction for driving while suspended, they are not dispositive in determining whether petitioner is entitled to an appeal nunc pro tunc from the official notification of suspension dated July 10, 2000.^[2]

Appeals from PennDot decisions suspending a driver's operating privileges are granted as of right under 75 Pa.C.S.A. § 1550. Jurisdiction of these appeals lies in the Court of Common Pleas as provided by 42 Pa.C.S.A. § 933. Appeals must be filed within thirty days of the mailing of the PennDot's notification. The trial court lacks jurisdiction if the appeal is not filed within the mandated thirty-day period. *Henning v. Commonwealth Department of Transportation, Bureau of Driver Licensing*, 687 A.2d 20 (Pa.Cmwlth.1996), citing, *Kulick v. Department of Transportation, Bureau of Driver Licensing*, 666 A.2d 1148 (Pa.Cmwlth.1995), appeal denied, 544 Pa. 616, 674 A.2d 1077.

The petitioner's notification of suspension was dated July 10, 2000, and an appeal of the criminal conviction was filed July 25, 2000. Petitioner did not file a civil appeal regarding the notification of suspension within the mandatory thirty-day time period. Petitioner claims that he was unaware of the requirement to file a civil appeal until he received a letter from PennDot dated August 23, 2000.^[3] Petitioner sought the aid of legal counsel after receipt of this letter in an effort to obtain an appeal nunc pro tunc of the suspension of his driving privileges dated July 10, 2000.

It is in light of these facts that the Court must determine whether petitioner has shown that he is entitled to an appeal nunc pro tunc.

An appeal nunc pro tunc will be granted when the petitioner proves that the cause of the untimely appeal is due to fraud or an administrative breakdown. *Smith v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing*, 749 A.2d 1065 (Pa. Cmwlth.2000), citing, *Commonwealth v. Stock*, 545 Pa. 13, 679 A.2d 760 (1996), see also, *Hinds v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing*, 740 A.2d 1217 (Pa.Cmwlth.1999), *Lajevic v. Commonwealth Department of Transportation, Bureau of Driver Licensing*, 718 A.2d 371 (Pa.Cmwlth.1998). An appeal may also be granted if the petitioner can show that his right to appeal was lost due to "extraordinary circumstances." *Id.* at 1066.

Petitioner argues that in light of the "flurry" of notices received from PennDot he was not capable of understanding their ultimate meaning and effect. He also contends that he timely filed an appeal of the criminal conviction "thinking" that this appeal covered both the criminal conviction and the suspension because the Clerk of Courts failed to "advise" him of the necessity to file a civil appeal. Finally, petitioner claims that upon receipt of PennDot's letter dated August 23, 2000, he immediately consulted counsel and filed the petition for leave to allow an appeal nunc pro tunc.

While the Court acknowledges the complexity of the flow of paperwork between petitioner and PennDot, the Court finds that the petitioner's actions and driving habits are the sole source responsible for this generation of paperwork. Petitioner testified that he both received and read all of the notifications including the July 10, 2000, notification. This notification included instructions on when, how, and where to file for an appeal of the suspension:

Appeal

You have the right to appeal this action to the Court of Common Pleas (Civil Division) within 30 days of the mail date of this letter, July 10, 2000. If you file an appeal in the County Court, the Court will give you a time-stamped certified copy of the appeal. Send this time-stamped certified copy of the appeal by certified mail to:...

The Petitioner did not present any evidence that suggests that he attempted to comply with these requirements.

The Court recognizes that petitioner was a pro se litigant and may have had difficulty understanding the procedural requirements to file an appeal. It was the petitioner's inability to understand

the procedural requirements that led to his erroneous contention that the timely filed appeal of the criminal conviction would also serve as a civil appeal of the notification of suspension. The petitioner must understand that he assumed the risk that his difficulty and/or inability to understand the notification would prove to be his undoing. *Hinds v. Commonwealth Department of Transportation, Bureau of Motor Vehicles*, 740 A.2d 1217 (Pa.Cmwlth.1999).

The Court is troubled by petitioner's contention that the Clerk of Courts failed to advise him of the need to file a separate civil appeal of his license suspension. As stated in *Hinds*, the petitioner assumes the risk when his lack of legal knowledge leads to an unfavorable result. The Court would be remiss in shifting this risk to the Clerk of Courts when petitioner had several opportunities to consult counsel regarding his numerous notices but failed to do so until it was too late to correct his error. Furthermore, court personnel are not attorneys and should not be offering legal advice.

Petitioner has shown that he either misunderstood or was unable to understand the proper appellate procedure, but petitioner has not provided any evidence that tends to show that he is entitled to an appeal nunc pro tunc based on fraud or administrative breakdown. *Id.* Any errors in judgment or lack of knowledge are attributed solely to the petitioner, not to any administrative or procedural breakdown.

Based on these conclusions, the Court finds that the petitioner has failed to establish the grounds for granting an appeal nunc pro tunc. PennDot's oral motion to quash petitioner's appeal as untimely is granted and an appropriate order will be entered.

ORDER OF COURT

And now this 15th day of November, 2000, after review and argument by counsel, it is hereby ordered that Petitioner's request to file an appeal nunc pro tunc is denied and Respondent's request to quash Petitioner's appeal is granted.

^[1] Petitioner received five notices between 10/4/99 and 12/14/99 regarding various violations of the Vehicle Code. (Commonwealth's Exhibit 1).

^[2] For purposes of this appeal the Court will consider PennDot's Notification of Suspension dated June 10, 2000, (Petitioner's Exhibit 2), Notice of Appeal Summary Criminal Conviction, filed July 25, 2000, (Petitioner's Exhibit 3), PennDot's letter, dated August 23, 2000, (Petitioner's Exhibit 4).

^[3] It should be noted that PennDot's August 23, 2000, letter was in response to petitioner's letter
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the criminal appeal of his summary conviction.