

COMMONWEALTH OF PENNSYLVANIA v. COREY L. BOYD, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Criminal Action No. 2997 of 2007

*Nunc Pro Tunc Appeal; Grounds; Breakdown in Court's Operations*

1. An appeal *nunc pro tunc* is an extraordinary remedy to vindicate the right to appeal where that right has been lost due to extraordinary circumstances.
2. Generally, only fraud or a breakdown in the court's operations constitutes extraordinary circumstances.
3. The giving of incorrect or inaccurate information to the accused by the District Justice or his staff may constitute a breakdown in the Court's operation.
4. The defendant must prove that the office of the District Justice gave him inaccurate information that caused him to plead guilty, that this inaccurate information prevented the defendant from filing a timely appeal, and that the defendant acted promptly upon learning that the information was false.

Appearances:

Jeremiah D. Zook, Esq., *Assistant District Attorney*

Karl E. Rominger, Esq., *Counsel for Defendant*

OPINION

Walsh, J., October 22, 2007

Facts

The Court must decide Corey Boyd's Petition for Leave to File a Summary Appeal *Nunc Pro Tunc*. A hearing on the Petition developed the salient facts. The Court found Mr. Boyd's testimony credible and basically uncontested.

On July 7, 2007, Boyd was cited for violating § 1371 of the Vehicle Code. Boyd testified that he contacted the office of District Justice Alloway, before whom the case was to proceed, and was advised by personnel at the office that the citation would not impact on his commercial driver's license. He reportedly was told to plead guilty and pay the fine and was not advised at any time that the office could not give him legal advice. The Court notes that Phoebe Connor, the office manager for District Justice Alloway, testified at the hearing concerning the general practices and policies of the office concerning requests for legal advice. However, she was unable to recall anything specific about Boyd's call concerning his citation. At any rate, on July 18, 2007, Boyd pled guilty and paid the fine, as he had been advised. He did not attempt to obtain counsel prior to entering his plea.

On July 26, 2007, the Department of Transportation mailed an "Official Notice of Suspension" to Boyd; the notice listed August 30, 2007 as the effective date of the suspension of his license. He testified that he does not know precisely when he received this letter, because he was away from home performing his job

as a trucker, an occupation that keeps him away from home for two week intervals. However, upon receiving the notice, he called the office of District Justice Alloway again. At this time, office personnel directed him to call his state representative for help. After two to three days of ongoing dialogue with the office of the state representative, the state representative informed Boyd that he could not help him and that the defendant should get an attorney.

At this point, Boyd contacted his present attorney, but, on such short notice, he could not secure an appointment until around approximately August 22, 2007. On August 24, 2007, defense counsel promptly filed the Petition for Leave to File a Summary Appeal *Nunc Pro Tunc*. In the Petition, Boyd alleges that he wishes to present meritorious defenses to the charge. An evidentiary hearing developed the relevant facts, the parties submitted briefs supporting their positions, and the matter is ripe for the Court's decision.

### Discussion

An appeal *nunc pro tunc* constitutes an "extraordinary remedy to vindicate the right to appeal where that right has been lost due to some extraordinary circumstance." Commonwealth v. White, 806 A.2d 45, 46 (Pa. Super. Ct. 2002). Within certain limitations, the decision to allow such an appeal is vested in the discretion of the trial court. Commonwealth v. Stock, 679 A.2d 760 (Pa. 1996). Generally, *nunc pro tunc* appeals are granted only where "there was fraud or a breakdown in the court's operations." Id. "The giving of incorrect or inaccurate information to the accused by the District Justice or his or her staff may, if established, constitute a breakdown in the court's operation that warrants the allowance of an appeal, *nunc pro tunc*." Commonwealth v. Bassion, 568 A.2d 1316,1319 (Pa. Super. Ct. 1989).

To establish such a breakdown in the court's operation, the defendant must prove four elements. First, he must demonstrate that the office of the District Justice gave inaccurate information to the accused. Id. Second, the defendant must prove that the office advised him to plead guilty and pay the fine and that he, in reliance, did so. Id. Third, the defendant must prove that the inaccurate information provided by the District Justice caused the defendant's failure to file a timely appeal. Id. And, finally, the defendant must demonstrate that he or she "acted promptly upon learning that the information given to her was inaccurate." Id.

Here, the Court found Boyd's testimony credible, and, thus, he has carried his burden of proof on all four elements. With respect to the first element concerning inaccurate information, Boyd testified that when he called the District Justice's office he was told that a conviction would not impact on his commercial driver's license. Since the Pennsylvania Department of Transportation subsequently suspended his license, this information was clearly erroneous. Moreover, Boyd was not warned by the office that no one at the office could give him legal advice. Therefore, Boyd has satisfied the first element.

Concerning the second element, Boyd testified specifically that the District Justice's staff advised him to plead guilty and pay the fine since it would not impact on his commercial driver's license. Boyd relied on this information and paid the fine. Thus, the second element is present.

Next, element three requires that the inaccurate information causes the untimely appeal. Boyd admits that some of the delay stemmed from his work schedule; however, he also testified that the District Justice sent him to his state representative where he lost two to three additional days. Additionally, the Court notes that the inaccurate information initially given to the defendant prompted him to plead guilty instead of getting an attorney prior to trial, a development in the case that would have really curtailed the delay. In light of the evidence, the Court concludes that the defendant has substantiated element three.

Finally, the Court finds that Boyd prosecuted his appeal promptly after discovering that he had received erroneous information. Boyd called the District Justice again as soon as he learned that the information was incorrect. He also quickly took their advice and contacted his state representative. Moreover, once the state representative's personnel informed him of their inability to aid him, he obtained an appointment with his attorney as soon as the attorney's schedule permitted. Finally, Boyd filed his Petition just two days after his initial meeting with his attorney and only one week after the deadline. The Court does not pass on the wisdom of some of these steps taken by Boyd but merely notes that under the circumstances his actions constituted prompt action upon learning of the inaccurate information.

### Conclusion

Accordingly, the Court grants Corey Boyd leave to file a summary appeal *nunc pro tunc*. A breakdown in the court's operations occurred when Boyd received false information from the District Justice's office that a conviction would not impact his commercial driver's license. Additionally, the District Justice's personnel never warned Boyd that they could not give him legal advice. Furthermore, the defendant relied on this information, and he took prompt steps to remedy the situation in which he found himself. The equities of this case merit giving Corey Boyd the opportunity to present his case in an appeal *de novo*.

#### ORDER OF COURT

October 22, 2007, this matter having come before the Court on Defendant's Petition for Leave to File a Summary Appeal *Nunc Pro Tunc*, and the Court having reviewed the record, the petition, the Commonwealth's and the Defendant's briefs, and the law, and after holding a hearing on the motion, it is hereby ordered that Defendant's request for relief is granted.