

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thomas Jacob Donohoe	:	
	:	
v.	:	
	:	
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing,	:	No. 1023 C.D. 2010
Appellant	:	Submitted: November 12, 2010

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: December 28, 2010

The Department of Transportation, Bureau of Driver Licensing (PennDOT) appeals the May 5, 2010 order of the Court of Common Pleas of Allegheny County (trial court) sustaining the appeal of Thomas J. Donohoe (Donohoe) from a 30-day suspension of his operating privileges imposed in accordance with the requirements of Section 1538 of the Vehicle Code, 75 Pa.C.S. § 1538 (relating to driver improvement school, examination or hearing on accumulation of points or excessive speeding).¹ The issue before this Court is whether the trial court abused its discretion and erred as a matter of law by allowing Donohoe to collaterally attack his second accumulation of six or more points. For the following reasons, we reverse the order of the trial court.

¹ Donohoe did not submit a brief in support of his position.

On July 2, 1996, Donohoe was convicted of violating Section 3361 of the Vehicle Code, 75 Pa.C.S. § 3361 (relating to driving vehicle at safe speed), and was assigned two points on his driving record in accordance with Section 1535 of the Vehicle Code, 75 Pa.C.S. § 1535 (relating to convictions and points). On September 5, 1996, Donohoe was convicted of violating Section 3367 of the Vehicle Code, 75 Pa.C.S. § 3367 (relating to racing on highways), and received a six-month suspension of his operating privileges. Donohoe's operating privileges were restored on April 21, 1997, and three points were added to his driving record in accordance with Section 1545 of the Vehicle Code, 75 Pa.C.S. § 1545 (relating to restoration of operating privileges). On July 2, 1997, Donohoe was convicted for violating Section 3362 of the Vehicle Code, 75 Pa.C.S. § 3362 (relating to maximum speed limits), and accumulated another four points on his driving record, for a total of nine points. This was the first time Donohoe accumulated six or more points on his driving record.

In accordance with Section 1538(a) of the Vehicle Code, 75 Pa.C.S. § 1538(a) (relating to initial accumulation of six points), PennDOT directed Donohoe to take and pass a special written exam within 30 days of the written notice or suffer a suspension of his operating privileges. Donohoe complied, and his point accumulation was reduced pursuant to Section 1538(a) of the Vehicle Code by two points to seven points. On March 2, 1998, Donohoe was again convicted of violating Section 3362 of the Vehicle Code, and four points were assigned to his driving record for a total of eleven points. As a result of his accumulation of eleven points, Donohoe's operating privileges were suspended for 110 days pursuant to Section 1539 of the Vehicle Code, 75 Pa.C.S. § 1539 (relating to suspension of operating privilege on accumulation of points).

On June 4, 1999, Donohoe was convicted of violating Section 6308 of the Vehicle Code, 75 Pa.C.S. § 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages by a minor), and his operating privileges were suspended for 90 days in accordance with Section 1538(d)(1) of the Vehicle Code, 75 Pa.C.S. § 1538(d)(1) (relating to driver improvement school for excessive speeding). Donohoe's operating privileges were restored after the 90-day suspension, and his point accumulation was reduced by six points to a total of five points in accordance with Section 1545 of the Vehicle Code. Donohoe's point accumulation was reduced by another three points pursuant to Section 1537 of the Vehicle Code, 75 Pa.C.S. § 1537 (relating to removal of points), bringing the total on his driving record down to two points. On October 5, 2001, Donohoe was convicted of violating Section 3362 of the Vehicle Code (relating to maximum speed limits), and received four points on his driving record for a total of six points. This was his second accumulation of six or more points. Donohoe was directed by PennDOT to attend a departmental hearing in accordance with Section 1538(b) of the Vehicle Code, 75 Pa.C.S. § 1538(b) (relating to second accumulation of six points). He failed to attend. Thereafter, his operating privileges were suspended for 60 days for his failing to attend the hearing.

Donohoe was later accepted into an Accelerated Rehabilitative Disposition (ARD) program for a violation of Section 3743 of the Vehicle Code, 75 Pa.C.S. § 3743 (relating to leaving the scene of an accident), and his operating privileges were suspended for three months. Donohoe's operating privileges were restored on March 20, 2004, and pursuant to Section 1545 of the Vehicle Code, his point accumulation was reduced by one point to a total of five points. On March 25,

2005, his point accumulation was reduced by another three points in accordance with Section 1537 of the Vehicle Code to a total of two points.

On January 18, 2006, Donohoe was convicted of violating Section 1501 of the Vehicle Code, 75 Pa.C.S. § 1501 (drivers required to be licensed). Because Donohoe had a prior offense within a five year span, Donohoe's operating privileges were then suspended for six months in accordance with Section 1532(b)(2) of the Vehicle Code, 75 Pa.C.S. § 1532(b)(2). On July 13, 2006, Donohoe was convicted of violating Section 3362 of the Vehicle Code (maximum speed limits) and, in lieu of assigning five points in accordance with Section 1535 of the Vehicle Code, PennDOT imposed a 25-day "add on" suspension to the six-month suspension he received in January of 2006. Subsequently, PennDOT imposed four indefinite suspensions on Donohoe's operating privileges for failing to respond to outstanding citations issued in August of 2006. On August 28, 2009, Donohoe's operating privileges were restored, and three points were added to his driving record in accordance with Section 1545 of the Vehicle Code, raising his total points to five.

On October 23, 2009, Donohoe was again convicted of violating Section 3362 of the Vehicle Code (maximum speed limits), and four points were added to his driving record bringing his total point accumulation to nine points. This was the third time his point accumulation totaled six or more points. As a result, Donohoe was again directed to attend a departmental hearing in accordance with Section 1538(c) of the Vehicle Code, 75 Pa.C.S. § 1538(c) (relating to hearings on subsequent accumulations of six points). Donohoe attended this hearing. The hearing officer recommended that PennDOT impose a 30-day suspension in accordance with Section 1538(c) of the Vehicle Code, which PennDOT accepted and imposed.

Donohoe appealed the 30-day suspension to the trial court. The trial court held a hearing and determined that the suspension should be reduced to five days based on Donohoe's testimony that his brother used his driver's license in 2001 which resulted in his accumulating more than six points on his record for a second time. PennDOT appealed to this Court.²

PennDOT argues that the trial court abused its discretion and erred as a matter of law because it accepted Donohoe's uncorroborated testimony concerning his brother's use of his driver's license, which was not clear and convincing evidence that he did not accumulate six or more points for a second time in 2001. PennDOT further argues that the trial court erred by allowing Donohoe to collaterally attack PennDOT's 2002 60-day suspension in a statutory appeal of its subsequent 30-day suspension. Finally, PennDOT argues that the trial court abused its discretion by arbitrarily reducing Donohoe's suspension from 30 days to 5 days. We agree.

Once DOT introduces certified conviction records showing that a licensee's record merits a suspension, it has established a prima facie case and the burden shifts to the licensee, who must then prove by clear and convincing evidence that the conviction did not occur. Clear and convincing evidence is defined as evidence that is so clear and direct as to permit the trier of fact to reach a clear conviction, without hesitancy, as to the truth of the facts at issue. To rebut a prima facie case established by a certified conviction record, the licensee must either challenge the regularity of the record, or introduce direct evidence showing that the record is incorrect and that the conviction was never entered.

² "Our scope of review in operating privilege suspension cases is limited to determining whether the findings of the trial court are supported by competent evidence, whether there has been an erroneous conclusion of law or whether there was a manifest abuse of discretion." *Weber v. Dept. of Transp., Bureau of Driver Licensing*, 675 A.2d 359, 360 n.1 (Pa. Cmwlth. 1996).

Dick v. Dep't of Transp., Bureau of Driver Licensing, 3 A.3d 703, 707 (Pa. Cmwlth. 2010) (citations and quotation marks omitted). PennDOT entered Donohoe's certified driving record into evidence without objection from Donohoe. Accordingly, PennDOT established its prima facie case. The only evidence Donohoe submitted in rebuttal was not clear and convincing as a matter of law, consisting merely of his testimony that his second accumulation of six or more points was a result of his brother using his license. "This Court has held that uncorroborated testimony is insufficient to meet the strict evidentiary standard required to overcome the statutory presumption." *Fell v. Dep't of Transp., Bureau of Motor Vehicles*, 925 A.2d 232, 239 (Pa. Cmwlth. 2007). In addition, Donohoe never appealed any of his convictions for his various Vehicle Code violations for any reason, let alone because they were allegedly committed by his brother while using his license. He cannot now use a supposed error in a previous, unappealed conviction to collaterally attack his current suspension. "The law is clear that a driver cannot question the assessment of points which caused his original suspension in a subsequent proceeding when he had the opportunity, but failed to appeal the original suspension." *Dep't of Transp., Bureau of Traffic Safety v. Schoeppner*, 528 A.2d 667, 668 (Pa. Cmwlth. 1987).

Clearly, the trial court abused its discretion and erred as a matter of law by reducing PennDOT's suspension solely on Donohoe's testimony that his unnamed brother was responsible for at least one of his convictions, a claim he had not previously made. Therefore, the trial court's order is reversed and Donohoe's 30-day suspension of his operating privileges is reinstated.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 28th day of December, 2010, the May 5, 2010 order of the Court of Common Pleas of Allegheny County is reversed and Thomas Jacob Donohoe's 30-day suspension of his operating privileges is reinstated.

JOHNNY J. BUTLER, Judge