

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Harold Hunt, :  
Appellant :  
v. : No. 1420 C.D. 2009  
Commonwealth of Pennsylvania, :  
Department of Transportation, :  
Bureau of Driver Licensing :

Harold Hunt, :  
Appellant :  
v. : No. 1421 C.D. 2009  
Submitted: April 9, 2010  
Commonwealth of Pennsylvania, :  
Department of Transportation, :  
Bureau of Driver Licensing :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: May 26, 2010

Harold Hunt (Licensee) appeals pro se from the June 22, 2009, orders of the Court of Common Pleas of Luzerne County (trial court) dismissing Licensee's appeals from a fifty-five day suspension of his operating privilege imposed by the Department of Transportation, Bureau of Driver Licensing (DOT) pursuant to sections 1539(a) and (b) of the Vehicle Code (Code), 75 Pa. C.S.

§1539(a), (b), and a fifteen-day suspension imposed by DOT pursuant to section 1538(d) of the Code, 75 Pa. C.S. §1538(d).<sup>1</sup> We affirm.

On April 30, 2007, Licensee received a citation for driving ninety miles per hour in a sixty-five mile per hour zone. On May 29, 2007, a district magistrate in Clearfield County convicted Licensee of violating section 3362 of the Code, 75 Pa. C.S. §3362 (relating to maximum speed limits). The district magistrate notified DOT of Licensee's conviction, and DOT assigned four points to Licensee's driving record. Licensee thereafter filed an appeal of his conviction with the Court of Common Pleas of Clearfield County.<sup>2</sup>

Also on April 30, 2007, Licensee received a citation for driving eighty-nine miles per hour in a sixty-five mile per hour zone. On August 20, 2007, a district magistrate in Bedford County convicted Licensee of a second violation of section 3362 of the Code. The district magistrate notified DOT of Licensee's conviction, and DOT assigned four more points to Licensee's driving record. Additionally, DOT directed Licensee to undergo a special written examination as required by section 1538(a) of the Code, 75 Pa. C.S. §1538(a).<sup>3</sup> Upon successful

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<sup>1</sup> Section 1539(a) of the Code provides that DOT shall suspend a person's operating privilege upon accumulation of eleven points on the person's driving record. Section 1539(b) of the Code provides for a suspension of five days for each accumulated point. Section 1538(d) of the Code provides that DOT may, after a departmental hearing, suspend the operating privilege of a person convicted of driving thirty-one miles per hour or more in excess of the speed limit for a period not exceeding fifteen days.

<sup>2</sup> A licensee's appeal of a criminal conviction does not stay the civil consequences of a conviction under the Code. Department of Transportation, Bureau of Driver Licensing v. Zavodsky, 637 A.2d 673 (Pa. Cmwlth. 1994).

<sup>3</sup> Section 1538(a) of the Code provides that DOT shall require a person to attend an approved driver improvement school or undergo a special examination upon accumulation of six points on the person's driving record.

completion of this examination, DOT removed two points from Licensee's driving record, leaving him with six points. Licensee did not appeal this conviction.

On September 9, 2007, Licensee received a citation for driving eighty-one miles per hour in a forty-five mile per hour zone. On November 6, 2007, a district magistrate in Luzerne County convicted Licensee of a third violation of section 3362 of the Code. The district magistrate notified DOT of Licensee's conviction, and DOT assigned five points to Licensee's driving record. Licensee thereafter filed an appeal of his conviction with the Court of Common Pleas of Luzerne County.

By official notice dated March 18, 2008, DOT notified Licensee that his operating privilege would be suspended for fifty-five days pursuant to section 1539 of the Code due to the accumulation of eleven points on his driving record. By official notice dated March 28, 2008, DOT notified Licensee that, as a result of his conviction for excessive speeding, he was required to attend a departmental hearing on April 17, 2008. Following this hearing, by official notice dated April 24, 2008, DOT notified Licensee that his operating privilege would be suspended for fifteen days pursuant to section 1538 of the Code.

Licensee appealed both suspensions to the trial court. The trial court held a consolidated *de novo* hearing on June 22, 2009. DOT introduced into evidence a packet of documents, duly certified and under seal, from the Secretary of DOT and the Director of the Bureau of Driver Licensing. The packet included electronic reports of Licensee's three violations and subsequent convictions from the respective district magistrates and copies of the suspension notices DOT sent to

Licensee.<sup>4</sup> Licensee testified that the common pleas courts found him not guilty with respect to his appeals of the Clearfield and Luzerne County convictions. However, counsel for DOT indicated that Licensee was in fact found guilty in both cases. Licensee then acknowledged that the appeals had been dismissed by the Superior Court.<sup>5</sup>

Following the hearing, the trial court issued separate orders, both dated June 22, 2009, dismissing Licensee's appeals. Licensee filed a notice of appeal with respect to each order.<sup>6</sup> The trial court subsequently issued a single opinion noting that the evidence of record, including the dismissals by the Superior Court, supported the dismissal of Licensee's suspension appeals.

On appeal to this Court,<sup>7</sup> Licensee argues that the trial court abused its discretion in dismissing his appeals. Specifically, Licensee contends that DOT was required to present documentary evidence of the guilty verdicts rendered by the

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<sup>4</sup> This packet also included Licensee's certified driving history, a copy of the results of Licensee's special written examination, and the departmental hearing officer's recommendation to suspend Licensee's operating privilege for fifteen days for excessive speeding.

<sup>5</sup> Licensee's admission was in response to Superior Court docket entries presented to the trial court by DOT. The trial court indicated that the documentation revealed that the Superior Court had dismissed both appeals and that it has no "authority to go against what the Superior Court has done." (N.T., June 22, 2009, p. 10.)

<sup>6</sup> By order dated October 19, 2009, Licensee's appeals were consolidated before this Court.

<sup>7</sup> Our scope of review in a driver's license suspension case is limited to determining whether the findings of the trial court are supported by competent evidence, whether errors of law were committed or whether there has been a manifest abuse of discretion. Hockenberry v. Department of Transportation, Bureau of Driver Licensing, 972 A.2d 97 (Pa. Cmwlth. 2009).

common pleas courts in order to meet its burden of proof in this case. We disagree.

Licensee misconstrues DOT's burden. DOT bears the initial burden to produce a record of conviction supporting a suspension. Kalina v. Department of Transportation, Bureau of Driver Licensing, 929 A.2d 1233 (Pa. Cmwlth. 2007). Once DOT has introduced, via a certified record, evidence of a conviction, DOT has met its burden of production and established a rebuttable presumption that a conviction exists. Roselle v. Department of Transportation, Bureau of Driver Licensing, 865 A.2d 308 (Pa. Cmwlth. 2005); Gregg v. Department of Transportation, Bureau of Driver Licensing, 851 A.2d 253 (Pa. Cmwlth. 2004).

To overcome the presumption, the burden shifts to the licensee to present clear and convincing evidence that he or she was not convicted of the offense. Roselle; Gregg. Such clear and convincing evidence may consist of a certified copy of an acquittal or evidence that a violation was *nolle prosequi*. Department of Transportation, Bureau of Driver Licensing v. Diamond, 616 A.2d 1105 (Pa. Cmwlth. 1992), appeal dismissed, 539 Pa. 382, 652 A.2d 826 (1995); Kalina.

In the present case, at the hearing before the trial court, DOT introduced a certified packet of documents that included electronic reports from the respective district magistrates detailing Licensee's three violations and convictions. This evidence was sufficient to meet DOT's initial burden and create a rebuttable presumption that the convictions existed. The burden shifted to Licensee to rebut the presumption. While Licensee testified that, with respect to at least two of the criminal convictions, he was found not guilty by the respective common pleas courts in Clearfield and Luzerne County, Licensee failed to present any evidence in

support of this testimony. Rather, DOT introduced evidence that Licensee's subsequent appeals to the Superior Court in each of these cases were dismissed, and Licensee conceded as much with his own testimony. Thus, Licensee failed to rebut the presumption raised by DOT's evidence, and the trial court did not abuse its discretion in dismissing Licensee's suspension appeals.

Accordingly, the orders of the trial court are affirmed.

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PATRICIA A. McCULLOUGH, Judge

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**ORDER**

AND NOW, this 26th day of May, 2010, the June 22, 2009, orders of the Court of Common Pleas of Luzerne County are hereby affirmed.

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PATRICIA A. McCULLOUGH, Judge