

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sheldon J. Rone :
 :
 v. :
 :
 Commonwealth of Pennsylvania, :
 Department of Transportation, :
 Bureau of Driver Licensing, : No. 1611 C.D. 2010
 Appellant : Submitted: March 4, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE McGINLEY

FILED: April 4, 2011

The Pennsylvania Department of Transportation, Bureau of Driver Licensing (DOT) appeals from an order of the Court of Common Pleas of Northampton County (trial court) that sustained the statutory appeal of Sheldon J. Rone (Rone) from a three month suspension of his operating privilege pursuant to Section 1786(d) of the Vehicle Code (Code), 75 Pa.C.S. §1786(d).¹

¹ Section 1786(d)(1) of the Code provides:

(1) The Department of Transportation shall suspend the registration of a vehicle for a period of three months if it determines the required financial responsibility was not secured as required by this chapter and shall suspend the operating privilege of the owner or registrant for a period of three months if the department determines that the owner or registrant has operated or permitted the operation of the vehicle without the required financial responsibility. The operating privilege shall not be restored until the restoration fee for operating privilege provided by section 1960 (relating to reinstatement of operation privilege or vehicle registration) is paid.

By official notice dated March 31, 2010, DOT informed Rone that his operating privilege was to be suspended for three months, effective May 5, 2010, because “you failed to produce proof of financial responsibility on 02/17/2010, the date of your traffic offense.” Notice of Suspension March 31, 2010, at 1; Reproduced Record (R.R.) at 7a. Rone appealed to the trial court.

During the July 8, 2010, *de novo* hearing, DOT introduced into evidence a packet of documents that established Rone’s conviction for violating Section 1786(f) of the Code, 75 Pa.C.S. §1786(f) (relating to operation of a motor vehicle without required financial responsibility) on February 17, 2010, and also established that he was notified of the three month suspension.

Rone admitted:

[I]t was my fault for the lapse that day when I was pulled over in the vehicle. . . . This vehicle here, I drove it about once a month. It’s at my house now in my garage. I don’t drive it at all. So indeed when I was pulled over on that date, February the 17th, I did not have insurance at that time. That very same day I did get insurance.

Notes of Testimony, July 8, 2010, (N.T.) at 3-4; R.R. at 15a-16a.

Rone further explained:

The only thing I could state, as I said, I do acknowledge that I didn’t have insurance at that time, merely an oversight, something I feel very foolish and irresponsible about, irresponsible about not keeping up on the insurance on only this vehicle. And I’m just asking if I can have a second opportunity to not have my driver’s license suspended because I do need to commute to work every day, also transport my family.

N.T. at 5-6; R.R. at 17a-18a.

The trial court sustained Rone's appeal and rescinded the suspension:

[T]he Petitioner [Rone] presented credible evidence that he rectified the violation of 1786(f) the very same day he received the citation. Under these circumstances, we concluded that the Petitioner's [Rone] violation of 1786(f), was *de minimis*. . . . As such, we concluded that a three (3) month suspension of the vehicle's registration and accompanying monthly fine would be disproportionate to the nature of the infraction. We respectfully submit that, based upon the foregoing, the trial court did not abuse its discretion in sustaining the appeal on the ground that the Petitioner's violation of 1786(f) was inadvertent and *de minimis*. (Citation omitted).

Trial Court Opinion, September 9, 2010, at 5; R.R. at 43a.

DOT contends that the trial court erred as a matter of law and abused its discretion when it sustained Rone's appeal on the basis that his violation was *de minimis*.²

In order to sustain a suspension of a licensee's operating privilege pursuant to Section 1786(d) of the Code, 75 Pa.C.S. §1786(d), DOT must establish the following: 1) the vehicle was required to be registered in the Commonwealth; 2) financial responsibility was not maintained on the vehicle; and 3) the licensee

² This Court's review is limited to a determination whether necessary findings of fact are supported by substantial evidence of record, whether the trial court committed an error of law, and whether the trial court abused its discretion. Todd v. Department of Transportation, Bureau of Driver Licensing, 555 Pa. 193, 723 A.2d 655 (1999).

operated the vehicle while it was not covered by financial responsibility. Richards v. Department of Transportation, Bureau of Driver Licensing, 767 A.2d 1133 (Pa. Cmwlth. 2001). An important part of DOT's burden is producing an official record of the conviction to support the suspension. The introduction of the certified record of the conviction into evidence creates a rebuttable presumption that the licensee was convicted of the offense. The burden then shifts to the licensee to rebut by clear and convincing evidence the presumption of correctness raised by DOT's records. If the licensee fails to do so, then the presumption becomes conclusive. Richards.

Here, DOT introduced a packet of documents which contained the conviction detail which indicated that Rone was convicted of violating Section 1786(f) of the Code, 75 Pa.C.S. §1786(f) for operating a vehicle without required financial responsibility. Through the introduction of these documents, DOT established the rebuttable presumption that 1) the vehicle was required to be registered in the Commonwealth; 2) financial responsibility was not maintained on the vehicle; and 3) the licensee operated the vehicle while it was not covered by financial responsibility.

The burden then shifted to Rone to rebut the presumption by clear and convincing evidence. Rone did not attempt to refute the conviction. He admitted that he drove the vehicle without insurance. He asked for leniency because he obtained insurance on the vehicle the same day he was cited and because he needed an operator's license to commute to and from work and to transport his family. Rone obviously did not rebut the presumption. The trial court

acknowledged that Rone drove the vehicle without insurance but characterized the violation as *de minimis*.

In Department of Transportation, Bureau of Traffic Safety v. Hill, 543 A.2d 211 (Pa. Cmwlth. 1988), this Court addressed the discretion afforded a trial court in license suspension cases. George Hill (Hill) was the owner and operator of a motor vehicle that was uninsured at the time of a reportable accident. DOT suspended Hill's operator's license for three months pursuant to Section 1785 of the Code, 75 Pa.C.S. §1785. Hill appealed the suspension to the Court of Common Pleas of Philadelphia County (common pleas court). The common pleas court reversed because Hill testified that he had instructed his insurance agent to place the car involved in the accident on his Erie Insurance Company policy with his other car and believed the insurance agent had followed his instruction. The common pleas court held, "While technically he is in violation of the Motor Vehicle Code, his intent was to comply as his instructions to his agent prove. In view of these circumstances, we see no purpose to be served by the suspension of his license." Hill, 543 A.2d at 212.

DOT appealed to this Court which reversed:

When the common pleas court finds that the licensee has committed the violation for which the penalty was imposed, it is a manifest abuse of discretion to modify the penalty because the court disagrees with the penalty. . . . the trial court has but two choices; it may affirm the penalty because the law as applied to the facts establishes a violation of the statute, or it may reverse because the facts do not establish a violation. . . .

Here, the trial court found that the licensee had violated Section 1785 of the Motor Vehicle Code. In such circumstances, the trial court ‘may not, because of the possible unfairness or inequity of the result, reverse the [Department] or modify the penalty imposed.’ (Citations omitted).

Hill, 543 A.2d at 212-213.

Here, it is undisputed that Rone violated Section 1786(f) of the Code, 75 Pa.C.S. §1786(f). The trial court did not have the authority to sustain Rone’s appeal by characterizing the violation as *de minimis*. Under Hill, the trial court was required to deny the appeal because the law as applied to the facts established a violation of the Code.

Accordingly, this Court reverses.

BERNARD L. McGINLEY, Judge

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Commonwealth of Pennsylvania,	:	
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Bureau of Driver Licensing,	:	No. 1611 C.D. 2010
Appellant	:	

ORDER

AND NOW, this 4th day of April, 2011, the order of the Court of Common Pleas of Northampton County in the above-captioned matter is reversed.

BERNARD L. MCGINLEY, Judge