

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Frank P. Cavanaugh :
 :
 v. : No. 2099 C.D. 2008
 : Submitted: December 9, 2009
 Commonwealth of Pennsylvania, :
 Department of Transportation, :
 Bureau of Driver Licensing, :
 Appellant :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
 HONORABLE DAN PELLEGRINI, Judge
 HONORABLE RENÉE COHN JUBELIRER, Judge
 HONORABLE ROBERT SIMPSON, Judge
 HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
 PRESIDENT JUDGE LEADBETTER**

FILED: March 25, 2010

The Department of Transportation (Department) appeals from the order of the Court of Common Pleas of Northampton County (trial court), which sustained Frank P. Cavanaugh’s (Licensee) appeal of the suspension of his driver’s license. After review, we reverse the trial court’s order.

On July 22, 2007, Licensee was issued a citation for exceeding the maximum speed limit. Licensee had been driving 57 miles per hour in a 40 miles per hour zone. (Report of Violations and Department Actions.) When Licensee did not respond to the citation, on December 28, 2007, the Department mailed an Official Notice of Suspension (Notice) to Licensee. This Notice informed

Licensee that his suspension would begin on January 18, 2008, unless he responded to the citation beforehand:

Your driving privilege will be **suspended effective 01/18/2008 at 12:01 a.m.** for failing to respond to **citation number B42659330** (Amount Owed \$151.50) issued on 07/22/2007. This citation is a result of your violation of Section 3362 of the Pennsylvania Vehicle Code: EXCEEDING MAXIMUM SPEED.

This suspension means that you will not be allowed to drive a motor vehicle on or after **01/18/2008** unless you are notified in writing by PennDOT that your driving privilege is restored.

PLEASE READ THIS LETTER IN ITS ENTIRETY. THIS IS A FINAL ORDER OF SUSPENSION. THE ONLY WAY TO AVOID THIS SUSPENSION IS TO COMPLETELY FOLLOW THE DIRECTIONS BELOW FOR RESPONDING TO THE CITATION BEFORE THE EFFECTIVE DATE. IF YOU DO NOT FOLLOW THESE DIRECTIONS, THIS SUSPENSION WILL GO INTO EFFECT ON 01/18/2008.

RESPONDING TO THE CITATION

If you respond to the citation BEFORE the suspension date, you will avoid this suspension.

Notice at 1. The Notice also described the steps Licensee needed to take to respond to the Notice. The first step listed on the Notice was for Licensee to contact the District Court, and the Notice identified the address and phone number for the District Court. The Notice then provided, still under the heading "RESPONDING TO THE CITATION," that:

3. If your response to the citation is accepted by the Court **BEFORE 01/18/2008**, you will receive notice from [the Department] regarding restoration of your driving privilege.
4. **Please Note:** Responding to the citation before the suspension date excuses you from the suspension of your driving privilege, not the actual violation. If you plead guilty or are found guilty by the Court, you are still subject to the penalties for that violation under the Pennsylvania Vehicle Code.

Notice at 2. A subsequent portion of the Notice discussed the payment of a license restoration fee:

PAYING THE RESTORATION FEE

If you do not respond to the citation BEFORE the suspension date, you will be suspended and must pay a restoration fee to [the Department] to be restored.

Notice at 3. Finally, the Notice indicated that “[r]emember, this is an **OFFICIAL NOTICE OF SUSPENSION**. You must respond before 01/18/2008.” *Id.*

On January 18, 2008, at approximately 8:00 a.m., Licensee appeared before the district magistrate to pay his fine, and he pleaded guilty to the exceeding the maximum speed violation. Conviction Detail. The violation to which Licensee pleaded guilty normally carries a penalty of four points. On January 26, 2008, the Department sent Licensee an Official Notice of Suspension (Incremental Suspension) for a 20-day incremental suspension authorized under Section 1544 of the Motor Vehicle Code (Code), 75 Pa. C.S. § 1544. Section 1544 provides, in relevant part:

(a) Additional point accumulation.--When any person's record shows an accumulation of additional points during

a period of suspension or revocation, the department shall extend the existing period of suspension or revocation at the rate of five days for each additional point and the person shall be so notified in writing.

75 Pa. C.S. § 1544. The Department issued the Incremental Suspension because, under the terms of the Notice, the Department had suspended Licensee's license as of 12:01 a.m. of the day he pleaded guilty, January 18, 2008. The points for the guilty plea were, thus, "an accumulation of additional points during a period of suspension." The Incremental Suspension also explained that:

Instead of assigning points to your driver's license record, [75 Pa. C.S. § 1544] requires [the Department] to extend any existing suspension 5 days for each point that would have been assigned to your driver's license record. Therefore, [the Department] is assigning this additional **20 DAY(S) suspension** to your current suspension.

Incremental Suspension, January 26, 2008.

Licensee appealed the Incremental Suspension to the trial court, arguing that: "The ticket was paid [on] 18 Jan 08. Suspension of License will possibly cause me to lose my job as I work as a consultant and travel out of state requiring me to drive." Petition for Appeal from Department Order. The trial court conducted a hearing on the appeal.

At the hearing, Licensee testified that after he had initially received the citation, he "had sent in the ticket with a check and it got lost someplace." September 25, 2008 Notes of Testimony (N.T.) at 3. Licensee testified that he subsequently received the Notice, which he misread, believing it to mean that he could pay the citation on January 18. However, Licensee acknowledged that "it was my fault because I didn't read the notice properly." N.T. at 4. Licensee

testified that he had been working in Wisconsin, but that he made sure he would be available, based on his reading of the Notice, on the 18th to pay the citation. N.T. at 5-6. Licensee testified that he “had just gotten back from Wisconsin” and that he went to pay the citation, but that, as it turns out, “I was eight hours late.” N.T. at 4.

Relying upon *Department of Transportation, Bureau of Driver Licensing v. Cable*, 580 A.2d 1194, 1196 (Pa. Cmwlth. 1990), the trial court sustained Licensee’s appeal, and the Department now appeals to this court.

For the reasons cited in *Burgess v. Department of Transportation, Bureau of Driver Licensing*, No. 1831 C.D. 2008, ___ A.2d ___ (Pa. Cmwlth. Jan. __, 2010), *Cable* is no longer controlling. In light of the subsequent statutory changes and our Supreme Court’s decision in *Rossi v. Department of Transportation, Bureau of Driver Licensing*, 580 Pa. 238, 860 A.2d 64 (2004) as discussed in *Burgess*, we conclude that the Department’s imposition of the add-on suspension was proper. Accordingly, we reverse the trial court’s order and reinstate the twenty-day add-on suspension imposed pursuant to Section 1544(a), 75 Pa. C.S. § 1544(a).

BONNIE BRIGANCE LEADBETTER,
President Judge

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Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing,	:	
Appellant	:	

ORDER

AND NOW, this 25th day of March, 2010, the order of Court of Common Pleas of Northampton County in the above-captioned matter is hereby REVERSED and the twenty-day add-on suspension imposed by the Department of Transportation, Bureau of Driver Licensing is REINSTATED.

BONNIE BRIGANCE LEADBETTER,
President Judge