IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Matt E. Dewey, Appellant	:	
v.	:	No. 2251 C.D. 2009
Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing	:	Submitted: May 21, 2010

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

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: July 9, 2010

Matt E. Dewey (Licensee) appeals, pro se, the order of the Court of Common Pleas of Venango County (trial court) dismissing his statutory appeal and reinstating the one-year license suspension imposed by the Department of Transportation, Bureau of Driver Licensing (DOT) pursuant to the provisions of Section 1543 of the Vehicle Code, 75 Pa.C.S. § 1543.[1] We affirm.

[1] Section 1543 of the Vehicle Code provides, in pertinent part:

> **(a) Offense defined.—[**A]ny person who drives a motor vehicle on any highway or trafficway of this Commonwealth after the commencement of a suspension, revocation or cancellation of the operating privilege and before the operating privilege has been restored is guilty of a summary offense and shall, upon conviction,

(Continued....)

On March 27, 2009, Licensee was cited for violating Section 1543(a) of the Vehicle Code. On May 4, 2009, Licensee was convicted of the charge by a district justice. On May 5, 2009, DOT was notified of Licensee's conviction.[2] On May 12, 2009, DOT sent Licensee notice that, based upon his conviction, his operating privilege was suspended for one year pursuant to Section 1543(c)(1) of the Vehicle Code, effective May 27, 2010.

On June 11, 2009, Licensee filed an appeal of DOT's notice of suspension in the trial court.[3] On August 12, 2009, a hearing was conducted before the trial court on Licensee's appeal. See N.T. 8/12/09[4] at 2-17. In support of the

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> be sentenced to pay a fine of $200.
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> * * *
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> **(c) Suspension or revocation of operating privilege.—**Upon receiving a certified record of the conviction of any person under this section, [DOT] shall suspend or revoke that person's operating privilege as follows:
>
> > (1) If [DOT]'s records show that the person was under suspension, recall or cancellation on the date of the violation, and had not been restored, [DOT] shall suspend the person's operating privilege for an additional one-year period.

75 Pa.C.S. § 1543(a), (c)(1).

[2] Licensee appealed his conviction to the Court of Common Pleas of Crawford County. On July 29, 2009, Licensee was again convicted by that court for violating Section 1543(a) of the Vehicle Code.

[3] It should be noted that the certified record in this case shows that Licensee was also cited on March 27, 2009, for violating Section 1786(f) of the Vehicle Code for operating a motor vehicle without the required financial responsibility. Licensee was also convicted of this offense by the district justice on May 4, 2009. Based upon this conviction, DOT imposed a three-month suspension of Licensee's operating privilege and his registration pursuant to Section 1786(d)(1) of the Vehicle Code. Although this suspension was also appealed by Licensee to the trial court, it is not part of the instant appeal to this Court.

[4] "N.T. 8/12/09" refers to the transcript of the hearing conducted before the trial court on

(Continued....)

suspension, and without objection, DOT entered into evidence a packet of documents under certification of cover and seal which included the Conviction Detail report of his conviction for violating Section 1543(a) of the Vehicle Code, and his Certified Driving History which indicated that his driving privilege had been suspended and had not been restored at the time of his conviction. See id. at 2-3, 10-11. See also Supplemental Reproduced Record (SRR) at 1b-20b. In his defense, Licensee asserted that at the time of his conviction his prior suspensions had expired, and his driving privilege had been restored; however, Licensee conceded that he did not have any evidence to rebut the information contained in DOT's packet of documents indicating the contrary. See id. at 9-10, 11-13.[5]

August 12, 2009.

[5] More specifically, the following was stated on the record, in pertinent part:

> THE COURT: What suspension are we talking about?
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> MR. DEWEY: My original 2007 suspension.
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> THE COURT: That was for?
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> MR. DEWEY: It was for a failure to appear for a citation. [DOT] has stated that I never started that suspension. I have to request an administrative hearing to try to correct that, which, you know, I have the proof that that suspension has been served previously, so that the new suspensions wouldn't even be existing.
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> * * *
>
> THE COURT: Do you want to speak to any of that, Mr. Dewey?
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> MR. DEWEY: The license that was received on February 27th of 2009 was a license that was issued on February 7th of 2008. I went to the Cranberry License Bureau to get a photo ID and turned in my camera card. They said, "Oh, your license is fine" and issued me a new license at that time. It was no good when they issued it to me but they issued me a license. I went, and I don't have the proof of it, but I paid the restoration fee when I was down there. I cannot get a copy of the check. My bank is still

(Continued....)

That same day, the trial court issued an order dismissing Licensee's appeal and reinstating the one-year suspension imposed by DOT.[6] Licensee then filed the instant appeal of the trial court's order.[7]

> working on it. It wasn't – I don't believe it's relevant here because it would be on an administrative hearing, but that license that was taken is dated February 7th, and by the code to surrendering my license, one of the things on the code is that I can surrender it at any [DOT] Office, which I did, which would trigger the suspension a year earlier than that. So, then this suspension wouldn't come about because I already served my suspension.
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> [COUNSEL FOR DOT]: Your Honor, that, of course, is not what the record shows. I believe on the – if I may just take a look at one of the exhibits that I have – Your Honor, I was just pointing out that it shows that the latest driving card was issued on August 31st of 2007, not February of – that is right there on the left-hand side, showing they issued it – the driver's license. So, I believe, Your Honor, that all may be something for Mr. Dewey to raise at a credit hearing, although I believe for purposes here, it is really not of relevance. In order for him to clear the – and, none of these suspensions actually begin until he completes his suspension for the prior 1543, which began in February of 2009, serving that suspension. So, you know, he has a couple of months, up until February of 2010, to resolve all of these matters because [DOT] is quite amenable to doing the administrative corrections if, in fact, he can make the proof that he is saying that he has to the Court today, and shows that he shouldn't have been suspended, that the insurance company did act improperly, [DOT] has administrative restorations but the Court doesn't have that power.

It should also be noted that Licensee also conceded that he had not yet sought administrative review to correct the purported errors in DOT's records. See N.T. 8/12/09 at 15-16.

[6] In the opinion filed in support of its order, the trial court determined that Licensee was, in effect, attempting to collaterally attack his underlying conviction for violating Section 1543(a) in the instant license suspension proceedings. See Trial Court Opinion at 3-4. As a result, the trial court determined that it "[had] no authority to relitigate the underlying conviction rendered in the Court of Common Pleas of Crawford County…." Id. at 4.

[7] Licensee initially appealed the trial court's order to the Pennsylvania Superior Court.

(Continued....)

In this appeal, Licensee claims: (1) the trial court erred in determining that it was without authority to consider the alleged defects in his driving record that formed the basis for his suspension and to rule on those defects; and (2) the Certified Driving Record introduced into evidence by DOT was not sufficient to sustain his license suspension because it contained a number of errors.

Licensee first claims that the trial court erred in determining that it was without authority to consider the alleged defects that formed the basis for his suspensions and to rule on those defects. In support of this assertion, Licensee cites to opinions of this Court[8] in which we have determined that a trial court has jurisdiction to consider whether DOT has acted in accordance with the provisions

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However, by order dated October 13, 2009, the appeal was transferred by the Superior Court to this Court.

[8] See, e.g., Waite v. Department of Transportation, 834 A.2d 1218, 1221 (Pa. Cmwlth. 2003) ("[I]n this instance, the common pleas court originally determined that an error had been made in determining the date Waite surrendered his license to the court and when each suspension period should begin. The common pleas court ordered that error be corrected. DOT ignored that finding and made its own determination as to when the suspension should run. Moreover, DOT did not appeal the common pleas court's determination. If DOT wanted to challenge the period of suspension, it should have appealed the original order instead of collaterally attacking the common pleas court's decision to enforce its original order…. [H]ere, the common pleas court correctly noted it enjoyed subject matter jurisdiction because Waite challenged whether DOT acted in accordance with law when it failed to treat each suspension period as beginning the day that he surrendered his license to the common pleas court. The common pleas court accurately perceived that Waite did not request a recalculation of his suspensions."); Ladd v. Department of Transportation, 753 A.2d 318, 321-322 (Pa. Cmwlth. 2000) ("[T]he trial court misperceived Licensee's argument. Licensee was not requesting that the trial court recalculate his driving record. Instead, Licensee was seeking an adjudication that DOT failed to act according to the law after DOT removed Licensee from habitual offender status. According to Licensee, once DOT removed Licensee from habitual offender status, DOT could properly impose only three one-year suspensions as a result of his section 1543 convictions; thus, Licensee asserted that DOT sentenced him in violation of the law when it imposed three two-year revocations. That issue was properly before the trial court, and the trial court erred in holding otherwise.").

of the Vehicle Code in determining whether a licensee's operating privileges have been properly suspended under Section 1543(c)(1). However, even if it assumed that Licensee is correct in this regard, the certified record in this case demonstrates that the trial court did not err in dismissing his statutory appeal and in reinstating the one-year license suspension imposed by DOT pursuant to Section 1543(c)(1) of the Vehicle Code.[9]

It is well settled that when a one-year suspension is imposed pursuant to Section 1543(c)(1), it is DOT's burden to prove that it complied with the applicable law, and to show that its records reflect that a licensee's operating privilege was under suspension at the time of the violation of Section 1543(a) giving rise to the suspension. 75 Pa.C.S. § 1543(c)(1); Department of Transportation v. Diamond, 616 A.2d 1105 (Pa. Cmwlth. 1992), appeal dismissed, 539 Pa. 382, 652 A.2d 826 (1995). DOT's submission of a certified conviction report and a certified driving history establishes a rebuttable presumption that the licensee was convicted of the offense, and that his operating privilege was suspended at the time of the offense. See Kovalcin v. Department of Transportation, 781 A.2d 273 (Pa. Cmwlth. 2001); Mateskovich v. Department of Transportation, 755 A.2d 100 (Pa. Cmwlth. 2000); Diamond. Once DOT establishes this rebuttable presumption, the burden then shifts to the licensee to present clear and convincing evidence that DOT's evidence is erroneous. Carter v. Department of Transportation, 838 A.2d 869 (Pa. Cmwlth. 2003); Diamond. If the

[9] It is beyond cavil that this Court may affirm the trial court's order on any basis appearing in the record. See, e.g., Feldman v. Lafayette Green Condominium Association, 806 A.2d 497, 502 n. 3 (Pa. Cmwlth. 2002) ("[W]e may affirm an order for any reason, regardless of the trial court's rationale, so long as the basis for our decision is clear on the record. *Pennsylvania State Police v. Paulshock*, 789 A.2d 309 (Pa. Cmwlth. 2001).").

licensee fails to present such clear and convincing evidence[10], the rebuttable presumption becomes conclusive on the issue of the conviction or on the status of the licensee's operating privilege at the time of conviction. See id.

It is equally well settled that a license suspension does not end automatically. Rather, "[Section] 1543(c)(1) requires an individual to complete the proper administrative steps after a statutory suspension has ended before being entitled to drive without restriction…." Rossi v. Department of Transportation, 580 Pa. 238, 244, 860 A.2d 64, 67 (2004). Among the required administrative steps, Section 1960 of the Vehicle Code requires a licensee to pay a restoration fee prior to the reinstatement of a licensee's operating privilege. Specifically, Section 1960 provides, in pertinent part:

> [DOT] ***shall*** charge a fee of $25 or, if section … 1786(d) (related to required financial responsibility) applies, a fee of $50 to restore a person's operating privilege or the registration of a vehicle following a suspension….

75 Pa.C.S. § 1960 (emphasis added). A licensee's failure to take such an administrative step to allow DOT to restore his operating privilege permits DOT to impose the additional one-year suspension under Section 1543(c)(1). Rossi.

As noted above, at the hearing before the trial court, DOT entered into evidence a packet of documents under certification of cover and seal which included a Conviction Detail report of Licensee's conviction for violating Section 1543(a) of the Vehicle Code, and his Certified Driving History which indicated

[10] As this Court has previously noted, "'[c]lear and convincing evidence' has been 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.'" Mateskovich, 755 A.2d at 102 n. 6.

that his driving privilege had been suspended and had not been restored at the time of his conviction. See N.T. 8/12/09 at 2-3, 10-11; SRR at 1b-20b. In addition, Licensee has not disputed that he was convicted of violating Section 1543(a) of the Vehicle Code. See N.T. 8/12/09 at 3 ("[I] am not objecting to the conviction, just to the one-year suspension that is being triggered as a result of [DOT]'s administrative failures…. I'm not attacking the conviction part of it because I can't, but I can attack the reasoning that this suspension has come about because they haven't cleared the previous suspension…."). Moreover, as also noted above, at the hearing Licensee conceded that he could not produce clear and convincing evidence that he had paid the fee required for the restoration of his operating privilege under Section 1960 of the Vehicle Code even if it assumed, as he alleges, that he had already served the prior periods of his license suspension. See N.T. 8/12/09 at 12 ("[I] went, and I don't have the proof of it, but I paid the restoration fee when I was down there. I cannot get a copy of the check. My bank is still working on it….").[11]

[11] Licensee's statements, standing alone, are not sufficient clear and convincing evidence to establish that DOT's certified documents are erroneous. See, e.g., Mateskovich, 755 A.2d at 102 ("In this case, Licensee's testimony that the district justice did not find him guilty of the November 13, 1998, citation is not clear and convincing evidence that the certified record is erroneous. To meet this burden, Licensee would have to challenge the regularity of the record or provide other direct evidence as to why the court record was incorrect, i.e., testimony of court personnel that the records were incorrect and that the conviction was never entered by a district justice. *See Diamond* (a certified copy of an acquittal is sufficiently clear and convincing to rebut the presumption of a conviction which arises from the introduction of [DOT]'s certified record); *Fine v. Department of Transportation*[], 694 A.2d 364 (Pa. Cmwlth. 1997) (certified copy of trial court order reversing Licensee's conviction was sufficiently clear and convincing to rebut presumption); *Department of Transportation*[] *v. Emery*, [580 A.2d 909 (Pa. Cmwlth. 1990)] (letter presented by Licensee that contained signature and official seal of district justice and stated that Licensee was found not guilty was clear and convincing evidence sufficient to rebut evidence of conviction); *In the Matter of Appeal of Richard Michael George*, [515 A.2d 1047 (Pa. Cmwlth. 1986)] (computer printout of driver's record that Licensee received from

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Because Licensee failed to present clear and convincing evidence that DOT's certified Conviction Detail report and Certified Driving History were erroneous, they are conclusive evidence that Licensee was convicted of violating Section 1543(a), and that his operating privilege was suspended at the time of the offense, as required to support a one-year suspension under Section 1543(c)(1). See Diamond, 616 A.2d at 1108 ("[T]herefore, when Diamond was cited on March 15, 1988 (which resulted in the 1990 conviction), his operating privileges were still under indefinite suspension. Pursuant to section 1543(c)(1), DOT could properly *suspend* Diamond's operating privileges for an additional one-year period.") (emphasis in original). Furthermore, Licensee's failure to present any evidence demonstrating that he complied with the provisions of Section 1960 regarding the restoration of his license further support the suspension of his operating privilege under Section 1543(c)(1). See Rossi, 580 Pa. at 244, 860 A.2d at 67 ("[S]ince Rossi failed to take these administrative steps to allow [DOT] to restore her driving privileges, it was proper for [DOT] to impose an additional one-year suspension for her violation of § 1543(c)(1)."). As a result, DOT met its burden of proof to support the one-year license suspension that was imposed under Section 1543(c)(1), and the trial court properly dismissed Licensee's appeal and reinstated the suspension imposed by DOT.

Finally, Licensee claims that the Certified Driving Record introduced into evidence by DOT was not sufficient to sustain his license suspension because it contained a number of errors.[12] However, as outlined above, there was clearly

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DOT that did not reflect one of the convictions upon which suspension was based did not rebut correctness of certified record).").

[12] As a corollary to this allegation of error, Licensee contends that he "[w]as not afforded the opportunity to rebut the presumption of [the] correctness [of DOT's certified record] due to *(Continued....)*

substantial evidence to support the one-year license suspension that was imposed by DOT under Section 1543(c)(1). In short, Licensee's allegation of error in this regard is patently without merit.

Accordingly, the order of the trial court is affirmed.

JAMES R. KELLEY, Senior Judge

the Trial Court believing that it does not have the authority to intervene in conviction based suspensions…." Brief for Appellant at 11. However, as outlined above, the transcript of the hearing before the trial court clearly demonstrates that Licensee was given ample opportunity to present evidence in support of his assertions to the court each time DOT rested following the presentation of its evidence. See N.T. 8/12/09 at 3, 6, 9, 11. The fact that Licensee failed to take advantage of these opportunities to present clear and convincing evidence in support of his claims in no way constitutes error on the part of the trial court. See, e.g., Vann v. Unemployment Compensation Board of Review, 508 Pa. 139, 148, 494 A.2d 1081, 1086 (1985) ("[I]t is, we believe, preferable to simply recognize, as the Commonwealth Court has previously done, that 'any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing.' *Groch v. Unemployment Compensation Board of Review*, [472 A.2d 286, 288 (Pa. Cmwlth. 1984)."). In short, the certified record in this case belies Licensee's claim in this regard and, as a result, this claim is likewise patently without merit.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Matt E. Dewey,	:	
Appellant	:	
	:	
v.	:	No. 2251 C.D. 2009
	:	
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing	:	

O R D E R

AND NOW, this 9th day of July, 2010, the order of the Court of Common Pleas of Venango County, dated August 12, 2009, at No. 856-2009, is AFFIRMED.

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JAMES R. KELLEY, Senior Judge