

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jonathan Ray Fisher :  
 :  
 v. : No. 2275 C.D. 2009  
 : Submitted: April 16, 2010  
 Commonwealth of Pennsylvania, :  
 Department of Transportation, :  
 Bureau of Driver Licensing, :  
 Appellant :

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
 HONORABLE ROBERT SIMPSON, Judge  
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
 BY SENIOR JUDGE FRIEDMAN

FILED: June 29, 2010

The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing (DOT) appeals from the order of the Court of Common Pleas of Lancaster County (trial court) sustaining the appeal of Jonathan Ray Fisher (Fisher) and rescinding DOT's suspension of Fisher's operating privilege. We reverse.

On two separate dates, May 17, 2003, and July 20, 2003, Fisher was charged with driving under the influence of alcohol (DUI) pursuant to former section 3731 of the Vehicle Code,<sup>1</sup> as well as other non-DUI offenses. At the time, Fisher

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<sup>1</sup> 75 Pa. C.S. §3731, *repealed by* the Act of Sept. 30, 2003, P.L. 120. A similar provision is now found in section 3802 of the Vehicle Code, 75 Pa. C.S. §3802.

already was serving a one-year license suspension for a March 2002 DUI violation. He entered guilty pleas to both new DUI charges on December 21, 2004.

On that same date, Fisher completed an “Acknowledgement of Suspension/Revocation/Disqualification/Cancellation,” also known as a DL-16C Form.<sup>2</sup> On that form, Fisher indicated that he was unable to surrender his license and handwrote the following notation: “EXPIRED & PREVIOUSLY SUSPENDED LANC. CO CASES 4192-03 and 3161-03.” The docket numbers on the form referred to the two cases at issue here. Fisher submitted the completed DL-16C Form to the Clerk of Courts, which then submitted it to DOT.

On January 18, 2005, the Clerk of Courts certified to DOT only the conviction for the May 17, 2003, DUI violation; it did not certify the conviction for the July 20, 2003, DUI violation. By letter dated February 4, 2005, DOT suspended Fisher’s license for one year based on his conviction for the May 17, 2003, DUI violation.

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<sup>2</sup> The DL-16C Form is a form on which a licensee must acknowledge a license suspension or revocation when he or she is no longer in possession of his or her driver’s license. This form satisfies the requirement of section 1541(a) of the Vehicle Code, which provides:

If a licensed driver is not in possession of his driver’s license, no credit toward the disqualification, revocation or suspension shall be earned until a sworn affidavit or a form prescribed by [DOT] is surrendered to [DOT] swearing that the driver is not in possession of his driver’s license.

75 Pa. C.S. §1541(a); *see also* 75 Pa. C.S. §1540(b)(2) (“[DOT] shall include with the written notice of suspension, revocation or disqualification a form for acknowledging the suspension, revocation or disqualification, which form shall be filed with [DOT] if the person has no license to surrender.”)

By letter dated May 20, 2005, DOT notified Fisher that he would be eligible for restoration of his operating privilege on March 31, 2009, if he complied with the requirements outlined in the letter. Fisher complied with the requirements, and his operating privilege was restored on April 6, 2009.

The Clerk of Courts finally certified the conviction for Fisher’s July 20, 2003, DUI violation to DOT on March 20, 2009.<sup>3</sup> Thereafter, by letter dated April 15, 2009, DOT notified Fisher that, effective May 21, 2009, his operating privilege would be revoked for five years under the “habitual offender” provision of section 1542 of the Vehicle Code, 75 Pa. C.S. §1542.<sup>4</sup>

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<sup>3</sup> According to DOT’s counsel, the Clerk of Courts did not realize that it had not certified this conviction until it received Fisher’s DUI treatment information in March 2009. (N.T., 10/27/09, at 4.)

<sup>4</sup> Section 1542 of the Vehicle Code provides in relevant part:

**(a) General rule.**—[DOT] shall revoke the operating privilege of any person found to be a habitual offender pursuant to the provisions of this section. A “habitual offender” shall be any person whose driving record, as maintained in [DOT], shows that such person has accumulated the requisite number of convictions for the separate and distinct offenses described and enumerated in subsection (b) committed after the effective date of this title and within any period of five years thereafter.

...

**(d) Period of revocation.**—The operating privilege of any person found to be a habitual offender under the provisions of this section shall be revoked by [DOT] for a period of five years.

75 Pa. C.S. §1542(a), (d).

Fisher filed a petition for appeal in the trial court, which conducted a *de novo* hearing. At the hearing, Fisher testified that to fulfill the requirements for restoration of his operating privilege, he paid the \$25.00 restoration fee, completed drug and alcohol counseling, obtained the proper insurance, and installed an ignition interlock device in his vehicle. (N.T., 10/27/09, at 17-18.) He also testified about the difficulties he would encounter if he were to lose his operating privilege at this time. Fisher has worked at his current job for two-and-one-half years. Although this job does not require him to drive as part of his employment, Fisher drives fourteen miles to and from work each day. (*Id.* at 19-20.) Fisher also testified that there is no public transportation available and no other practicable means by which he could get to and from work. (*Id.* at 21-22.) DOT did not present any testimony at the hearing.

The trial court concluded that: (1) DOT's delay of more than four years in suspending Fisher's operating privilege was unreasonable; (2) DOT knew or should have known about Fisher's second DUI conviction in December 2004 when it received the completed DL-16C Form, and, thus, the delay was partially attributable to DOT; and (3) Fisher was prejudiced by the delay. Therefore, the trial court sustained Fisher's appeal and rescinded DOT's suspension of Fisher's operating privilege. DOT now appeals from that decision.<sup>5</sup>

DOT asserts that Fisher is not entitled to reinstatement of his operating privilege because the delay was due entirely to the Clerk of Courts' failure to timely

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<sup>5</sup> Our scope of review in a license suspension case is limited to determining whether the trial court's findings are supported by competent evidence and whether the trial court committed an error of law or an abuse of discretion in reaching its decision. *Department of Transportation v. Gombocz*, 589 Pa. 404, 407, 909 A.2d 798, 800 (2006).

report Fisher's conviction for the July 20, 2003, DUI violation.<sup>6</sup> DOT contends that because the Clerk of Courts failed to comply with the Vehicle Code's ten-day reporting requirement, such delay cannot be attributed in any way to DOT. We agree.

Our case law provides that to sustain an appeal of a license suspension based on delay, the licensee must prove that: (1) an unreasonable delay chargeable to DOT led the licensee to believe that his operating privilege would not be impaired; and (2) prejudice would result by having the licensee's operating privilege suspended after such delay. *Terraciano v. Department of Transportation, Bureau of Driver Licensing*, 562 Pa. 60, 66, 753 A.2d 233, 236 (2000). Once a licensee raises the delay defense, DOT must then prove that the delay was caused by some factor other than mere administrative inaction. If DOT meets this burden, the licensee's appeal should be dismissed. If DOT fails to meet this burden, then the burden shifts to the licensee to prove prejudice. *Grover v. Department of Transportation, Bureau of Driver Licensing*, 734 A.2d 941, 943 (Pa. Cmwlth. 1999). A licensee proves prejudice by demonstrating that he changed his circumstances to his detriment in reliance on the belief that his operating privilege would not be impaired. *Terraciano*, 562 Pa. at 68, 753 A.2d at 237.

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<sup>6</sup> Under section 6323(1) of the Vehicle Code, the Clerk of Courts is required to notify DOT of a DUI conviction within ten days after final judgment of conviction. That section states:

The clerk of any court of this Commonwealth, within ten days after final judgment of conviction or acquittal or other disposition of charges under any of the provisions of this title ... shall send to [DOT] a record of the judgment of conviction, acquittal or other disposition.

75 Pa. C.S. §6323(1); *see also* 67 Pa. Code §81.4(a).

This court has previously recognized the confusing and seemingly contradictory burdens of proof in license suspension matters, *see Grover*, 734 A.2d at 943-44, and we do so again. Fortunately, however, we need not be concerned with this difficulty here because it is undisputed that the delay of more than four years was unreasonable and that Fisher would be prejudiced by having his license suspended after such a delay. Therefore, the only issue remaining is whether DOT can be held accountable for the delay.

It is well settled that “DOT ‘may not be held accountable for delay attributable to a court’s failure to timely certify a conviction to [DOT].’” *Hockenberry v. Department of Transportation*, 972 A.2d 97, 99 (Pa. Cmwlth. 2009) (citation omitted); *see Pokoy v. Department of Transportation, Bureau of Driver Licensing*, 714 A.2d 1162, 1164 (Pa. Cmwlth. 1998). Moreover, DOT may be chargeable only with delay that occurs *after* it has received the certification of conviction from the Clerk of Courts. *Grover*, 734 A.2d at 943 n.4. “[T]he relevant time period is that between the point at which DOT receives notice of the driver’s conviction from the judicial system and the point at which DOT notifies the driver that her license has been suspended or revoked.” *Pokoy*, 714 A.2d at 1164. Fisher does not dispute that DOT issued its suspension notice within a reasonable time after receiving the certification from the Clerk of Courts in March 2009. Thus, that time period is not being challenged.

Nonetheless, the trial court determined that DOT shared the blame for the delay that *preceded* the certification because it knew or should have known about Fisher’s second DUI conviction in December 2004 when it received the completed

DL-16C Form. The trial court reasoned that, upon receiving that information, DOT had an obligation to investigate the matter with the Clerk of Courts and failed to do so.

Notably, the trial court cites no authority to support this position, and we have found no authority that imposes such a duty on DOT. To the contrary, our courts have recognized that DOT's obligation to revoke or suspend a driver's operating privilege is not triggered until it receives certification of the conviction from the Clerk of Courts. *See Terraciano*, 562 Pa. at 67 n.9, 753 A.2d at 237 n.9 (noting that "PennDOT is unable to suspend a driver's license until it receives a certified record from the court system that the licensee has been convicted of an offense for which a suspension may be imposed"); 75 Pa. C.S. §1532 (stating that DOT shall revoke or suspend operating privilege of any driver upon receipt of certified record of driver's conviction).

Moreover, nothing on the DL-16C Form would have even suggested to DOT that Fisher had an unreported DUI conviction. Fisher merely stated that his license was suspended and listed two docket numbers. With respect to each docket number, however, Fisher pled guilty to numerous non-DUI offenses for which his license also was suspended. (*See* DOT's Restoration Requirements Letter, 5/20/05, at 2.) DOT would have no reason to believe there was a second, unreported DUI conviction based solely on that information. *See Rothstein v. Department of Transportation*, 922 A.2d 17, 23 n.13 (Pa. Cmwlth. 2006) (rejecting trial court's suggestion that DOT had duty to "seek out" information related to licensee's suspension, as doing so "would unduly burden DOT"). Therefore, the trial court

erred in concluding that DOT knew or should have known of Fisher's second DUI conviction based on the DL-16C Form.

Accordingly, because DOT cannot be held accountable for the delay in this case, we reverse the trial court's order and reinstate the suspension of Fisher's operating privilege.

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ROCHELLE S. FRIEDMAN, Senior Judge



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

ORDER

AND NOW, this 29th day of June, 2010, we hereby reverse the October 27, 2009, order of the Court of Common Pleas of Lancaster County and reinstate the suspension of Jonathan Ray Fisher's operating privilege.

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ROCHELLE S. FRIEDMAN, Senior Judge