

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sean P. Dougherty	:	
	:	
v.	:	No. 2489 C.D. 2009
	:	SUBMITTED: July 9, 2010
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing,	:	
Appellant	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER**, President Judge
 HONORABLE MARY HANNAH LEAVITT, Judge
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER¹**

FILED: May 19, 2011

The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing (DOT) appeals from the order of the Court of Common Pleas of Luzerne County (common pleas) dismissing the license suspension appeal of Sean P. Dougherty but ordering DOT to credit the time Dougherty was deployed in Iraq toward the one-year suspension. We affirm in part and vacate in part.

On October 28, 2003, Dougherty received a traffic citation for violating Section 4581 of the Vehicle Code, *as amended*, 75 Pa. C.S. § 4581 (relating to safety belt and other restraint systems). Dougherty failed to respond to the citation in a timely manner. On December 29, 2003, DOT sent Dougherty a notice that his operating privilege was suspended indefinitely. *See* 75 Pa. C.S. §

¹ This case was reassigned to the author on April 19, 2011.

1533 (relating to suspension of operating privilege for failure to respond to citation). Dougherty deployed to Iraq as a member of the United States Army in December 2003 and returned to Pennsylvania in March 2005.

On November 30, 2006, Dougherty was cited for driving while suspended in violation of Section 1543 of the Vehicle Code, *as amended*, 75 Pa. C.S. § 1543. He pled guilty to that charge on January 18, 2007. DOT suspended Dougherty's operating privilege on January 26, 2007, for driving while suspended. Dougherty appealed the suspension to common pleas.

Common pleas held a *de novo* hearing on September 11, 2009, at which Dougherty testified that he had never received the December 2003 notice. He also testified that in 2005, he had renewed his license without objection from DOT.² Common pleas dismissed Dougherty's appeal, finding that because Dougherty had pled guilty to driving a vehicle under suspension on January 17, 2007, DOT properly suspended Dougherty's license pursuant to 75 Pa. C.S. § 1543. However, common pleas also "ordered that [Dougherty] be provided with credit for the aforesaid deployment to run against any period of suspension..." Reproduced Record (R.R.) 73a – 74a. DOT appealed common pleas' order to this court. Dougherty did not cross-appeal.³

² We note that the certified records admitted into evidence by DOT reflect that his license was last renewed in September 2003 with an expiration in August 2007, not in 2005. However, the trial judge chose to accept Dougherty's testimony to the contrary. R.R. at 68a.

³ While the order for credit may have obviated the need for Dougherty to serve any further period of time under the suspension, it did not remove the suspension from his driving record. Therefore, we believe that he was aggrieved by the trial court's order and thus that a cross-appeal would have been appropriate if Dougherty wished to further challenge the suspension. Further, Dougherty did not file a brief in this appeal, either on its original due date or during the two week extension granted *sua sponte* by this court (and thus was precluded from filing, and never attempted to do so). Accordingly, the validity of the suspension has not been raised in this appeal in any fashion, and is not properly before us.

DOT asserts that common pleas was without subject matter jurisdiction to grant credit to Dougherty. In its Rule 1925(a) opinion, common pleas stated that in its “view that had [Dougherty] received the December 29, 2003, suspension letter from the Commonwealth, his license would have been turned over and the suspension would have been served while he was out of the country.” R.R. 86a. Common pleas further reasoned that DOT, having renewed Dougherty’s license in August 2005 was precluded from suspending his license in 2007, based upon a 2003 violation. *Id.* Common pleas concluded that Dougherty should be entitled to credit for the time he was deployed to Iraq and DOT’s appeal to this Court should be dismissed. *Id.* at 87a.

DOT argues that pursuant to *Department of Transportation, Bureau of Driver Licensing v. Yarbinitz*, 508 A.2d 641, 642 (Pa. Cmwlth. 1986), common pleas does not have the authority to grant credit for the time Dougherty was deployed to Iraq. In *Yarbinitz*, this court stated:

The function of the trial court in an appeal from a license suspension is to determine the validity of the suspension. *Department of Transportation, Bureau of Traffic Safety v. Quinlan*, 47 Pa. Commonwealth Ct. 214, 408 A.2d 173 (1979). Once the identity of the party whose license is suspended is established and the grounds for the suspension are found to be proper, the trial court’s inquiry is ended. Even assuming Appellee was entitled to credit, this is *not* a basis for sustaining the appeal. If the person whose license is suspended committed the offense, and if the offense is a valid basis for suspension and no violation of due process has occurred, then the suspension must be upheld and the operator’s appeal dismissed. The trial court can do no more. Therefore, a suspension cannot be invalidated if it was properly imposed, even if it has already been served.

508 A.2d at 642. The *Yarbinitz* court concluded that for the purposes of a license suspension appeal, common pleas lacks the authority to compute and give credit. *Id.*

Applying the reasoning of *Yarbinitz* to the present case, we note that common pleas properly identified Dougherty as the party whose license was suspended. Further, common pleas correctly found that because Dougherty had pled guilty to driving a vehicle under suspension, that the grounds for Dougherty's subsequent suspension could not be challenged. Nevertheless, common pleas' order that DOT credit Dougherty for the time he was deployed to Iraq, however just and equitable, exceeded the limits of its jurisdiction. *Yarbinitz*. The proper method for an operator to receive credit against a suspension is to apply to DOT through the administrative procedures provided by the agency. *Id.*; *Dep't of Transp. v. Cunningham*, 604 A.2d 1212 (Pa. Cmwlth. 1992); 67 Pa. Code § 491.3(b)(2).

Accordingly, we vacate common pleas' grant of credit and affirm its order in all other respects.⁴

BONNIE BRIGANCE LEADBETTER,
President Judge

⁴ The dissent would reverse the order of the Court of Common Pleas upholding the suspension on the ground that Dougherty's guilty plea was *void ab initio*. However, Dougherty has never challenged the trial court's order affirming the suspension. As noted above, he did not appeal that order, nor has he contested its validity in this court. Although we may affirm an order on any ground, and are not limited to grounds raised by the parties, *McAdoo Borough v. Pa. Labor Relations Bd.*, 506 Pa. 422, 485 A.2d 761 (1984), we do not have the authority to reverse on a ground that has not been raised. *Riedel v. Human Relations Comm'n of City of Reading*, 559 Pa. 34, 41, 739 A.2d 121, 125 (1999). While we sympathize with Dougherty, the legal principles are clear: DOT had a mandatory duty to suspend after the guilty plea for driving on a suspended license, and we simply lack the power to reverse the trial court *sua sponte* on an issue that is not before us.

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ORDER

AND NOW, this 19th day of May, 2011, the order of the Court of Common Pleas of Luzerne County granting credit toward Sean P. Dougherty's license suspension in the above-captioned matter is hereby VACATED. The order is AFFIRMED in all other respects.

BONNIE BRIGANCE LEADBETTER,
President Judge

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DISSENTING OPINION
BY SENIOR JUDGE KELLEY

FILED: May 19, 2011

I respectfully dissent. I would affirm the result reached by the Court of Common Pleas of Luzerne County (Trial Court), but on different grounds.¹ The appeal taken in this matter by the Department of Transportation (DOT), in every equitable sense, represents an abuse of its discretion.

The record supports the Trial Court's conclusion that Licensee's overseas deployment in this country's armed forces resulted in his failure to timely

¹ This Court may affirm an order on any grounds apparent from the record, and is not limited to the grounds raised by the parties. McAdoo Borough v. Pennsylvania Labor Relations Board, 506 Pa. 422, 485 A.2d 761 (1984).

respond to his citation in 2003. Had Licensee received notice prior to his deployment in the active military, his license would have been properly turned in and the suspension properly served during his deployment to Iraq. DOT's myopia to the equity of the factual situation before it - and its failure to equitably view the time Licensee served overseas as a sufficient equivalent to the suspension it mechanically pursued herein - resulted in an abuse of its discretion when it decided to appeal the Trial Court's result to this Court.

DOT, as a Commonwealth agency, is but one arm of the sovereign that created it. For the arm of that sovereign to take such an appeal as was taken herein, when the crux of the issue revolves around the fact that one of the sovereign's citizens has been deployed in military service for the very sovereign's protection and security – should be held to be an abuse of discretion.

I would affirm the Trial Court.

JAMES R. KELLEY, Senior Judge