

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John A. Weber, :
Appellant :
v. : No. 2653 C.D. 2009
Commonwealth of Pennsylvania, : Submitted: August 13, 2010
Department of Transportation, :
Bureau of Driver Licensing :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: October 15, 2010

John A. Weber (Licensee) appeals from the order of the Court of Common Pleas of Montgomery County (trial court) that denied his statutory appeal from the Department of Transportation, Bureau of Driver Licensing's (PennDOT) one-year suspension of his operating privilege. Licensee essentially argues PennDOT lacked authority to impose civil penalties on Licensee for his New Jersey driving while intoxicated (DWI) conviction. We affirm. We further conclude the appeal is frivolous and award counsel fees and costs.

Police arrested Licensee in Pennsylvania in 2007 for driving under the influence (DUI). PennDOT suspended Licensee's operating privilege for 60 days as a result of his acceptance into an accelerated rehabilitative disposition program. Licensee completed the program requirements, and PennDOT restored his operating privilege.

In 2008, police in New Jersey arrested Licensee for DWI in violation of N.J.S. §39:4-50.¹ Licensee was convicted of DWI with a blood alcohol concentration of 0.193%. New Jersey suspended his operating privilege within the state for three months. Pursuant to Article III of the Driver's License Compact (Compact), N.J.S. §39:5D-3, New Jersey informed Licensee's home state, Pennsylvania, of Licensee's DWI conviction.²

Under Article IV of the Compact, 75 Pa.C.S. §1581, PennDOT treated Licensee's conduct as if it occurred in Pennsylvania. PennDOT imposed the penalties for a repeat DUI offender. It suspended Licensee's operating privilege for one year and required Licensee to install ignition interlock systems (interlock) on his vehicles as a prerequisite to PennDOT restoring his operating privilege.

Licensee appealed PennDOT's suspension and restoration

¹This section provides defines a violation as being when:

a person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood....

N.J.S. §39:4-50.

²Article III provides in relevant part that "The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee." 75 Pa. C.S. §1581.

requirements. Licensee argued PennDOT erred in imposing a penalty harsher than the penalty New Jersey authorities imposed on him. He argued PennDOT violated Section 102 of the Crimes Code, 18 Pa. C.S. §102, which pertains to the territoriality of offenses. Additionally, Licensee contended only the judiciary has the authority to impose the penalties which PennDOT imposed.³

The trial court denied the appeal. The trial court relied on several Pennsylvania Supreme Court decisions to conclude that the suspension of operating privileges is a collateral civil consequence of a criminal act. The trial court also reasoned the Compact provides PennDOT with authority to impose civil penalties for an out of state conviction. The trial court concluded Licensee is subject to the laws of his home state, and PennDOT complied with Pennsylvania law. Licensee appeals.⁴

First, Licensee argues PennDOT violated subsections (a)(2) and (c) of Article IV of the Compact by imposing consequences that were harsher than those imposed by New Jersey. We conclude that neither subsection supports his

³ In his brief before this Court, Licensee raises for the first time the phrase “separation of powers,” and classifies these arguments as being components of an overall separation of powers issue. PennDOT argues Licensee first raises this separation of powers issue on appeal and that the issue is waived. However, from our reading, Licensee is not raising a new issue, but is simply using the term to classify arguments he raised before the trial court.

⁴ Our review is limited to determining whether the trial court’s findings of fact were supported by competent evidence, whether the trial court committed an error of law, or whether the trial court committed an abuse of discretion. Hyer v. Department Transportation, Bureau of Driver Licensing, 957 A.2d 807 (Pa. Cmwlth. 2008).

position.⁵ Rather, these provisions simply allow the home state to treat conduct that occurred in the reporting state as having occurred in the home state for purposes of imposing reciprocal suspensions and license limitations. 75 Pa. C.S. §1581. Neither subsection prohibits the home state from imposing a more serious consequence.

Licensee also argues Pennsylvania DUI laws are not comparable to New Jersey DWI laws. He draws this distinction from Pennsylvania classifying its DUI laws as criminal provisions and New Jersey classifying its DWI laws as motor

⁵Article IV of the Compact provides that:

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state in the case of convictions for:

* * * *

(2) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

* * * *

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) of this article as being applicable to and identifying those offenses or violations of a substantially similar nature and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

75 Pa. C.S. §1581.

vehicle provisions. Accordingly, Licensee argues the New Jersey DWI laws may not be used as a foundation for PennDOT to apply Pennsylvania DUI laws. Licensee cites no authority in support of his position.

Licensee's argument fails to address established precedent holding that New Jersey DWI laws are substantially similar to conduct described in Article IV(a)(2) of the Compact, thereby allowing PennDOT to use the conduct underlying the New Jersey conviction as the basis to apply the suspension and restoration requirements of Pennsylvania DUI laws. See, e.g., Scott v. Dep't of Transp., Bureau of Driver Licensing, 567 Pa. 631, 790 A.2d 291 (2002); Nolan v. Dep't of Transp., Bureau of Driver Licensing., 819 A.2d 159 (Pa. Cmwlth. 2003). We conclude this authority is controlling and that it contradicts Licensee's argument.

Next, Licensee argues PennDOT violated 18 Pa. C.S. §102 by imposing penalties for an offense committed in another state. That section of the Crimes Code addresses when conduct outside the Commonwealth may be used as a predicate for criminal convictions in Pennsylvania. Licensee argues "[n]one of the statutory criteria" in Section 102 apply. Licensee's Br. at 9. Thus, Licensee contends PennDOT may not use this conduct to impose suspension and interlock consequences.

Licensee's argument rests on the faulty premise that administratively imposed consequences arising from the Compact are criminal in nature. For seven decades our courts hold that driver's licenses represent privileges, not rights, and the suspension of those privileges are consequences that are civil and not criminal

in nature. Commonwealth v. Funk, 323 Pa. 390, 186 A. 65 (1936); accord, Commonwealth v. Mockaitis, 575 Pa. 5, 834 A.2d 488 (2003). Here, PennDOT is not using the New Jersey conduct as a predicate for a criminal conviction, but rather, as the basis for civil penalties. Accordingly, we hold Section 102 of the Crimes Code is not applicable.

Licensee argues the judiciary alone has the authority to impose the interlock requirement. In support of his position, he cites, without discussion, Occhibone v. Department of Transportation, Bureau of Driver Licensing, 542 Pa. 588, 669 A.2d 326 (1995).

Our Supreme Court thoroughly addressed this issue, concluding PennDOT has authority to impose interlock requirements as a precondition for restoring a licensee's operating privilege. McGrory v. Dep't. of Trans., Bureau of Driver Licensing, 591 Pa. 56, 915 A.2d 1155 (2007); see also Mockaitis. We find Occhibone, an implied consent case that does not address the Compact or interlock requirements, inapplicable. Accordingly, we reject this argument.

In sum, we reject Licensee's arguments and affirm the trial court's denial of Licensee's appeal.

PennDOT argues Licensee's appeal is frivolous and seeks counsel fees and costs pursuant to Pa. R.A.P. 2744; see generally Venafro v. Dep't. of Trans., Bureau of Driver Licensing, 796 A.2d 384 (Pa. Cmwlth. 2002) (awarding counsel fees and costs to PennDOT for a licensee's frivolous appeal).

An appeal is frivolous when a party raises well-settled issues and presents no legal support. Venafro. Additionally, an appeal is frivolous when a party fails to disclose contrary legal authority. Id. Frivolous appeals warrant the award of counsel's fees and costs. Id.

In this case, the issues raised by Licensee are well-settled. Licensee's arguments rest on arguments long rejected by our Supreme Court. Licensee not only fails to acknowledge this authority, but offers no meaningful argument for why this authority is no longer applicable. We are compelled to conclude that Licensee's appeal is frivolous and that PennDOT is entitled to an award of counsel fees and costs in accordance with Pa. R.A.P. 2744.

Accordingly, we affirm the decision of the trial court. Additionally, we award counsel fees and costs to be paid by Licensee and his counsel jointly and severally to PennDOT. Pursuant to Pa. R.A.P. 2744, the case is remanded to the trial court to determine a reasonable counsel fee.

ROBERT SIMPSON, Judge

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Department of Transportation,	:	
Bureau of Driver Licensing	:	

ORDER

AND NOW, this 15th day of October, 2010, the order of the Court of Common Pleas of Montgomery County in the above captioned matter is **AFFIRMED**. It is further **ORDERED** that costs, including a reasonable counsel fee, of the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing are awarded against John A. Weber and his counsel, jointly and severally. The case is **REMANDED** for further proceedings consistent with the opinion.

Jurisdiction is relinquished.

ROBERT SIMPSON, Judge