IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lawrence A. Chatfield	:	
	:	
v.	:	No. 571 C.D. 2010
	:	
Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, Appellant	:	Submitted: October 8, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: May 11, 2011

The Department of Transportation, Bureau of Driver Licensing (DOT) appeals from the March 29, 2010, order of the Court of Common Pleas of Philadelphia County (trial court) that sustained the statutory appeals filed by Lawrence A. Chatfield (Licensee) from the thirty-day suspension of his personal driving privilege and the one-year disqualification of his commercial driving privilege that were imposed by DOT pursuant to sections 1611(a) and 3807(d) of the Vehicle Code, 75 Pa. C.S. §§1611(a), 3807(d).[1] We reverse.

[1] This Court's order of September 9, 2010, directed Licensee to file an appellate brief within fourteen days, and Licensee was precluded from filing a brief by order dated October 1, 2010, for failure to comply.

On March 16, 2008, Licensee was charged with violating section 3802 of the Vehicle Code (Code), 75 Pa. C.S. §3802, prohibiting driving under the influence of alcohol or a controlled substance (DUI). On November 20, 2009, Licensee accepted an Accelerated Rehabilitative Disposition (ARD) of the DUI charge. The conditions of participation in ARD include a mandatory license suspension if the licensee's blood alcohol level is 0.10% or greater;[2] participants are given both oral and written notice of the provisions of section 1543(b) of the Code, 75 Pa. C.S. §1543(b), relating to driving while a person's operating privilege is suspended or revoked. Section 3807 of the Code, 75 Pa. C.S. §3807.

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[2] Section 3807(d) provides:

§3807. Accelerated Rehabilitative Disposition

(d) Mandatory suspension of operating privileges.--As a condition of participation in an Accelerated Rehabilitative Disposition program, the court shall order the defendant's license suspended as follows:

> (1) There shall be no license suspension if the defendant's blood alcohol concentration at the time of testing was less than 0.10%.
> (2) For 30 days if the defendant's blood alcohol concentration at the time of testing was at least 0.10% but less than 0.16%.
> (3) For 60 days if:
>> (i) the defendant's blood alcohol concentration at the time of testing was 0.16% or higher;
>> (ii) the defendant's blood alcohol concentration is not known;
>> (iii) an accident which resulted in bodily injury or in damage to a vehicle or other property occurred in connection with the events surrounding the current offense; or
>> (iv) the defendant was charged pursuant to section 3802(d).
> (4) For 90 days if the defendant was a minor at the time of the offense.

75 Pa.C.S. §3807(d).

By letters dated January 11, 2010, DOT informed Licensee that his personal driving privilege would be suspended for thirty days pursuant to section 3807(d) of the Code, 75 Pa. C.S. §3807(d), and that his commercial driving privilege would be disqualified for a period of one year pursuant to section 1611(a) of the Code, 75 Pa. C.S. §1611(a). Section 1611(a)(1) of the Code provides as follows:

> Upon receipt of a report of conviction, the department shall, in addition to other penalties imposed under this title, disqualify any person from driving a commercial motor vehicle or school vehicle for a period of one year for the first violation of … section 3802 (relating to driving under the influence of alcohol or controlled substance)….

75 Pa. C.S. §1611(a)(1) (emphasis added). The suspension and disqualification were to commence on February 15, 2010.

On January 26, 2010, Licensee filed separate statutory appeals from the suspension and the disqualification with the trial court, at the same docket number. Thereafter, on January 29, 2010, Licensee appeared pro se before the trial court and was granted a supersedeas as to the disqualification of his commercial driving privileges.

On March 26, 2010, the trial court held a de novo hearing on both appeals.[3] DOT offered into evidence two packets of certified documents, (Reproduced Record (R.R.) at 23a-38a, 43a-49a), both reflecting that Licensee

[3] Section 1550 of the Vehicle Code, 75 Pa. C.S. §1550 entitles a licensee to a de novo hearing on the merits of the suspension. Liebler v. Department of Transportation, Bureau of Traffic Safety, 476 A.2d 1389 (Pa. Cmwlth. 1984). When reviewing the administrative suspension of a motorist's driver's license, the trial court's authority is limited to determining whether the motorist has been convicted and whether DOT has faithfully observed the provisions of the Vehicle Code in issuing the suspension. Department of Transportation, Bureau of Driver Licensing v. Campbell, 588 A.2d 75 (Pa. Cmwlth. 1991).

accepted ARD on November 20, 2009, for a DUI violation he committed on March 16, 2008. Licensee's counsel (Counsel) objected to the introduction of these documents on the grounds of relevancy. (R.R. at 26a.)

Licensee testified that, on the morning of March 16th he had been to dialysis, which made him very weak. Licensee explained that he was on dialysis for eight years and eventually received a kidney. According to Licensee, he was not able to walk a straight line due to his weakened condition and he explained to the arresting officer that he was on dialysis. (R.R. at 27a-28a.)

Counsel asserted that Licensee would not have opted for ARD had he known he was going to lose his commercial driving privilege for a year, particularly since Licensee has been a bus driver for twenty-nine years and a suspension would result in the forfeiture of his pension. Counsel further asserted that Licensee was ill-advised by his former attorney to accept ARD when there was no evidence of Licensee's blood alcohol level at the time of his arrest. In support of this assertion, Counsel offered three pages of records from Hahnemann Hospital Emergency Department, (R.R. at 54a-56a), which indicate only that Licensee's blood was drawn on March 16, 2008; Counsel stated that he was unable to obtain any other records. Counsel also represented that, if necessary, he could secure testimony that Licensee's blood alcohol level was zero at the time. (R.R. at 27a.) In response to the trial court's inquiry, Counsel added that Licensee had successfully completed all of the ARD requirements. (Id.)

DOT objected to the introduction of the hospital records as collateral and irrelevant to the civil suspension proceeding. (R.R. at 27a.) DOT explained that the only document it had received was the clerk's report reflecting that Licensee was accepted into ARD, and DOT argued that Licensee's acceptance into ARD was the

only information relevant to the matter and was sufficient to trigger the suspension and disqualification of Licensee's driving privileges.

The trial court sustained Licensee's appeals and ordered the suspension and disqualification rescinded. (R.R. at 57a.) DOT appealed, and the trial court issued an opinion in support of its order on June 16th, 2010. The trial court relied on Licensee's testimony and Counsel's representations to set forth the following underlying facts: Licensee had not been drinking at the time of his arrest; Licensee submitted blood results that showed no blood alcohol analysis on the night he was pulled over; Licensee's attorney urged him to accept ARD but did not inform him of the dire consequences, including the disqualification of his commercial driver's license; and, if Licensee loses his commercial driver's license, he will forfeit his entire pension. (R.R. at 61a-62a.)

The trial court acknowledged that section 1611(a) of the Code requires DOT to disqualify any person from driving a commercial vehicle for period of one year if that person has been convicted of DUI. The trial court also recognized that acceptance of ARD constitutes a conviction pursuant to section 1603 of the Code, which states in part as follows:

> **"Conviction."** For the purposes of this chapter, a conviction includes a finding of guilty or the entering of a plea of guilty, nolo contendere or the unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court…. A payment of the fine or court cost or entering into an installment agreement to pay the fine or court cost for the violation by any person charged with a violation of this title is a plea of guilty. <u>The term shall include the acceptance of Accelerated Rehabilitative Disposition or other preadjudication disposition for an offense</u> or an unvacated finding of guilt or determination of violation of the law or failure to comply with the law by an authorized administrative tribunal. The term also includes a

> violation of a condition of release without bail, including the failure to pay a fine or appear in court to contest a citation. The term does not include a conviction which has been overturned or for which an individual has been pardoned.

75 Pa. C.S. §1603 (emphasis added).

However, the trial court reasoned that the purpose of section 1603 is to help enforce a federal "anti-masking" statute, which mandates that all information concerning traffic law violations appear on an individual's commercial driver's license record. The trial court explained that the intent of the federal provision is to prevent a state from "masking" the fact that a person was driving under the influence when he or she enters into a diversion program such as ARD. The trial court determined that these concerns are not implicated in the present case because Licensee was not driving under the influence, "as evidenced by his blood work." (R.R. at 63a-64a.) Finally, the trial court concluded that Licensee should not be punished because he had ineffective assistance of counsel.

On appeal to this Court,[4] DOT argues that the trial court erred as a matter of law in sustaining Licensee's statutory appeals where Licensee offered no competent evidence to rebut DOT's prima facie proof of Licensee's DUI conviction, for which DOT was required to impose an operating privilege suspension and a commercial driving disqualification. DOT asserts that the trial court erred by admitting documents into evidence that were not authenticated by a qualified witness

[4] Our scope of review in a license suspension appeal is limited to determining whether the trial court's findings of fact are supported by competent evidence, whether errors of law have been committed, or whether the trial court's determination demonstrates a manifest abuse of discretion. Poborski v. Department of Transportation, Bureau of Driver Licensing, 964 A.2d 66 (Pa. Cmwlth. 2009).

as required to establish a business records exception to the hearsay rule.[5] Finally, DOT further observes that the documents do not indicate Licensee's blood alcohol level.

In a license suspension appeal, DOT bears the initial burden to establish a prima facie case that a record of conviction supports a suspension. Zawacki v. Department of Transportation, Bureau of Driver Licensing, 745 A.2d 701 (Pa. Cmwlth. 2000). Once DOT meets its prima facie burden, the burden shifts to the licensee to rebut DOT's proof that he was convicted. Here, by submitting into evidence certified records of License's acceptance of ARD for a DUI violation committed on March 18, 2008, DOT satisfied its prima facie burden and created a presumption that Licensee was convicted of DUI. See Roselle v. Department of Transportation, Bureau of Driver Licensing, 865 A.2d 308 (Pa. Cmwlth. 2005). In order to overcome that presumption, Licensee was required to present clear and

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[5] **803(6). Records of regularly conducted activity**

> A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, ***all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification***, unless the sources of information or other circumstances indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Pa.R.E. 803(6) (emphasis added).

convincing evidence that the record was erroneous. Mateskovich v. Department of Transportation, Bureau of Driver Licensing, 755 A.2d 100 (Pa. Cmwlth. 2000). Licensee did not challenge the accuracy of the record of his conviction;[6] instead, Licensee argued that the record would have been different had he been fully informed of the consequences of accepting ARD.

The principles governing our disposition of this case were set forth by our Supreme Court in Commonwealth v. Duffey, 536 Pa. 436, 639 A.2d 1174 (1994), cert. denied, 513 U.S. 884 (1994). The court in Duffey reiterated that a defendant's lack of knowledge of the collateral consequences of his guilty plea does not undermine the validity of the guilty plea. The court also reaffirmed the well settled principle that a licensee may not collaterally attack an underlying criminal conviction in a civil license suspension proceeding. Id.

The licensee in Duffey was cited for underage drinking, a violation of 18 Pa. C.S. §6308,[7] and DOT suspended his license pursuant to 18 Pa. C.S. §6310.[8] The licensee appealed the suspension to the trial court. At a de novo hearing, the licensee filed a motion to withdraw his guilty plea contending that it had been unknowingly entered because he was not given notice of the consequence of the license suspension.

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[6] We note that even if the hospital records purportedly showing Licensee's blood alcohol level on the night of his arrest were properly admitted, they are not relevant to the accuracy of the record of Licensee's conviction; at best, they may be relevant only to the circumstances preceding Licensee's conviction (acceptance of ARD).

[7] 18 Pa. C.S. §6308(a) provides in part that "[a] person commits a summary offense if he, being less than 21 years of age, attempts to purchase, purchases, consumes, possesses or knowingly and intentionally transports any liquor or malt or brewed beverages…."

[8] "Whenever a person is convicted …for a violation of section…6308…the court…shall order the operating privilege of the person suspended. A copy of the order shall be transmitted to the Department." 18 Pa. C.S. §6310.4(a).

The trial court denied the licensee's motion to withdraw his guilty plea and dismissed his appeal on the grounds that it was an impermissible collateral attack on the underlying conviction. On further appeal, our court reversed and sustained the appeal from the driving privilege suspension. In doing so, we concluded that the suspension of the licensee's driving privilege was part of the criminal penalty for underage drinking and that jurisdiction of the matter was properly with Superior Court.

Our Supreme Court vacated that order and reinstated the order of the trial court dismissing the licensee's appeal, explaining as follows:

> We have held that a defendant's lack of knowledge of the collateral consequences of pleading guilty does not undermine the validity of his guilty plea. *Commonwealth v. Frometa, 520 Pa. 552, 555 A.2d 92 (1989). See also United States v. Romero-Vilca, 850 F.2d 177 (3rd. Cir. 1988)* (deportation a collateral consequence of pleading guilty). We have also recognized that the collateral consequences of pleading guilty are "numerous". *Frometa, 520 Pa. at 555, 555 A.2d at 93*. A sampling of collateral consequences for pleading guilty includes: loss of the right to vote, *U.S. Const. amend. XIV, § 2*; to enlist in the armed services, *10 U.S.C.A. § 504*, to own a firearm, *18 Pa.C.S.A. § 6105*, or fishing license, *30 Pa.C.S.A. § 928*; to inherit property, 20 Pa.C.S.A. §§ 8802-11, and to practice a particular profession, *E.g., 63 Pa.C.S.A. § 479.11(a)* (funeral director); *63 Pa.C.S.A. § 34.19(a)(8)*(architect). *See Frometa, 520 Pa. at 556 n.1, 555 A.2d at 93 n.1*.
>
> Today, we hold that loss of driving privileges is a civil collateral consequence of a conviction for underage drinking under 18 Pa.C.S.A. § 6803. Courts of this Commonwealth have consistently recognized that a license suspension is a collateral civil consequence of a criminal conviction. *See Commonwealth v. Englert, 311 Pa. Super. 78, 457 A.2d 121 (1983)* (suspension imposed following a conviction for failing to stop at the scene of an accident constituted a civil collateral consequence); *Brophy v. Department of Transportation, 94 Pa. Commw. 310, 503*

> *A.2d 1010 (1986)* (operating privilege suspension as a habitual offender constitutes a collateral civil consequence of acceptance of ARD on the underlying offense). *See also Commonwealth v. Bursick, 526 Pa. 6, 584 A.2d 291 (1990)*; *Brewster v. Department of Transportation, 94 Pa. Commw. 277, 503 A.2d 497 (1986)*; *Zanotto v. Department of Transportation, 83 Pa. Commw. 69, 475 A.2d 1375 (1984)*. We recognize that these cases involved offenses other than underage drinking. However, we find that these cases establish that license suspension is properly considered a collateral consequence rather than a criminal penalty.
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> As we hold that appellee's suspension is a collateral civil consequence of his conviction, there is no requirement that he know of this consequence at the time of his guilty plea. Appellee's loss of driving privileges is "irrelevant to the determination of whether a guilty plea was entered voluntarily and knowingly." *Frometa, 520 Pa. at 555, 555 A.2d at 93*.

Duffey, 536 Pa. at 440-41, 639 A.2d at 1176.

We relied on Duffey in Ray v. Department of Transportation, 821 A.2d 1275 (Pa. Cmwlth. 2003), which involved a licensee's attempt to correct his certified driving record. After the licensee received notice of a five-year habitual offender suspension, he requested an administrative hearing and contested the validity of a prior suspension, alleging in part that his underlying guilty plea was improperly induced. We rejected the licensee's contention that Duffey was inapplicable in the context of an administrative hearing.

> This Court has repeatedly held the only issues in a civil license suspension appeal are whether the motorist was in fact convicted and whether PennDOT acted in accordance with applicable law. *Orndoff v. Dep't of Transp., Bureau of Driver Licensing, 654 A.2d 1 (Pa. Cmwlth. 1994)*; *Amoroso v. Dep't of Transp., Bureau of Driver Licensing, 152 Pa. Commw. 215, 618 A.2d 1171 (Pa. Cmwlth. 1992)*. The fact that Licensee challenges the circumstances of his guilty plea in the context of a record correction rather than a

> license suspension is irrelevant. The guilty plea is beyond the review of the hearing examiner or of this Court. Licensee's sole remedy is post-conviction relief from the criminal proceeding. *Duffey*.[9]

Ray at 1278 (emphasis added).

Because the validity of the underlying conviction may not be challenged in a civil license suspension, Ray, and because, in any event, a failure to inform a licensee of the civil consequences of his conviction will not invalidate the guilty plea, Duffey, we conclude that the trial court erred in sustaining Licensee's statutory appeals.

Accordingly, we reverse.

PATRICIA A. McCULLOUGH, Judge

[9] In Duffey, the court concluded its analysis with the following recommendation:

> We would suggest to our legislature that it should be clearly stated on the citation, if it is not already, that a guilty plea to the offense of [DUI] will result in a license suspension. While we hold today that a licensee does not have to be warned of the collateral consequences of [a] license suspension, we believe it would be more equitable and no great burden on the Commonwealth to provide such a warning.

Duffey, 536 Pa. at 443, 639 A.2d at 1177. Where, as here, the motorist's commercial driver's license is at stake, the above suggestion is even more compelling.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lawrence A. Chatfield	:	
	:	
v.	:	No. 571 C.D. 2010
	:	
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing,	:	
Appellant	:	

ORDER

AND NOW, this 11th day of May, 2011, the order of the Court of Common Pleas of Philadelphia County, dated March 29, 2010, is hereby reversed.

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PATRICIA A. McCULLOUGH, Judge