

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ian Pietro,	:	
	:	
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	No. 663 C.D. 2011
Bureau of Driver Licensing	:	Submitted: September 16, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: October 31, 2011

Ian Pietro (Pietro) appeals from the March 16, 2011 order of the Court of Common Pleas of Montgomery County (trial court) denying his appeal of his license suspension. There is one issue before the Court: whether Section 1542 of the Vehicle Code, 75 Pa.C.S. § 1542, is a recidivist statute. For the reasons set forth below, we affirm the trial court's order.

On June 9, 2009, Pietro was cited for violating Section 3733 of the Vehicle Code, 75 Pa.C.S. § 3733 (relating to fleeing or attempting to elude a police officer). On September 7, 2009, Pietro was arrested for violating Section 3802(d) of the Vehicle Code, 75 Pa.C.S. § 3802(d) (relating to driving under the influence of a controlled substance). On November 20, 2009, Pietro was again arrested for violating Section 3802(d) of the Vehicle Code (Section 3802(d)). On March 20, 2010, Pietro was arrested a third time for violating Section 3802(d).

On September 9, 2010, Pietro pled guilty to all of the above charges. By Official Notice, with a mail date of October 5, 2010, the Bureau of Driver Licensing (Bureau) imposed a one-year license suspension pursuant to Section 1532(b)(3) of the Vehicle Code, 75 Pa.C.S. § 1532(b)(3),¹ effective August 20, 2010. By Official Notice, with a mail date of October 6, 2010, the Bureau imposed a one-year license suspension pursuant to Section 3804(e)(2)(i) of the Vehicle Code, 75 Pa.C.S. § 3804(e)(2)(i),² effective August 20, 2011. By Official Notice, with a mail date of October 6, 2010, the Bureau designated Pietro a habitual offender, and imposed a five-year license suspension pursuant to Section 1542(d) of the Vehicle Code, 75 Pa.C.S. § 1542(d),³ effective August 20, 2012. Finally, by Official Notice with a mail date of October 6, 2010, the Bureau imposed a two-year license suspension pursuant to Section 1542(e) of the Vehicle Code, 75 Pa.C.S. § 1542(e),⁴ effective August 20, 2017. Pietro appealed his five-year suspension to the trial court. On March 16, 2011, the trial court denied Pietro's appeal and reinstated his suspension. Pietro appealed to this Court.⁵

Pietro argues that his license cannot be suspended pursuant to Section 1542 of the Vehicle Code (Section 1542) because all of his convictions occurred on

¹ 75 Pa.C.S. § 1532(b)(3) provides for a one-year suspension for a conviction of fleeing or attempting to elude police.

² 75 Pa.C.S. § 3804(e)(2)(i), provides for a one-year suspension for a conviction of an ungraded misdemeanor, or a misdemeanor of the second degree.

³ 75 Pa.C.S. § 1542(d) provides for a five-year suspension for any person deemed to be a habitual offender.

⁴ 75 Pa.C.S. § 1542(e) provides for a two-year suspension for a conviction for any additional offense committed within five years after being deemed a habitual offender.

⁵ "The standard of review is limited to whether the trial court's findings of fact are supported by competent evidence and whether the trial court committed an error of law or an abuse of discretion. The scope of review on issues of law is plenary." *McKeown v. Dep't of Transp., Bureau of Driver Licensing*, 869 A.2d 556, 560 n.6 (Pa. Cmwlth. 2004) (citation omitted).

the same date. Specifically, he contends that it is a recidivist statute and, as such, there must be time in between convictions to afford rehabilitation. We disagree.

Section 1542 states in pertinent part:

(a) General rule.--The department 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 . . . shows that such person has accumulated *the requisite number of convictions for the separate and distinct offenses* described and enumerated in subsection (b) *committed . . . within any period of five years*

(b) Offenses enumerated.--Three convictions arising from separate acts of any one or more of the following offenses committed by any person shall result in such person being designated as a habitual offender:

...

(1.1) Any violation of Chapter 38 (relating to driving after imbibing alcohol or utilizing drugs)

(Emphasis added). Pietro has clearly accumulated the requisite number of convictions within a five-year period to be deemed a habitual offender. The issue as to whether the statute is recidivist in nature was long ago addressed by this Court. Specifically, in *West v. Department of Transportation, Bureau of Driver Licensing*, 685 A.2d 649 (Pa. Cmwlth. 1996), this Court held: “even where legislation demonstrates a recidivist philosophy, that philosophy cannot be exalted over the plain language of the statute. Where there is no ambiguity, there is no room for interpretation.” *Id.*, 685 A.2d at 651 (citation and quotation marks omitted). Given Pietro’s three convictions for three separate and distinct violations of Section 3802(d) within a five-year period, “the [Bureau’s] duty under [S]ection 1542 could not be plainer: it is mandated to revoke [Pietro’s] license for a period of five years.” *Id.*

For all of the above reasons, the trial court's order is affirmed.

JOHNNY J. BUTLER, Judge

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v.

Commonwealth of Pennsylvania,
Department of Transportation,
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No. 663 C.D. 2011

ORDER

AND NOW, this 31st day of October, 2011, the March 16, 2011 order of the Court of Common Pleas of Montgomery County is affirmed.

JOHNNY J. BUTLER, Judge