

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Darryl L. Wynn,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 767 C.D. 2011
	:	
Commonwealth of Pennsylvania,	:	Submitted: September 23, 2011
Department of Transportation,	:	
Bureau of Driver Licensing	:	
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: October 19, 2011

Darryl L. Wynn (Wynn) petitions for review of an order of the Secretary of Transportation (Secretary) that denied his exceptions and adopted a Department of Transportation, Bureau of Driver Licensing (PennDOT) hearing officer’s proposed report. In her report, the hearing officer recommended denying Wynn credit toward his license suspensions for any time prior to his filing of an acknowledgment of his suspensions under Section 1541(a) of the Vehicle Code (commencement of credit toward a suspension).¹ Wynn argues the Secretary erred in determining what Section 1541(a) of the Vehicle Code required of a driver before PennDOT could grant credit toward a license suspension. Upon review, we reject Wynn’s interpretation of the Vehicle Code, and we affirm.

¹ 75 Pa. C.S. §1541(a). The Vehicle Code is codified at 75 Pa. C.S. §§101-9805.

Since as early as 1994, Wynn was a resident of Philadelphia and held a Pennsylvania driver's license. During the time from March 1998 through March 1999, Wynn was cited for six Vehicle Code violations. However, before his violations were adjudicated, Wynn moved and established residency in Delaware. Significantly, Wynn did not inform PennDOT about his change of address despite renewing his Pennsylvania driver's license after he moved. Once Wynn renewed his Pennsylvania license, he surrendered it to the Delaware Department of Transportation (DelDOT) in exchange for a Delaware license.

Following Wynn's convictions for all six Vehicle Code violations, in February 2000 PennDOT mailed official suspension notices to Wynn's Philadelphia address. The notices contained instructions describing how to commence credit toward his suspensions. Specifically, PennDOT instructed Wynn to mail his driver's license to PennDOT, or if his driver's license was unavailable, to submit a sworn affidavit acknowledging the suspensions. PennDOT also warned Wynn that if he failed to comply, PennDOT would be unable to begin awarding him credit. Wynn did not surrender his Pennsylvania driver's license or submit an acknowledgment of his suspensions to PennDOT. However, two months later, PennDOT received Wynn's Pennsylvania license from DelDOT.

For the next 10 years, Wynn proceeded to use his Delaware license without restriction. In 2010, when Wynn attempted to renew his Delaware license, he learned that he had outstanding suspensions in Pennsylvania, and that he had not yet received any credit toward those suspensions. On May 6, 2010, Wynn provided PennDOT with his current Delaware address and requested an

administrative hearing seeking credit. PennDOT received Wynn's hearing request, treated it as a suspension acknowledgement, and started granting Wynn credit. PennDOT also scheduled an administrative hearing.

After the hearing, the presiding hearing officer determined Wynn failed to physically surrender his driver's license to PennDOT while it was valid. Also, Wynn failed to submit an affidavit to PennDOT acknowledging his suspensions. Rather, Wynn surrendered his Pennsylvania driver's license to DelDOT for the purpose of receiving a Delaware driver's license, which, in turn, led to DelDOT returning the license to PennDOT. Thus, Wynn's submission of his license to DelDOT did not constitute a license surrender under Section 1541(a) of the Vehicle Code. The hearing officer concluded PennDOT did not err by denying credit until the day Wynn mailed PennDOT an acknowledgment of his suspensions, May 6, 2010. Wynn filed exceptions to the proposed report, which the Secretary denied. Thereafter, Wynn petitioned for review.²

Section 1541(a) of the Vehicle Code provides in pertinent part:

Commencement of period. -- The period of ... suspension of the operating privilege shall commence as provided for in section 1540 (relating to surrender of license). No credit toward the revocation or suspension shall be earned until the driver's license is surrendered to

² This Court's review is limited; therefore, we will only reverse the Secretary's decision if: (1) the Secretary's findings are not supported by substantial evidence; (2) the Secretary committed an error of law; (3) any of the motorist's constitutional rights have been violated; or (4) any of the procedural provisions of the Administrative Agency Law have not been complied with. Realmutto v. Dep't of Trans., 637 A.2d 769 (Pa. Cmwlt. 1994).

the department, the court or the district attorney, as the case may be. A nonresident licensed driver or an unlicensed driver shall submit an acknowledgement of suspension or revocation to the department in lieu of a driver's license

75 Pa. C.S. §1541(a) (emphasis added).

Wynn argues PennDOT improperly applied Section 1541(a) of the Vehicle Code.³ Wynn asserts the language of Section 1541(a) permits a suspended driver to submit either his license or an acknowledgment of suspension to begin receiving credit regardless of whether the driver is a Pennsylvania license holder or an out-of-state license holder. Furthermore, Wynn argues, based on the General Assembly's use of the passive voice in Section 1541(a), it is unclear whether a driver must personally surrender his license, or if third-party delivery is sufficient. Wynn claims DelDOT effectuated his license surrender when it mailed his relinquished license to PennDOT in April 2000. Therefore, Wynn claims he should receive credit toward his suspensions as of that day.

This Court's objective in interpreting a statute is to ascertain the legislature's intent as expressed by the words employed. Human Relations Comm'n v. Alto-Reste Park Cemetery Ass'n, 453 Pa. 124, 306 A.2d 881 (1973). In so doing, this Court may not ignore the plain language of the statute. Walters v. Kamppi, 545 A.2d 975 (Pa. Cmwlth. 1988). When the legislature uses the word

³ To the extent Wynn raises additional claims in his petition for review, these claims merely restate our standard of review and are also not developed in his supporting brief. Therefore, they are waived. See Maier v. Unemployment Comp. Bd. of Review, 983 A.2d 1264 (Pa. Cmwlth. 2009) (en banc).

“shall,” it does so to clearly express what is mandatory. Rouch v. Dep’t of Transp., 690 A.2d 1278 (Pa. Cmwlth. 1997).

As noted above, Section 1541(a) of the Vehicle Code states, “[a] nonresident licensed driver ... shall submit an acknowledgment of suspension or revocation to [PennDOT] in lieu of a driver's license.” 75 Pa. C.S. §1541(a). In McCrea v. Department of Transportation, Bureau of Driver Licensing, 783 A.2d 380 (Pa. Cmwlth. 2001), this Court defined the point in time at which a Pennsylvania driver’s status changes to nonresident driver. Where, as here, a license holder surrenders his Pennsylvania license to another state, the Vehicle Code’s license provisions no longer apply to him as a resident driver. Id. Rather, the individual becomes a nonresident licensed driver at the very moment he relinquishes his Pennsylvania license. Id.; Realmuto (at the expiration of a license, the holder becomes an unlicensed driver).

Here, Wynn surrendered his Pennsylvania license to DelDOT to obtain a Delaware driver’s license in October 1999. Proposed Report, 12/22/10, Finding of Fact (F.F.) No. 15. Thereafter, in February 2000, PennDOT mailed Wynn notices of his suspensions. F.F. No. 5. Consequently, when PennDOT issued Wynn’s suspensions, Wynn did not hold a valid Pennsylvania driver’s license; thus, he was a nonresident licensed driver. See F.F. Nos. 5, 15; McCrea.⁴

⁴ Wynn also raises the issue that DOT did not internally consider Wynn out-of-state until it received his license from DelDOT and entered a notation on its system accordingly. However, this contention is without merit, as Wynn became a nonresident driver as a matter of law at the moment he surrendered his Pennsylvania driver’s license to DelDOT. See McCrea v. Dep’t of Transp., Bureau of Driver Licensing, 783 A.2d 380 (Pa. Cmwlth. 2001).

As a result of Wynn's status, his exclusive procedure to commence credit was to submit an affidavit to PennDOT acknowledging his suspensions. See 75 Pa. C.S. §1541(a); Realmuto. Wynn did not submit an acknowledgment of suspension until May 6, 2010; thus, PennDOT did not err by declining credit before that date.

Furthermore, regardless of any perceived imprecision in the Vehicle Code's language, DelDOT's transmission of Wynn's license to PennDOT is a nullity under Section 1541(a). At the time DelDOT mailed Wynn's surrendered license to PennDOT, Wynn was not a Pennsylvania license holder. See McCrea. Therefore, Wynn could not surrender a valid license to PennDOT at that time regardless of how or from whom PennDOT received it. In short, Wynn's argument lacks merit.

Accordingly, we affirm.

ROBERT SIMPSON, Judge

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ORDER

AND NOW, this 19th day of October, 2011, the order of the Secretary of the Department of Transportation is **AFFIRMED**.

ROBERT SIMPSON, Judge