

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Brian Mroczka,	:	
	:	
Appellant	:	
	:	
v.	:	No. 1716 C.D. 2007
	:	Submitted: February 8, 2008
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Judge  
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE FRIEDMAN

FILED: March 10, 2008

Brian Mroczka (Licensee) appeals from the August 9, 2007, order of the Court of Common Pleas of Luzerne County (trial court), which denied Licensee’s appeal of the driver’s license suspension imposed upon him by the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing (DOT) pursuant to section 1547(b) of the Vehicle Code.<sup>1</sup> We affirm.

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<sup>1</sup> 75 Pa. C.S. §1547(b). Section 1547(b) of the Vehicle Code states that, if any person placed under arrest for a violation of section 3802 of the Vehicle Code (relating to driving under the influence of alcohol or a controlled substance) is requested to submit to chemical testing and refuses to do so, the testing shall not be conducted but upon notice by the police officer, DOT shall suspend the operating privilege of the person.

To support a suspension for refusal to submit to chemical testing, DOT must establish that: (1) the licensee was arrested for violating section 3802 of the Vehicle Code; (2) the arresting officer had reasonable grounds to believe that the licensee was operating a vehicle while in violation of section 3802; (3) the licensee was requested to submit to a chemical test; (4) the licensee refused to do so; and (5) the police officer advised the licensee that his operating **(Footnote continued on next page...)**

On October 24, 2005, Officer Vincent Zerblas of the Laflin Borough Police Department pulled over Licensee for a traffic violation. Officer Zerblas detected an odor of alcoholic beverages and observed that Licensee had bloodshot eyes and slurred speech. Officer Zerblas attempted to administer field sobriety tests, but Licensee informed the officer that he was unable to perform the tests due to back surgery. The officer took Licensee into custody and transported him to Wilkes-Barre General Hospital for a blood alcohol test. Officer Zerblas read the DL-21 chemical test warnings to Licensee and asked Licensee to submit to a blood test, but Licensee refused. The officer asked two more times, but Licensee refused each time. (Trial ct. op. at 1.)

On December 4, 2006, Licensee pled guilty to driving under the influence of alcohol (DUI) pursuant to a plea agreement. The DUI case had been delayed because several plea agreements that were scheduled for hearing were withdrawn. The Clerk of Courts forwarded a copy of the DL-21 form to DOT, which notified Licensee that his driver's license was being suspended for one year. Licensee appealed the suspension to the trial court, which held a hearing on the matter. (Trial ct. op. at 2.)

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**(continued...)**

privileges would be suspended if he refused to submit to chemical testing and that the licensee might be subject to enhanced penalties. *Quick v. Department of Transportation, Bureau of Driver Licensing*, 915 A.2d 1268 (Pa. Cmwlth. 2007).

At the hearing, Licensee testified that: (1) he is disabled and receives social security disability benefits, (R.R. at 16); (2) he attended special education classes in high school and has a problem with reading, (R.R. at 20); (3) Officer Zerblas tried to read the DL-21 form's chemical test warnings to him, but the officer could not read the form, and when Licensee examined the form, he did not understand it, (R.R. at 17); (4) he pled guilty to DUI only because Officer Zerblas agreed not to submit the DL-21 form to DOT, i.e., because his driver's license would not be suspended for refusing to submit to chemical testing, (R.R. at 18-19); and (5) the suspension of his driver's license fourteen months after the alleged refusal has the prejudicial effect of preventing Licensee from going to his doctor and therapy appointments, (R.R. at 19).

Officer Zerblas testified that: (1) he read Licensee the chemical test warnings from the DL-21 form, (R.R. at 13); (2) he placed the DL-21 form in the case file, so that it would be available when the DUI case was heard, (R.R. at 14); (3) he was not aware of a plea agreement conditioned on his not sending the DL-21 form to DOT, (R.R. at 15); (4) the fourteen-month delay in sending the form to DOT was a result of the filing, withdrawal and re-filing of plea agreements in the DUI case, (R.R. at 15); (5) he normally does not send the form to DOT until the licensee enters a guilty plea, (R.R. at 15); and (6) due to an oversight on his part, his sergeant actually mailed the form to DOT, (R.R. at 15).

After considering the evidence, the trial court accepted the testimony of Officer Zerblas and denied Licensee's appeal. Licensee now appeals to this court.<sup>2</sup>

Licensee argues that Officer Zerblas failed to explain the chemical test warnings to Licensee, relying on his own testimony that Officer Zerblas tried to read the warnings but had difficulty reading from the form. However, the trial court did not find Licensee's testimony credible, and questions regarding credibility and conflicts in the evidence are for the trial court to resolve. *Schlata v. Department of Transportation, Bureau of Driver Licensing*, 744 A.2d 814 (Pa. Cmwlth. 2000).

Licensee next argues that the trial court erred in denying his statutory appeal because the submission of the DL-21 form to DOT was contrary to his plea agreement in the DUI case. However, in *Department of Transportation, Bureau of Driver Licensing v. Lefever*, 533 A.2d 501 (Pa. Cmwlth. 1987), this court stated that statutory suspensions following a refusal to submit to chemical testing are not bargaining chips; they are mandatory civil penalties. More recently, this court stated that ignoring the plea agreement reached in the DUI case does not raise a question of fairness because when the licensee refused to submit to chemical testing, the licensee was not relying on the plea agreement, which did not then

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<sup>2</sup> Our scope of review in license suspension cases is limited to determining whether the trial court's findings of fact are supported by substantial evidence, whether errors of law were committed or whether the trial court's decision demonstrates a manifest abuse of discretion. *Quick*.

exist. *Quick v. Department of Transportation, Bureau of Driver Licensing*, 915 A.2d 1268 (Pa. Cmwlth. 2007).

Licensee next argues that the fourteen-month delay in the imposition of a suspension was prejudicial to him. In order to sustain an appeal of a license suspension based on delay, a licensee must prove that: (1) an unreasonable delay **chargeable to DOT** led him to believe that his operating privileges would not be impaired; and (2) prejudice would result by having his operating privileges suspended after such delay. *Brozena v. Department of Transportation, Bureau of Driver Licensing*, 802 A.2d 1 (Pa. Cmwlth. 2002), *appeal denied*, 573 Pa. 673, 821 A.2d 588 (2003). Licensee now acknowledges that the fourteen-month delay was not chargeable to DOT. (Licensee's brief at 9.)

However, Licensee argues that the fourteen-month delay still violated his due process rights, claiming he was entitled to notice that the DL-21 form would be sent to DOT so that he could adequately prepare a defense. However, DOT correctly points out that Licensee failed to raise such an issue in his concise statement of matters complained of on appeal or in the "Statement of Questions Involved" portion of his brief.<sup>3</sup> (DOT's brief at 29-30.) Thus, Licensee has

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<sup>3</sup> In his concise statement of matters complained of on appeal, Licensee argued that: (1) the submission of the DL-21 form to DOT violated Licensee's plea agreement in the DUI case; (2) someone other than Officer Zerblas submitted the DL-21 form to DOT, contrary to section 1547(b)(1) of the Vehicle Code; (3) submitting the form to DOT fourteen months after the refusal was prejudicial to Licensee; and (4) the officer did not explain the chemical test warnings to Licensee, who did not understand them. (S.R.R. at 4b.)

waived this issue.<sup>4</sup> Pa. R.A.P. 1925(b)(4)(vii) (stating that issues not included in the concise statement of errors complained of on appeal are waived); Pa. R.A.P. 2116(a) (stating that ordinarily no point will be considered which is not set forth in the statement of questions involved or suggested thereby).

Licensee also argues that someone other than the arresting officer submitted the DL-21 form to DOT. Section 1547(b)(1) of the Vehicle Code states that DOT shall suspend a driver’s license for refusal to submit to chemical testing “upon notice by the [arresting] police officer.” 75 Pa. C.S. §1547(b)(1). Officer Zerblas testified that he failed to send the form to DOT, but he believed that his sergeant, who supervises daily operations, noticed the oversight while reviewing the case file and that the sergeant mailed the form to DOT. (R.R. at 15.) Because it is apparent that the sergeant acted on behalf of Officer Zerblas, we find no error here.

Accordingly, we affirm.<sup>5</sup>

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ROCHELLE S. FRIEDMAN, Judge

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<sup>4</sup> Even if we were to address this issue, Licensee would not prevail. It is well established that the law governing license suspensions does not recognize plea agreements that bargain away the civil suspensions. *Quick; Lefever*. Thus, the law constituted notice to Licensee that the DL-21 form would be sent to DOT.

<sup>5</sup> Licensee also argues that Officer Zerblas lacked reasonable grounds to suspect that he was driving while intoxicated. However, Licensee did not raise this issue before the trial court or in the “Statement of Questions Involved” portion of his brief. Thus, it is waived. Pa. R.A.P. 1925(b)(4)(vii); Pa. R.A.P. 2116(a).

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Department of Transportation,	:	
Bureau of Driver Licensing	:	

ORDER

AND NOW, this 10th day of March, 2008, the order of the Court of Common Pleas of Luzerne County, dated August 9, 2007, is hereby affirmed.

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ROCHELLE S. FRIEDMAN, Judge