

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Matthew Dudzinski, :  
Appellant :  
 :  
v. : No. 845 C.D. 2007  
 : Submitted: January 4, 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 SENIOR JUDGE McCLOSKEY

FILED: February 7, 2008

Matthew Dudzinski (Licensee) appeals from an order of the Court of Common Pleas of Lackawanna County (trial court), dismissing his appeal of a one-year disqualification of his commercial vehicle operating privileges pursuant to Section 1611(a)(1) of the Uniform Commercial Driver's License Act, 75 Pa. C.S. §1611(a)(1). We affirm.

On June 11, 2006, Licensee was charged with driving his automobile while under the influence of alcohol (DUI), in violation of Section 3802 of the Vehicle Code, 75 Pa. C.S. §3802. Licensee subsequently applied for admission into the accelerated rehabilitative disposition (ARD) program with regard to the DUI. On December 15, 2006, Licensee was accepted into this program. The Department of Transportation, Bureau of Driver Licensing (PennDOT) thereafter notified Licensee that his operating privileges were being suspended for a period of thirty days, as a consequence of his

DUI. PennDOT further notified Licensee that his commercial driving privilege was disqualified for a period of one year, again as a consequence of this DUI, pursuant to Section 1611(a)(1) of the Vehicle Code.<sup>1</sup>

Licensee appealed the disqualification of his commercial driving privilege to the trial court. At the *de novo* hearing before the trial court, Licensee did not testify and stipulated to the fact that he was accepted into the ARD program for a DUI while holding a commercial driver's license. In support of his appeal, Licensee presented argument challenging the applicability and constitutionality of Section 1611(a). The trial court rejected Licensee's arguments and dismissed his appeal.

Licensee now appeals to this Court.<sup>2</sup> Licensee first argues that PennDOT did not have the authority to disqualify him from driving a commercial vehicle, as Section 1611(a) only permits disqualification when there is a "conviction" for DUI. Licensee argues that acceptance into the ARD program does not constitute a conviction.

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<sup>1</sup> This Section provides as follows:

(a) Disqualification for first violation of certain offenses.—Upon receipt of a report of conviction, the department shall, in addition to any 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:

(1) section 3802 (relating to driving under influence of alcohol or controlled substance) or former section 3731, where the person was a commercial driver at the time the violation occurred....

75 Pa. C.S. §1611(a)(1).

<sup>2</sup> Our scope of review in a driver's license suspension case is limited to determining whether the findings of the trial court are supported by competent evidence, whether errors of law were committed or whether there has been a manifest abuse of discretion. Department of Transportation, Bureau of Driver's Licensing v. Gross, 605 A.2d 433 (Pa. Cmwlth. 1991).

Recently, in Thorek v. Department of Transportation, Bureau of Driver Licensing, \_\_ A.2d \_\_ (Pa. Cmwlth., No. 288 C.D. 2007, filed December 4, 2007), this Court addressed the identical argument raised by Licensee. In Thorek, a licensee entered the ARD program as a result of a DUI charge. At the time of the DUI, the licensee was driving an automobile. PennDOT then notified him that his commercial driver's license would be disqualified for one year due to the DUI. The licensee filed an appeal to the trial court, arguing that the Vehicle Code only permitted disqualification based on a conviction and that an ARD did not qualify as a conviction. The trial court rejected the argument and the licensee appealed to this Court.

We also rejected the licensee's argument. We noted that Section 1603 of the Vehicle Code, 75 Pa. C.S. §1603, expressly provided that the definition of a "conviction" included acceptance into an ARD program. Additionally, we noted that Section 1602(b) of the Vehicle Code, 75 Pa. C.S. §1602(b), provides that in the event Chapter 16 conflicted with other driver licensing provisions, Chapter 16 was to prevail. As such, we concluded that PennDOT was authorized to disqualify the licensee from operating a commercial motor vehicle for a period of one year.

Based on our decision in Thorek, we reject Licensee's claim that acceptance into the ARD program does not constitute a conviction.

Licensee next contends that disqualifying his commercial driver's license for one year violates his constitutional right to equal protection, as guaranteed by the Fourteenth Amendment of the United States Constitution and Article I, Section 26 and Article III, Section 32 of the Pennsylvania Constitution. Licensee claims that it is unfair to disqualify his commercial driver's license, when he was not driving a commercial vehicle at the time of his arrest for DUI. Licensee also argues that the one-year penalty

is substantially unequal to the sixty-day penalty non-commercial drivers receive for a first-time DUI conviction.

In Thorek, we addressed the identical claims raised by License as to equal protection and determined that the legislature had a rational basis for imposing stricter penalties on commercial drivers. Further, we noted in Thorek that the legislature had a legitimate state interest in imposing harsher sanctions on commercial drivers, as the driver of a commercial vehicle can cause greater harm to the public. We also concluded that it was not arbitrary or capricious for the legislature to conclude that a person who violates the laws of the Commonwealth while driving an automobile is at risk to repeat said behavior while driving a commercial vehicle.

Licensee's final claim is that Section 1611(a) violates his right to procedural due process. Licensee alleges that he was denied due process, as Section 1611(a) allows for an automatic disqualification of his commercial driver's license without a pre-disqualification hearing.

A "driver's license is 'property,' which a State may not revoke or suspend without satisfying the due process guarantee of the Fourteenth Amendment." Department of Transportation v. McCafferty, 563 Pa. 146, 160, 758 A.2d 1155, 1163 (2000) (citations omitted). As such, "[t]he constitutional guarantee of procedural due process has always been understood to embody a presumptive requirement of notice and a meaningful opportunity to be heard before the State acts finally to deprive a person of his property." Id.

Licensee does not claim that the notice he received from PennDOT, which set forth the details involving his commercial driver's license disqualification was insufficient or contained errors. As such, Licensee has not established that the notice he received from PennDOT violated his right to due process.

Also, the evidence of record does not establish that Licensee was deprived of his license without a meaningful opportunity to be heard. On January 5, 2007, Licensee received notice that his commercial driver's license was to be disqualified as of February 9, 2007. The notice also informed Licensee that he had thirty days in which to appeal PennDOT's determination. Pursuant to Section 1550(b) of the Vehicle Code, 75 Pa. C.S. §1550(b), any person who files an appeal of a suspension, revocation, or disqualification of a driver's license automatically receives a supersedeas. Thus, Licensee was not deprived of his property, i.e., his license, without first being given an opportunity to be heard. In this case, the opportunity to be heard was a *de novo* hearing before the trial court, with an automatic grant of supersedeas.<sup>3</sup> As such, Licensee has failed to establish that his right to due process was violated.

Accordingly, the order of the trial court is affirmed.

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JOSEPH F. McCLOSKEY, Senior Judge

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<sup>3</sup> A supersedeas was also granted to Licensee pending the outcome of his appeal to this Court. (Supplemental Reproduced Record at 22b).

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|-------------------------------|---|-------------------|
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| Appellant                     | : |                   |
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| v.                            | : | No. 845 C.D. 2007 |
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| Commonwealth of Pennsylvania, | : |                   |
| Department of Transportation, | : |                   |
| Bureau of Driver Licensing    | : |                   |

**ORDER**

AND NOW, this 7<sup>th</sup> day of February, 2008, the order of the Court of Common Pleas of Lackawanna County is affirmed.

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JOSEPH F. McCLOSKEY, Senior Judge