NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	
RONALD G. STEELE, Appellee	No. 149 WDA 2014

Appeal from the Order December 24, 2013
in the Court of Common Pleas of Westmoreland County
Criminal Division at No.: CP-65-CR-0004535-2011

BEFORE: BENDER, P.J.E., WECHT, J., and PLATT, J.[*]

MEMORANDUM BY PLATT, J.: **FILED JULY 16, 2014**

The Commonwealth appeals from the order granting the petition of Appellee, Ronald G. Steele, for writ of *habeas corpus* and dismissing count one of the amended information.[1] We reverse and remand.

At approximately 8:40 p.m. on September 24, 2011, Officer Chad Piontka of the Delmont Police Department was in his marked police car when he observed Appellee driving erratically onto the curb and into the opposite lane of traffic. When the officer stopped Appellee, he detected a strong odor of alcohol, and observed Appellee's glassy eyes and slurred speech.

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[*] Retired Senior Judge assigned to the Superior Court.

[1] Pursuant to Pennsylvania Rule of Appellate Procedure 311(d), the Commonwealth has certified that the court's order will terminate or substantially handicap its ability to prosecute. ***See*** Pa.R.A.P. 311(d); (***see also*** Notice of Appeal, 1/16/14; Commonwealth's Brief, at 1-2).

Appellee admitted he had been drinking and failed field sobriety tests. Officer Piontka arrested Appellee for driving under the influence (DUI) and transported him to the Westmoreland Excela Hospital to determine his blood alcohol content (BAC). However, Appellant did not agree to submit to a BAC test and one was not performed.

The Pennsylvania Department of Transportation suspended Appellee's commercial and non-commercial driver's licenses[2] and he appealed the suspensions on November 17, 2011. On May 11, 2012, the Court of Common Pleas of Westmoreland County held a civil license suspension hearing at which Appellee and a representative of the Pennsylvania Department of Transportation appeared. The civil judge granted Appellee's appeal and dismissed the suspensions based on his finding that Appellee did not knowingly or consciously refuse the BAC test.[3] (***See*** License Suspension Hearing, 5/11/12, at 43).

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[2] ***See*** 75 Pa.C.S.A. § 1547 ("If any person placed under arrest for a violation of section 3802 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, the department shall suspend the operating privilege of the person.").

[3] The Commonwealth failed to ensure that the certified record contains the notes of testimony from the civil license suspension proceeding. ***See Commonwealth v. Whitaker***, 878 A.2d 914, 922 (Pa. Super. 2005) ("It is Appellant's responsibility to ensure that this Court is provided a complete certified record to ensure proper appellate review[.]") (citation omitted). However, it did provide a copy of the transcript in the reproduced record and, because the parties do not dispute the relevant facts from that hearing or the authenticity of the provided copy, we will rely on it for our review. ***See Commonwealth v. Landis***, 2014 WL 1369592, at *8 n.5 (Pa. Super.
(Footnote Continued Next Page)

On August 6, 2013, the Commonwealth filed an amended criminal information charging Appellee with DUI—general impairment, second offense, refusal to take chemical test, misdemeanor of the first degree; DUI—general impairment, second offense, misdemeanor;[4] and related summary offenses. On August 9, 2013, Appellee filed a petition for writ of *habeas corpus* seeking the dismissal of the refusal count because the civil license suspension hearing judge found that he had not refused a chemical test. At a hearing on December 24, 2013,[5] the trial court granted Appellee's petition and found that the Commonwealth was collaterally estopped from pursuing DUI—refusal where the civil license suspension hearing judge had found that Appellee had not refused the BAC test. The Commonwealth timely appealed.[6]

(Footnote Continued) ________________________

filed April 8, 2014); ***see also Commonwealth v. Brown***, 52 A.3d 1139, 1145 n.4 (Pa. 2012).

[4] ***See*** 75 Pa.C.S.A. § 3802(a)(1); ***see also*** 75 Pa.C.S.A. §§ 3803(a)(1), (b)(4) ("An individual who violates section 3802(a) . . . and has no more than one prior offense commits a misdemeanor" and "[a]n individual who violates section 3802(a)(1) where the individual refused testing of blood . . . and who has one or more prior offenses commits a misdemeanor of the first degree.").

[5] The order was filed on December 27, 2013.

[6] Pursuant to the trial court's order, the Commonwealth filed a Rule 1925(b) statement on February 4, 2014. ***See*** Pa.R.A.P. 1925(b). Judge Richard E. McCormick, Jr. filed a Rule 1925(a) opinion in which he relied on the reasons stated in the December 24, 2013 order filed by the now-retired Judge John E. Blahovec. ***See*** Pa.R.A.P. 1925(a).

The Commonwealth raises one issue for our review: "Did the trial court err in ruling as a matter of law that the Commonwealth is precluded from prosecuting [A]ppellee for [DUI] and refusing a chemical test when [A]ppellee was previously found not to have refused chemical testing at a civil license suspension hearing?" (Commonwealth's Brief, at 5).

> The decision to grant or deny a petition for writ of *habeas corpus* will be reversed on appeal only for a manifest abuse of discretion.
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> > Judicial discretion requires action in conformity with law, upon facts and circumstances judicially before the court, after hearing and due consideration. An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will, as shown by the evidence or the record, discretion is abused.

Commonwealth v. McCullough, 86 A.3d 901, 905 (Pa. Super. 2014) (citations and quotation marks omitted). Further, "[c]ollateral estoppel claims are questions of law, and are subject to a *de novo* review; our scope of review is plenary." ***Id.*** at 904 (citation omitted).

Here, the Commonwealth argues that the trial court erred when it granted Appellee's petition for writ of *habeas corpus* on the basis of collateral estoppel. (***See*** Commonwealth's Brief, at 15-23). We agree.

> The doctrine of collateral estoppel is a part of the Fifth Amendment's guarantee against double jeopardy, which was made applicable to the states through the Fourteenth Amendment. The phrase "collateral estoppel," also known as "issue preclusion," simply means that when an issue of law, evidentiary fact, or ultimate fact has been determined by a valid

> and final judgment, that issue cannot be litigated again **between the same parties** in any future lawsuit. Collateral estoppel does not automatically bar a subsequent prosecution, but rather, it bars redetermination in a second prosecution of those issues **necessarily** determined **between the parties** in a first proceeding that has become a final judgment.

Commonwealth v. Holder, 805 A.2d 499, 502 (Pa. 2002) (plurality decision) (some emphasis added, citations omitted); ***see also McCullough***, ***supra*** at 904 ("[W]hen an issue of law, evidentiary fact, or ultimate fact has been determined by a valid and final judgment, that issue cannot be litigated again **between the same parties**) (citing ***Holder***, ***supra*** at 502) (emphasis added).

To apply the doctrine of collateral estoppel, all of the following factors must be present:

> 1) the issue decided in the prior adjudication was identical to the one presented in the later action; 2) there was a final judgment on the merits; 3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication; and 4) the party against whom it is asserted has had a full and fair opportunity to litigate the issue in question in a prior action.
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> . . . . [T]he Department [of Transportation] and the District Attorney [do not] stand in sufficient relationship so that the Department could be considered the same party as, or in privity with the District Attorney. . . . [T]he Department's civil suspension is separate and distinct from the criminal proceeding initiated by the . . . District Attorney.

Commonwealth v. Pullano, 625 A.2d 1226, 1228 (Pa. Super. 1993), *appeal denied*, 639 A.2d 30 (Pa. 1994) (citation omitted).

In this case, the parties agree that a representative from the Department of Transportation, not the District Attorney's office, appeared at Appellee's civil license suspension hearing. (***See*** Commonwealth's Brief, at 8; Appellee's Brief, at 7). This hearing was "separate and distinct from [Appellee's] criminal proceeding." ***Pullano***, ***supra*** at 1228. Accordingly, because the Department of Transportation cannot "be considered the same party as, or in privity with the District Attorney," and the District Attorney's office did not have a "full and fair opportunity to litigate the issue [of whether Appellant refused a BAC test] in a prior action," collateral estoppel does not apply.[7] ***Id.***; ***see also Holder***, ***supra*** at 502; ***McCullough***, ***supra*** at 904. Hence, we are constrained to conclude that the trial court abused its

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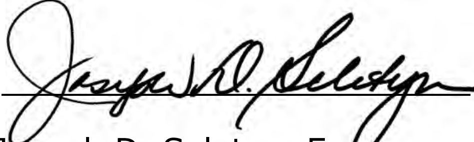
[7] We do not find Appellee's reliance on ***Holder***, ***supra*** in support of his argument that collateral estoppel applies to this case to be persuasive. (***See*** Appellee's Brief, at 8-13). First, he ignores the fact that the Pennsylvania Supreme Court clearly stated in ***Holder*** that, in order to find collateral estoppel, the same parties must have been involved in both the first and second proceedings. ***See Holder***, ***supra*** at 502; (Appellee's Brief, at 8, 10, 12-13). The District Attorney's office and the Department of Transportation "cannot be deemed as the same party[.]" ***Pollano***, ***supra*** at 1228. Also, ***Holder*** involved circumstances in which the District Attorney's office and the defendant were the parties in both actions involving the same criminal case. ***See Holder***, ***supra*** at 505 (holding that "collateral estoppel barred relitigation of the evidentiary issue in [a]ppellant's criminal trial after the identical issue was litigated at his ***Gagnon*** hearing"). However, in this case, because the District Attorney's office and the Department of Transportation are not the same party or in privity with each other, ***Holder*** is distinguishable and we are not persuaded on Appellee's reliance on it.

discretion in applying the doctrine of collateral estoppel and in dismissing count one of the criminal information. ***See McCullough***, ***supra*** at 905.

Order reversed and case remanded. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/16/2014