

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JONATHAN C. BYRNE,	:	
	:	
Appellant	:	No. 2008 MDA 2001

Appeal from the Judgment of Sentence December 6, 2001,
In the Court of Common Pleas of Centre County,
Criminal Division at No. 2001-1436.

BEFORE: MUSMANNO, POPOVICH and CAVANAUGH, JJ.

*****REVISED JANUARY 23, 2003*****

OPINION BY POPOVICH, J.: Filed: December 10, 2002

¶ 1 Jonathan C. Byrne was granted panel reconsideration of the affirmance of the judgment of sentence (90 days in jail and a \$1,000 fine) for operating his motor vehicle (a "moped") when his driving privileges had yet to be restored in violation of 75 Pa.C.S.A. § 1543(b).¹ We affirmed the judgment of sentence on sufficiency of evidence grounds, which is not challenged in Appellant's "Application for Reconsideration." *Commonwealth v. Byrne*, No. 2008 MDA 2001, J-S47024/02 (filed on August 5, 2002). Thus, the sole issue for our review centers upon statutory construction of Section 1543.

¹ We note that 75 Pa.C.S.A. § 1543(b) was amended by 2002 Oct. 4 P.L. 845, No. 123 § 3. These amendments do not affect the disposition of this case.

¶ 2 In particular, Appellant seeks to have his sentence vacated consistent with the Commonwealth Court's decision in **Rossi v. Com., Dept. of Trans.**, 798 A.2d 801 (Pa. Cmwlth. 2002), which held that, despite Rossi's failure to comply with the restoration requirements prescribed by PennDOT to secure reinstatement of her license, on the date Appellee was cited for driving while her operating privileges were suspended "she did possess a valid privilege[, albeit not a license,] to operate a motor vehicle in the Commonwealth on that date; she could not, therefore, have been operating a motor vehicle in violation of Section 1543(a)." **Id.** at 804.

¶ 3 Further, **Rossi** concluded that an operator could not be guilty of violating Section 1543(a)(operating a vehicle while license is suspended) because the operator's driving privileges were "restored by operation of law" once the suspension period ended. We disagree.

¶ 4 This Court held in **Commonwealth v. Tharp**, 724 A.2d 368 (Pa. Super. 1999), that, notwithstanding the expiration of the period of suspension, an operator shall "seek restoration" of his suspended license to avoid violating Section 1543(b)(2). Tharp's failure to do so resulted in a reversal of the trial court's dismissal of his conviction under Section 1543(b). Also, we ruled that PennDOT's restoration requirements must be complied with to avoid contravening Section 1543, even in the face of satisfying the suspension period.

¶ 5 Accordingly, we are not persuaded by **Rossi's** interpretation of the language appearing in Section 1543(a): " ... any person who drives a motor vehicle on any highway or trafficway of this Commonwealth after the ... suspension, revocation ... of the operating privilege *and before the operating privilege has been restored* is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of \$200. As amended December 21, 1998, P.L. 1126, No. 151 § 18, 75 Pa.C.S.A. § 1543(a) (Supp. 2002) (Emphasis added).

¶ 6 **Rossi** concludes that, once the period of suspension has run its course, an operator may not be in violation of Section 1543(a) because the operator's license is "restored by operation of law" when the suspension period expires. We find **Rossi** to be unpersuasive. **Commonwealth v. Lewis**, 718 A.2d 1262, 1265 n. 10 (Pa. Super. 1998), **allocatur denied**, 558 Pa. 629, 737 A.2d 1224 (1999) (Superior Court need not be bound by Commonwealth Court decisions).

¶ 7 We hold that **Tharp** gives the correct interpretation to similar language appearing in Section 1543(b), which reads:

- (1) Any person who drives a motor vehicle on any highway or trafficway of this Commonwealth at a time when their operating privilege is suspended or revoked ... shall, upon conviction, be guilty of a summary offense and shall be sentenced to pay a fine of \$1,000 and to undergo imprisonment for a period of not less than 90 days.
- (2) ... This provision shall [...] apply until **the person** has had the operating privilege restored

As amended December 21, 1998, P.L. 1126, No. 151 § 18 (Supp. 2002), 75 Pa.C.S.A. § 1543(b)(1), (2) (Emphasis added).

¶ 8 **Tharp** requires a person whose license is suspended to seek restoration of his driving privileges, anything short of such an accomplishment will subject the operator to the penalties associated with violating Section 1543 despite the expiration of the license suspension period during the time of operation.

¶ 9 In light of the express language of Section 1543(b)(2), and giving it a common sense reading not at odds with the intent of the Legislature, we conclude that Appellant, who operated a vehicle after the expiration of his suspension—DUI related but before the restoration of his license, was cited properly for violation of 75 Pa.C.S.A. § 1543(b).

¶ 10 Judgment of sentence affirmed.