

[J-39-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JAMES J. MCGRORY,	:	No. 48 MAP 2005
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court entered July 16,
	:	2003, at 2949 C.D. 2002, affirming the
v.	:	Order of the Court of Common Pleas of
	:	Bucks County, Civil Division, entered
	:	November 26, 2002, at No. 02-5511-17-6.
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF TRANSPORTATION,	:	
BUREAU OF DRIVER LICENSING,	:	828 A.2d 506 (Pa. Cmwlth. 2003)
	:	
Appellant	:	ARGUED: April 4, 2006

DISSENTING OPINION

MADAME JUSTICE BALDWIN

DECIDED: February 20, 2007

The majority's determination that the Department of Transportation, Bureau of Driver Licensing possessed the authority under the former Ignition Interlock Law to enforce the interlock requirement on repeat DUI offenders is, in my judgment, erroneous. Therefore, I respectfully dissent.

In enacting the former Ignition Interlock Law, 42 Pa.C.S. §§ 7001-7003 (repealed 2003), the General Assembly intended and attempted to place in the judiciary the responsibility of ordering repeat DUI offenders to install interlock systems in their vehicles as a condition to restoration of their driving privileges. 42 Pa.C.S. § 7002(b). In accordance with the former law, the sentencing court was also required to provide the Department of Transportation, Bureau of Driver Licensing (Department) with a "certification" that an appropriate ignition interlock system had been installed on each motor vehicle owned by the offender. 42 Pa.C.S. §§ 7002(b) and 7003(1). Once the Department

received the required certification, the Ignition Interlock Law then authorized the Department to issue an ignition interlock restricted license upon the offender's application. 42 Pa.C.S. § 7003(2).

We determined however, in Commonwealth v. Mockaitis, 575 Pa. 5, 834 A.2d 488 (2003) that the General Assembly's attempt to place in the courts the executive function necessary to effectuate issuance of an ignition interlock restricted license impermissibly violated the separation of powers doctrine. Accordingly, in Mockaitis, those portions of the Ignition Interlock Law delegating to the sentencing court the executive responsibilities of ordering installation of the devices and certifying that they have been installed were severed. (See Mockaitis, 575 Pa. at 30, 834 A.2d at 503, severing subsections 7002(b), 7003(1), and the last clause of 7003(5)).¹

We noted in Mockaitis that our holding that the Ignition Interlock Law improperly delegated executive responsibilities to the sentencing court did not require striking the Act in its entirety. With the unconstitutional provisions severed, we determined that the remaining portions of the statute, specifically § 7003(2), still required recidivist DUI offenders seeking restoration of driving privileges to apply to the Department for an ignition interlock restricted license. Furthermore, we concluded that § 7003(3), which was not severed, precluded an offender in possession of such a restricted license from operating any motor vehicle on a highway in the Commonwealth unless that vehicle was equipped with an approved ignition interlock system. Mockaitis, 575 Pa. at 29-30, 834 A.2d at 502-503. Accordingly, since the remaining provisions of the Interlock Ignition Law prevented recidivist DUI offenders from lawfully operating motor vehicles unless they possessed an

¹See also Mockaitis, 575 Pa. at 14, n.6., 834 A.2d at 493, n.6, noting that subsection 7002(a) was not directly implicated in Mockaitis because it applied to first offenses for DUI, but that "in terms of the executive functions it delegates to the judiciary, subsection 7002(a) suffers from the same constitutional infirmity as subsection 7002(b)."

approved limited license and drove a properly-equipped vehicle, we concluded that “the remaining provisions of the Act still authorize the Department to impose an ignition interlock restriction upon serial DUI offenders who seek restoration of their operating privileges at the expiration of the one-year mandatory suspension of their licenses.” Id., 575 Pa. at 31, 834 A.2d at 503.

In the instant case, the majority holds that the Department has independent authority to order installation of ignition interlock devices on vehicles owned by serial DUI offenders. I respectfully disagree. In Mockaitis, we determined that the Ignition Interlock Law improperly delegated executive responsibility to the courts. Thus, the provisions of the Ignition Interlock Law which delegated this authority were severed by this Court from the remainder of the statute. Accordingly, the Ignition Interlock Law was left without procedure granting any entity the authority to order installation of ignition interlock devices.² To permit the Department to order offenders to install ignition interlock devices would be to read into the statute language that the Legislature did not include or intend to include. In enacting the former Ignition Interlock Law, the Legislature expressly, albeit improperly, placed in the courts alone the authority to order offenders to install ignition interlock devices. The determination in Mockaitis that the courts were precluded, by the doctrine of separation of powers, from ordering installation of ignition interlock devices and certifying compliance with those orders, does not permit this Court to substitute the statutory language of the former Ignition Interlock Law and place authority in the Department to order installation of such devices where the Legislature awarded the Department no such authority. “We may not supply words which are not to be found in the statute and so give to it a meaning which

² The version of the Ignition Interlock Law at issue in Mockaitis and herein has since been repealed. The current version of the Ignition Interlock Law, 75 Pa.C.S. § 3805, expressly gives the Department independent authority to require the installation of interlock devices in appropriate cases.

it otherwise does not have.” Calvert Distillers Corp. v. Bd. of Finance and Revenue, 376 Pa. 476, 481, 103 A.2d 668, 670 (1954). “It is clear that we may not, under the rubric of statutory interpretation, add to legislation, matter conspicuously absent therefrom.” Pennsylvania Human Relations Comm’n v. Mars Cmty. Boys Baseball Ass’n, 488 Pa. 102, 106, 410 A.2d 1246, 1248 (1980). Such a task lies properly with the Legislature.

, Since there is no indication within the Ignition Interlock Law that the Legislature intended to grant the Department independent authority to order installation of ignition interlock devices, neither the sentencing court nor the Department has the authority to order recidivist DUI offenders to install such devices on their vehicles. As we determined in Mockaitis, however, this does not leave the statute incapable of execution. The Department may employ the remaining valid portions of the Ignition Interlock Law to effectuate the legislative requirement that serial DUI offenders must obtain an ignition interlock restricted license in order to have their driving privileges restored. Mockaitis, 575 Pa. at 9, 834 A.2d at 490; 42 Pa. C.S. § 7003(2). Having obtained such a license, the offender is not permitted to operate any motor vehicle on a highway within the Commonwealth unless the vehicle is equipped with an approved ignition interlock system. 42 Pa.C.S. § 7003(3). Accordingly, “enforcement of the legislative purpose will still occur in the ordinary course of enforcement of the highway law - just as it does, for example, in relation to drivers whose licenses are subject to other restrictions.” Mockaitis, 575 Pa. at 30, 834 A.2d at 503.

I would therefore affirm the order of the Commonwealth Court which held that the Department of Transportation lacked independent authority to require Appellee to install an ignition interlock device on his vehicle as a precondition to the restoration of his driving privileges.