

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

LOUIS N. GRECO,	:	
Plaintiff	:	
	:	
v.	:	NO. 97-01,464
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT OF	:	
TRANSPORTATION,	:	
Defendant	:	

OPINION and ORDER

The issue in this case is whether a court order staying a license suspension actually does so. Curiously enough, the Commonwealth Department of Transportation appears to believe that such an order does not *lift* the suspension, but merely *raises* it. The suspension, although temporarily out of sight, hovers over the head of the unwary driver, ready to crash down upon him with its full weight if he violates the Vehicle Code. This court cannot go along with such a proposition.

Factual Background¹

Louis Greco was convicted of drug charges on 7 April 1997. He appealed the judgment of sentence on 28 April 1997. The Pennsylvania Department of Transportation (PennDOT) sent him notice² that his license would be suspended for six months pursuant to 75 Pa.C.S.A. § 1532(c), which requires PennDOT to suspend the license of a driver

¹ The facts of the case were stipulated to at the hearing on the license suspension held on 27 July 1999.

² There is a dispute over when Mr. Greco received notice of the suspension, but that issue is unimportant for purposes of this decision.

convicted of a violation of the Controlled Substance, Drug, Device and Cosmetic Act. The suspension was to take effect on 12 June 1997. Mr. Greco appealed the license suspension, alleging that he had not violated the Act and stating that his appeal of the conviction was pending before the Superior Court.³ This court stayed the suspension by order issued 3 October 1997, pursuant to 75 Pa.C.S.A. § 1547(a), which states that an appeal from such a suspension shall operate as a supersedeas until final determination of the matter. A hearing was scheduled for 17 December 1997.

In the meantime, Mr. Greco's driver's license was returned and he went his merry way, traveling the highways and byways of this fair Commonwealth without an inkling that he might actually be driving under suspension. Perhaps he was a bit too merry, however, for he was cited for speeding on 23 October 1997. He pled guilty to that offense on 3 November 1997.

Soon afterward, he received a letter from PennDOT stating that because of his speeding conviction five points had been assigned to his record. Mr. Greco had no reason to be surprised by this sanction; he apparently deserved it and has not contested the five points. However, the letter went on to state, "You may also be subject to further action based on these points pending, [sic] the outcome of your appeal to court." Mr. Greco later found out that what PennDOT had in mind was imposing an additional 25 days to his suspension, if and when the suspension took effect. PennDOT was relying on § 1544, which states:

³ His conviction was eventually affirmed.

When any person's record shows an accumulation of additional points during a period of suspension or revocation, the department shall extend the existing period of suspension or revocation at the rate of five days for each additional point and the person shall be so notified in writing.

On 17 December 1999, upon stipulation of the parties, the court dismissed Mr. Greco's appeal of the license suspension and directed PennDOT to reinstate the six-month suspension on or after 17 May 1998. On 15 January 1998 PennDOT sent Mr. Greco two notices. The first contained no surprises. It stated that his suspension under § 1532(c) would begin on 29 May 1998. The second notice, however, sent him running to his attorney. It informed him that his license would be suspended an additional 25 days—five days for each point he received for the speeding violation. Apparently, PennDOT believed that Mr. Greco had been driving under suspension when he was speeding, although the supersedeas was still in effect. Mr. Greco then filed the Motion to Set Aside the Additional Suspension currently before the court.

Discussion

At the hearing, much of PennDOT's argument focused on whether the agency properly preserved its right to impose the add-on suspension. Counsel for PennDOT pointed out that § 1551 requires it to notify the driver of a suspension being imposed because of the accumulation of points. The notice must be sent within six months of the conviction of the offense that resulted in the points causing the suspension. Counsel then argued that by notifying Mr. Greco he might be subject to "further action" on these points, in its 8 December 1998 letter, PennDOT gave timely notice and was free to go ahead

and impose the add-on suspension once the appeal from the suspension was dismissed.⁴

The argument that PennDOT preserved its right to impose the add-on suspension, however, merely begs the question of whether PennDOT *has such a right*. This court does not believe such a right exists, for the following reasons.

A. Language of the Statute

The statute at issue plainly tells PennDOT exactly when to impose an add-on suspension. Section 1544(a) states that an additional suspension is to be imposed “[w]hen any person’s record shows an accumulation of additional points during a period of suspension or revocation.”

A period of suspension is not a blurry concept. It is a distinct period of time, with a definite commencement date and a definite ending date. It is not identical to any or all periods of time when operating privileges have been lost or unavailable. See Com. Dept. of Transportation v Cable, 580 A.2d 1194 (Pa. Cmwlth. 1990). Under § 1541(a), the period of suspension commences “as provided for in § 1540” Under § 1540(b), a suspension is effective upon the date determined by PennDOT or the date the license is filed or mailed to PennDOT, whichever is earlier.

The suspension imposed for Mr. Greco’s drug violation was set to begin on 12

⁴ In this court’s unresearched opinion, the language of the letter might well be insufficient to constitute notice under § 1551. “You may be subject to further action based on these points pending, [sic] the outcome of your appeal to court” is hardly a notification of suspension. PennDOT does not even cite the statute under which the add-on suspension may be imposed. However, since Mr. Greco has not raised this point, this court will not address it.

June 1997, according to the notice sent by PennDOT.⁵ However, that suspension was stayed on 2 October 1997, when this court issued a rule to show cause on the appeal from that suspension. The order, which explicitly stated that all proceedings were to stay, was in accordance with § 1550(b), which states that filing and service of a petition for appeal from a suspension shall operate as a supersedeas until final determination of the matter. That occurred on 17 December 1997, when the Hon. Kenneth Brown dismissed the appeal. PennDOT's letter of 15 January 1998 states, "The effective date of suspension is 05/20/98, 12:01 a.m."

Clearly, then, the suspension was not in effect on 8 December 1997, when the five points were assigned to Mr. Greco's driving record.⁶ If no suspension was in effect on that date, a § 1544(a) add-on suspension is not appropriate. The court notes that this conclusion is further supported by the language in §1544 stating that PennDOT shall "extend the existing period of suspension" by adding on an additional five days per point. How can PennDOT extend something that does not yet exist?

Counsel for PennDOT essentially argued that the agency should be given discretion to interpret the statutes pertaining to the matters it administers. While this court is happy to show such deference when a statute is ambiguous, we elect to follow the plain meaning of a clearly written statute. Nor will we permit PennDOT to *add to* a statute under the guise of interpreting it. If the Pennsylvania legislature wishes to include under §

⁵ Mr. Greco contends he did not receive the letter until 10 September 1997, but that is not an issue in this case.

⁶ The "accumulation of points" mentioned in § 1544(a) occurs when the points are assessed by PennDOT—not when the violation was committed. See Commonwealth v. Gibboney, 414 A.2d 408 (Pa. Cmwlth. 1980).

1544(a) periods when a supersedeas is in effect, it may certainly do so. PennDOT, however, may not.

Intention of the Statute

PennDOT is essentially asserting that although § 1544(a) does not say so, its intent is to impose an add-on suspension when points are accumulated during a supersedeas, as well as an actual period of suspension. This is a tough argument to swallow not only because the plain meaning of the statute implies otherwise, but also because it violates some of the principles our legal system holds sacrosanct.

First is the basic due process requirement that before the government imposes punishment or sanctions it must give adequate notice. Under PennDOT's interpretation, this principle is violated in two ways. First, the plain meaning of § 1544(a) indicates it applies only during an actual period of suspension and second, drivers who have been granted a supersedeas have every reason to believe they are not under suspension.

Furthermore, although the government is free to "piggyback" an additional penalty onto an underlying sanction based on a person's actions while under that sanction, due process surely requires at the very least that the underlying sanction be in effect at the time, so that the additional penalty serves its purpose of deterring further violations while being punished for another violation.

And finally, construing the statute in the manner PennDOT urges would penalize drivers who appeal their suspensions. Whereas drivers who do not appeal their

suspensions are subject to the add-on suspension sanction only during the actual suspension period, drivers who appeal the suspension are subject to this sanction throughout the entire time they wait for a hearing and a decision, as well as the actual period of suspension. A statute that has the effect of discouraging appeals might be at home in totalitarian countries, but is certainly out of place in this Commonwealth.

Conclusion

For the reasons stated above, this court concludes that 75 Pa.C.S.A. § 1544(a) can only mean what it says: a driver must be under suspension at the time he accumulates additional points in order to be subject to the add-on suspension period. Not only was there no suspension in effect when Mr. Greco was assessed points for speeding, but at that time it was unknown whether a suspension would *ever exist*. Yet PennDOT wants to reserve the right to impose the add-on suspension just in case there is ever a suspension upon which to add! PennDOT asks too much—far too much. It is quite enough that drivers who accumulate points while on suspension are penalized. PennDOT has no right to also penalize those who *may* be on suspension at a later date. Such greed for punishment is unbecoming to a Commonwealth agency.

ORDER

AND NOW, this _____ day of August, 1999, for the reasons stated in the above opinion, the petitioner's Motion to Set Aside Proposed Additional Suspension of Twenty-Five Days is granted and the 25-day suspension is set aside.

BY THE COURT,

Clinton W. Smith, P.J.

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