

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 99-10,039
:
vs. : CRIMINAL DIVISION
:
MARK T. KESSLER, :
Defendant : Writ of Habeas Corpus

ORDER

AND NOW, this ____ day of May 1999, the Court DENIES the defendant's Petition for Writ of Habeas Corpus. With respect to the charge of driving under the influence .10% or greater, the Court recognizes that a panel of the Pennsylvania Superior Court has recently declared unconstitutional Section 3731(a.1) of the Vehicle Code, 75 Pa.C.S. 3731(a.1). See Commonwealth v. Murray, 1999 WL 74560 (Pa.Super. 1999). However, prior to the enactment of 3731(a.1), the Pennsylvania Supreme Court held that once the Commonwealth has established that the driver's blood alcohol content (BAC) reflects an amount above .10% the Commonwealth has presented prima facie evidence of a violation of driving under the influence .10% or greater. Commonwealth v. Yarger, 538 Pa. 329, 648 A.2d 529 (1994). Therefore, based on Yarger, the Court finds that the Commonwealth has made a prima facie case under 75 Pa.C.S.A. Section 3731(a)(4).

By The Court,

Kenneth D. Brown, J.

cc: District Attorney
Peter Campana, Esquire
Work File