

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
Plaintiff	:	
	:	
v.	:	NO. 99-10,482
	:	
CHARLES T. ECK,	:	
Defendant	:	

OPINION and ORDER

The sole question before the court is whether 75 P.A. § 1543(b)(2) is an ex post facto law. That statute, which became effective on 12 September 1995, changed the punishment for a future driving under suspension conviction for people formerly convicted of DUI-related driving on suspension who have not yet had their licenses restored.¹ The defendant, Charles T. Eck, has argued the statute is unconstitutional unless interpreted to apply only to those suspensions received after the effective date of the statute. The court rejects this argument for the simple reason that the statute applies to future offenses, and not past ones.

Factual Background

On 4 January 1994 Mr. Eck was convicted of Driving Under the Influence, and his license was suspended for one year, effective 21 February 1994. Also on 4 January 1994 Mr. Eck was convicted of Driving on a Suspended License, Non-DUI-related, and his license was suspended for five years under the “habitual offender” statute. That suspension became effective on 21 February 1995. On 13 January

¹ Section 1543(b)(1) states the penalty for DUI-related Driving Under Suspension and §1543(2) states, “This provision shall also apply until the person has had the operating privilege restored.”

1999, while serving the non-DUI-related suspension, Mr. Eck was stopped pursuant to an investigation of a hit and run accident. Upon being unable to produce his license, the officer discovered Mr. Eck's history and charged him with Driving Under Suspension, DUI-related (75 P.S. § 1543(b)(1)).

Discussion

Mr. Eck claims he cannot be convicted of DUI-related Driving Under Suspension because at the time he committed the offense at issue he was serving out his sentence for non-DUI related suspension. Although §1543(b)(2) would ordinarily apply and permit the Commonwealth to charge him with DUI-related driving on suspension, at the time Mr. Eck committed his previous suspension, Pennsylvania caselaw did not permit the Commonwealth to charge him with DUI-related Driving on Suspension. See Commonwealth v. Rosenberger, 426 Pa. Super. 37, 626 A.2d 181 (1993). Mr. Eck argues that the 1995 amendment to §1543(b)(2) cannot be applied retroactively because it would be an ex post facto law. We disagree.

The ex post facto prohibition in the federal Constitution forbids Congress and the States from enacting any law that imposes a punishment for an act which was not punishable at the time it was committed, or imposes additional punishment to that formerly proscribed. Weaver v. Graham, 450 U.S. 24, 28, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981); Weaver v. Department of Corrections, 720 A.2d 178, 182 (Pa. Commw. 1998). The prohibition is aimed at laws that retroactively alter the definition of crimes or increase the punishment for criminal acts. Id. In order for a law to be deemed ex post facto, two essential elements must be present: (1) it must

be retrospective—that is, it must apply to events occurring before its enactment, and (2) it must disadvantage the offender affected by it. Graham, supra, at 29, Department of Corrections, supra, at 182.

Here, the first element is not met, for §1543(b)(2) does not apply to past events—only to future ones. The statute did not change the punishment of Mr. Eck’s 1994 non-DUI-related driving under suspension conviction. His sentence for that remained a five year suspension. The statute merely changed the consequences of a future conviction for driving under suspension: previously, the penalty would be assessed by viewing the future offense as a non-DUI-related suspension, whereas now the penalty is assessed by viewing the future offense as a DUI-related suspension.

This does not in any way offend the ex post facto clause in the Constitution. That clause was enacted primarily to allow individuals to go about their business without fear of being punished for an act not prohibited at the time it was committed, or having the consequences of that act later changed. Stewart v. Board of Probation and Parole, 714 A.2d 502, 508-09 (Pa. Commw. 1998), citing Prater v. United States Parole Commission, 802 F.2d 9948 (7th Cir. 1986). Our founding fathers, always wary of an overbearing government, wisely wanted to ensure that governmental officials would not be tempted to assume such an awesome and malevolent power.

Section 1543(b)(2) does not allow them to do any such thing. It does not change the consequences of an act after it is committed. It merely changes the consequences of a future act, and that is in no way unfair to Mr. Eck or anyone else who was convicted of DUI-related driving under suspension before the statute was

enacted and has never had their license restored. Whereas none of us can change our past actions, we do have control over our future actions. If Mr. Eck did not want to suffer the consequences of §1543(b)(2), he should not have driven until his license was restored.

Mr. Eck also argues he cannot be convicted of DUI-related driving under suspension because §1543(b)(2) transformed his non-DUI-related suspension into a DUI-related suspension, and the Commonwealth did not notify him that his license was suspended for a DUI-related offense. The problem with this argument is that no such transformation ever took place. The non-DUI-related suspension remained a non-DUI-related suspension. The statute merely changed the consequences to Mr. Eck if he should in the future be convicted of driving under suspension before his license was restored.

Conclusion

The statute at issue in this case is precisely parallel to the “three strikes” laws which are being enacted all over the country, and which have not been struck down as ex post facto. Like these laws, § 1543(b)(2) relates only to future criminal acts not yet committed. If individuals want to avoid the harsh consequences of these laws, they can easily do so by refraining from committing additional crimes.

ORDER

AND NOW, this _____ day of March, 2000, for the reasons stated in the foregoing opinion, the court finds the defendant guilty of 75 P.C.A. §1543(b), Driving Under Suspension, DUI-related. The defendant shall appear before this court for sentencing on 21 March 2000 at 8:30 A.M. in Courtroom #1.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Eric Linhardt, Esq.
Daniel Holmes, Esq.
Gary Weber, Esq., Lycoming Reporter