

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF PA	:	
Plaintiff	:	
	:	
v.	:	NO. 99-10,456
	:	
JOHN DIMASSIMO,	:	
Defendant	:	

OPINION and ORDER

The question in this case is the effect of a DUI-related suspension imposed while a driver is under non-DUI-related suspension. Mr. DiMassimo argues that he cannot receive the enhanced penalty provisions of 75 Pa.C.S.A. § 1543(b) because at the time he was stopped the non-DUI-related suspension had not yet expired and therefore the DUI-related suspension was not yet in effect. Because the Pennsylvania Supreme Court has already soundly rejected this argument, we must dismiss the appeal and find the defendant guilty.

Facts

At the hearing held on 25 August 1999 counsel for Mr. DiMassimo admitted the following facts. On 21 July 1998, Mr. DiMassimo was convicted of Driving Under the Influence. The Pennsylvania Department of Transportation mailed him a notice on 7 August 1998, which he received in August 1998. This notice stated that he would be placed under a 1-year suspension due to the DUI conviction, and that the suspension

would begin on 26 August 1999, after his non-DUI related suspensions had expired.¹ At that time, Mr. DiMassimo was already under suspension for non-DUI-related violations.

On 22 November 1998, Mr. DiMassimo was legitimately stopped by Officer Eric Delker, who cited him for driving under suspension. Mr. DiMassimo was found guilty under 75 Pa.C.S.A. § 1543(b), Driving Under Suspension, DUI-related. Mr. DiMassimo has appealed that conviction.

DISCUSSION

Mr. DiMassimo's sole argument is that he cannot be convicted of DUI-related driving under suspension because at the time he was stopped he was still serving his sentence for non-DUI-related suspension. The DUI-related suspension was slated to begin on 26 August 1999, after his non-DUI-related suspension had expired. Therefore, Mr. DiMassimo argues, he is guilty only of 75 Pa.C.S.A. § 1543(a), Driving Under Suspension, Non-DUI-Related.

While that argument is certainly logical and won the day for the driver in Commonwealth v. Sherry, 44 D. & C. 3d 663 (1986), the Pennsylvania appellate courts have flatly rejected it and so must we. Commonwealth v. Jenner, 545 Pa. 445, 681 A.2d 1266 (1996); Commonwealth v. Nuno, 385 Pa. Super. 6, 559 A.2d 949 (1989). These cases are so directly on point that we are at a loss to understand why defense counsel has

¹ The court originally permitted the record to be held open to give Mr. DiMassio time to produce a copy of the letter. However, after researching the issue the court realizes this is not necessary for the purposes of making our decision, since Mr. DiMassio has admitted receiving the letter and has admitted its contents as stated above.

wasted this court's time and his client's money by appealing the conviction.²

In Jenner, the Supreme Court stated explicitly that a person cannot escape the penalty of a DUI-related suspension simply because he must finish serving prior suspensions before the DUI-related suspension can begin. The court thoroughly explained its reasoning, and held that the purpose of § 1543 was to keep DUI-convicted drivers off Pennsylvania roads. Accepting the argument of Mr. DiMassimo would allow drunk drivers to avoid these penalties simply because they have also been suspended for violating other provisions of the Vehicle Code. The court concluded:

[W]e hold that once a driver is notified that his license is suspended as a result of a conviction for driving under the influence under 74 Pa.C.S.A. §3731, he is subject to the enhanced sentencing provisions of §1543(b) for the duration of any prior periods of suspension or revocation until the completion of the DUI-related suspension. The effective dates provided by the Department of Transportation in such cases are simply for the purpose of determining when the DUI-related suspension is completed.

Jenner, supra, at 1273.

Mr. DiMassimo has admitted receiving notice of his DUI related suspension in August 1998, prior to the time of the violation at issue. Therefore, he must be deemed to have been under DUI-related suspension at that time.

² We are also at a complete loss to understand why the District Attorney was so fixated on presenting testimony as to stipulated facts, while entirely ignoring the legal issue upon which the case turned. Had the District Attorney simply waived a copy of Jenner, this court could have disposed of the matter within minutes.

ORDER

AND NOW, this ____ day of August, 1999, the court finds the John C. DiMassimo guilty of 75 Pa.C.S.A. § 1543(b), Driving Under Suspension, DUI-related. John DiMassimo is ordered to appear before this court for sentencing on 8 September 1999 at 3:00 p.m.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Daniel Holmes, Esq.
Jearrett Smith, Esq.
109 Main Street, Suite 2
Wellsboro, PA 16901