

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 02-11,449
:
:
vs. : CRIMINAL DIVISION
:
:
CARL ANDERSON, :
Defendant : 1925(a) Opinion

OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of this Court's decision and sentence docketed July 1, 2003. The relevant facts follow. Defendant was driving a motor vehicle on May 9, 2002. The police charged him with driving under suspension, DUI related, pursuant to 75 Pa.C.S.A. §1543(b). Defendant's certified driving record shows Defendant's license is suspended through January 5, 2016. His numerous suspensions include, in relevant part: a five-year habitual offender suspension effective July 6, 1992 for a driving under the influence conviction on February 8, 1990; a two-year habitual offender suspension effective July 6, 2001 for a conviction on February 25, 1991 for driving without a license; a one-year suspension effective July 6, 2003 for a

chemical test refusal; and a two-year habitual offender suspension effective July 6, 2006 for a driving under the influence conviction on March 26, 1993. Official notices of these suspensions were mailed April 16, 1990, August 30, 1991, August 7, 1992, and May 21, 1993, respectively.

The district justice found Defendant guilty and Defendant filed an appeal of his summary conviction. The Court heard Defendant's appeal on May 30, 2003. At the end of the hearing, the Court found Defendant guilty. Defendant filed a notice of appeal to the Pennsylvania Superior Court.

The sole issue raised in Defendant's appeal is that his suspension cannot be considered DUI related. This Court cannot agree. Although the suspension Defendant was serving on May 9, 2002 was a habitual offender suspension for driving without a license, he had not been restored from his previous five-year habitual offender suspension from a DUI conviction and he had two pending DUI related suspensions. Under both statutory and common law of Pennsylvania, Defendant's suspension would be considered DUI related.

The statute clearly indicates a suspension is DUI related even if the effective date of the DUI related suspension has not yet been reached. The statute states, in

relevant part:

This subsection shall apply to any person against whom one of these suspensions has been imposed whether the person is currently serving this suspension or whether the effective date of suspension has been deferred under any of the provisions of section 1544(relating to additional period of revocation or suspension). This provision shall also apply until the person has had the operating privilege restored.

75 Pa.C.S.A. §1543(b)(2). Due to the pending suspensions for a chemical test refusal and a DUI conviction, the Court must consider Defendant's suspension DUI related.

Before the statute was amended, the common law compelled a similar result. When an individual has a suspension for a violation of 3731 (relating to driving under the influence) or 1547(b)(1)(relating to suspension for chemical refusal), but is not currently serving those suspensions due to prior suspensions which are not DUI related, he is considered under a DUI related suspension from the time he is given notice of his suspension for the DUI related offense until the end of the DUI related suspension. Commonwealth v. Yetsick, 402 Pa.Super. 615, 620, 587 A.2d 788, 790, appeal denied, 529 Pa. 620, 600 A.2d 537 (1991); Commonwealth v. Nuno, 385 Pa.Super. 6, 559 A.2d 949 (1989).

The statute would also require Defendant's suspension to be DUI related because he had a 1990 DUI

related suspension and has never had his operating privilege restored. The Superior Court has interpreted this statute in accordance with its plain meaning, so that an individual is considered under a DUI related suspension until his operating privilege is restored, even if the individual has served all his DUI related suspensions. Commonwealth v. Byrne, 815 A.2d 637, 638 (Pa.Super. 2002); see also Commonwealth v. Tharp, 724 A.2d 368 (Pa.Super. 1999).

Defendant claims his suspension could not have been DUI related based on Rossi v. Pa. Dept. of Transp., 798 A.2d 801 (Pa.Commw. 2001).¹ The Court does not believe Rossi is applicable to this case. First, Defendant's appeal is before the Pennsylvania Superior Court, which has specifically found Rossi unpersuasive. Commonwealth v. Byrne, 815 A.2d 637, 638 (Pa.Super. 2002); see also Commonwealth v. Paxson, 2003 Pa.Super.LEXIS 1340 (Pa.Super. 2003). Furthermore, Rossi is factually distinguishable. In Rossi, the appellant did not have any DUI related suspensions. Therefore, that case sheds no light on whether Defendant's suspension should be considered DUI related. Moreover, the appellant in Rossi had served all of her suspensions, but she did not apply to have her license

¹ The Court notes Rossi is presently on appeal before the Pennsylvania Supreme Court. Rossi v. Pa. Dept. of Transp., 798 A.2d 801 (Pa.Commw.

restored. Thus, the question in Rossi was whether the appellant should be considered driving under suspension or merely driving without a license. Here, the certified driving record (Commonwealth's Exhibit 1) shows Defendant is suspended through January 5, 2016. Based on the foregoing, Defendant's suspension is DUI related through January 6, 2016 and until his operating privilege is restored.

DATE: _____

By The Court,

Kenneth D. Brown, Judge

cc: District Attorney
G. Scott Gardner, Esquire
Law Clerk
Work file
Gary Weber, Esquire (Lycoming Reporter)