

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	: NO. 04-01,050
DEPARTMENT OF TRANSPORTATION,	:
Appellant	:
	:
vs.	:
	:
ROBERT NICHOLAS,	:
Appellee	:

OPINION IN SUPPORT OF ORDER OF AUGUST 13, 2004,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

The Department of Transportation appeals from this Court’s Order of August 13, 2004, which sustained Appellee’s Petition for Appeal from the Department’s Notice of Suspension and struck the Ignition Interlock requirement from said Notice. In its Statement of Matters Complained of on Appeal, filed September 30, 2004, the Department raises two issues, neither of which was before the Court on August 13, 2004.

First, the Department contends the Court erred “when it sustained Appellee Nicholas’ challenge to the Bureau’s determination that he was required to apply for an ignition interlock restricted driver’s license when [he] applied for restoration ... of his operating privilege”, arguing that the Department has the authority, independent of any Court Order, to require repeat DUI offenders to apply for a restricted license. Appellee Nicholas did not challenge any determination that he was required to apply for a restricted license, however, but only challenged “the requirement of the installation of Ignition Interlock Systems prior to the reinstatement of operating privileges”. The installation requirement is the only issue raised in his petition, See Petition for Appeal From the Order of the Director of the Bureau of Driver Licensing Requiring Ignition Interlock Devices, filed July 1, 2004, Paragraph 7, and during the hearing on Appellee’s petition, Appellee did not raise the issue of a restricted license. Further, although this Court’s Order of August 13, 2004, strikes the “Ignition Interlock requirement of the Notice of Suspension dated June 2, 2004”and does not use the word “installation”, a close reading of the Notice will reveal that the only Ignition Interlock requirement mentioned therein

is that of installation of Ignition Interlock Devices. Thus, while the Court agrees with the Department that it indeed has independent authority to require repeat DUI offenders to apply for a restricted license in certain instances,¹ that issue was simply not before this Court.

The Department also contends the Court erred “when it sustained Appellee Nicholas’ challenge to the ignition interlock requirement and relieved Appellee Nicholas from being required to apply for an ignition interlock restricted driver’s license upon the restoration of his operating privilege” on the basis that his previous DUI conviction occurred prior to the effective date of the Ignition Interlock Law, arguing that although such a decision is in accordance with “the law as it currently stands”,² that law was “wrongly decided.” Again, Appellee did not challenge any requirement that he apply for a restricted license,³ and this Court’s Order did not address such a requirement.

The only issue raised by Appellee and the only issue addressed by this Court was that of the Department’s authority to independently require the installation of ignition interlock devices when the Court’s Sentencing Order did not do so.⁴ In accordance with Schneider v. Commonwealth, 790 A.2d 363 (Pa. Commw. 2002), appeal granted, 842 A.2d 408 (Pa. 2004), and subsequent cases, the Department’s requirement that Appellee have ignition interlock devices installed in all vehicles owned by him was stricken from the Notice of Suspension. As this issue has been clearly addressed by the Commonwealth Court, the Court believes the Department’s appeal to be without merit, and respectfully suggests the Order of August 13, 2004, should be affirmed.

By The Court,

Dated: November 2, 2004

Dudley N. Anderson, Judge

cc: Timothy P. Wile, Esq., 1101 South Front Street, 3rd Floor, Harrisburg, PA 17104-2516

1 The Court notes the Department’s disagreement with the Court respecting the definition of “certain instances”.

2 Alexander v. Department of Transportation, 822 A.2d 92 (Pa. Commw. 2002), appeal granted, 849 A.2d 1129 (Pa. 2004).

3 Indeed, as noted above, the Notice of Suspension did not contain a requirement that Appellee apply for a restricted license.

4 Undoubtedly, thirty days prior to the expiration of his period of suspension, Appellee will receive a Restoration Requirements letter, informing him he must apply for an interlock-restricted license. At that point, the issue addressed by the Department in the instant appeal will be ripe for judicial review.

Eric R. Linhardt, Esq.
Gary L. Weber, Esq.
Hon. Dudley N. Anderson