

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. CP-41-SA-318-2005
	:
vs.	: CRIMINAL DIVISION
	:
RICHARD HAMILTON,	: Summary Appeal
Defendant	: Disposition and Sentence

OPINION AND ORDER

Before the Court is Defendant's Appeal of his conviction of the summary offense of driving while operating privilege is suspended or revoked, 75 Pa.C.S. Section 1543(b)(1). A hearing on the appeal was held July 19, 2005. Defendant does not dispute he was driving while his operating privilege was suspended; he argues, however, that conviction under Section 1543(b)(1) based on a suspension for refusal to submit to chemical testing violates equal protection and due process. By Order dated July 19, 2005, the Court directed Defendant to file a brief on the issue and allowed the Commonwealth time to respond if it deemed it appropriate. Defendant's brief was received July 28, 2005. The Commonwealth did not respond.

Section 1543(b)(1) provides, in pertinent part, that it is a summary offense to drive a motor vehicle on a highway of this Commonwealth at a time when the person's operating privilege is suspended or revoked because of a violation of Section 1547(b)(1).¹ The appellate Courts of this Commonwealth have previously indicated that in order to prevail on an equal protection claim with respect to Section 1543(b), the person claiming the violation must establish that the asserted classification and disparate treatment of certain drivers does not bear a rational relationship to a legitimate state interest. Commonwealth v. Jenner, 681 A.2d 1266 (Pa. 1996). Further, the Pennsylvania Supreme Court has held that the legislature's decision to punish persons with mandatory prison sentences who continue to drive prior to the expiration of DUI-related license suspensions is rationally related to the state interest of protecting those who use the state's highways by keeping intoxicated drivers off of those highways. Id. Defendant argues only that Jenner addressed an equal protection argument aimed at DUI-related suspensions and thus does not apply to the instant case, but does not indicate why the reasoning of Jenner should not apply. Indeed, the Court believes that Section 1547(b)'s

¹ Section 1547(b)(1) provides for the suspension of a person's operating privilege for refusal to submit to chemical testing after being arrested for a violation of Section 3802 (driving under the influence of alcohol).

prerequisite that a person be placed under arrest for DUI, which requires an officer to have probable cause to believe that person is operating under the influence of alcohol, supports the application of Jenner as it too implicates the state interest of keeping intoxicated drivers off of the highways of this Commonwealth. Defendant's equal protection argument is, therefore, without merit.

With respect to his claim that a conviction under Section 1543(b)(1) would violate his right to due process, it appears Defendant is arguing that no due process is afforded in the process of suspending one's license for refusal to submit to chemical testing as such suspension is based on the refusal itself, rather than a conviction or acceptance of ARD. Defendant fails to recognize the right to appeal from the license suspension in the first instance, however. 75 Pa.C.S. Section 1547(b)(3). Such right to appeal provides Defendant with all the process that is due.

Inasmuch as neither of Defendant's constitutional arguments has merit, the conviction will be upheld.

ORDER

AND NOW, this day of August 2005, for the foregoing reasons, the summary appeal in this matter is hereby dismissed and the adjudication of guilt entered by Magisterial District Judge Carn is hereby affirmed.

Sentence of the Court is Defendant shall pay all costs of prosecution and a fine in the amount of \$500.00, and shall undergo incarceration in the Lycoming County prison for a period of sixty (60) days. Defendant shall report to the Lycoming County prison to begin serving this sentence at 9:00 a.m. on August 26, 2005.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Warden, LCP
 DA
 Joseph Devecka, Esq., 301 S. Allen St., Ste. 108, State College, PA 16801
 Gary Weber, Esq.
 Hon. Dudley Anderson