

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF TRANSPORTATION :
BUREAU OF DRIVER LICENSING, :
Respondent : No. 06-00111
vs. : License Suspension Appeal
CRAIG LYNN BUSKIRK, :
Petitioner, :

ORDER

AND NOW, this ____day of March 2006, the Court DENIES Petitioner's License Suspension Appeal.

The basis of Petitioner's appeal is the length of delay between his conviction under 75 Pa.C.S. §3743 on February 24, 1999 and the mailing of Official Notice of Suspension on December 21, 2005. To overturn a license suspension on the basis of delay, there must be an unreasonable delay attributable to the Department of Transportation (hereinafter "DOT") which led the licensee to believe his operating privileges would not be impaired and prejudice to the licensee as a result of having the operating privileges suspended after such a delay. Terraciano v. Dept. of Transp., Bureau of Driver Licensing, 562 Pa. 60, 66, 753 A.2d 233, 236 (Pa. 2000). It is DOT's burden to prove the delay was not chargeable to DOT; if this burden is met, the appeal should be dismissed. Grover v. Dept. of Transp., Bureau of Driver Licensing, 734 A.2d 941, 943 (Pa.Cmwlt. 1999). If there is unreasonable delay chargeable to DOT, then the burden is on the licensee to prove prejudice as a result of that delay. Id.

A delay that is attributable to the judicial system and not to DOT cannot serve as a basis for the invalidation of a license suspension or revocation. Dept. of Transp., Bureau of

Driver Licensing v. Green, 119 Pa. Commw. 281, 546 A.2d 767 (Pa. Cmwlth. 1988), affirmed, 524 Pa. 98, 569 A.2d 350 (1990). “In determining whether there was an unreasonable delay attributable to DOT, the relevant time period is the point at which DOT receives notice of the driver’s conviction from the judicial system and the point at which DOT notifies the driver that his license has been suspended or revoked.” Pokoy v. Dept. of Transp., Bureau of Driver Licensing, 714 A.2d 1162, 1164 (Pa. Cmwlth. 1998).

DOT presented a certification from Janet Dolan, the custodian of the Driver License records of DOT that showed DOT received notification of Petitioner’s conviction by electronic transmittal from the Administrative Office of Pennsylvania Courts (AOPC) on November 10, 2005. Commonwealth’s Exhibit 1, sub-exhibit 2. DOT mailed an official notice of suspension to Petitioner on December 21, 2005. Commonwealth’s Exhibit 1, sub-exhibit 1. Therefore, the period of delay attributable to DOT is 41 days. As a matter of law, this delay is not unreasonable. Fordham v. Dept. of Transp., Bureau of Driver Licensing, 663 A.2d 868 (Pa. Cmwlth. 1995)(six month delay between DOT’s receipt of notice of conviction and its sending notice of suspension not unreasonable).

Although the Court believes the result in this case is unfair to the Petitioner and he will suffer prejudice due to the suspension being imposed so long after his conviction, the Court is bound to follow the decisions of the Pennsylvania Appellate Courts set forth above and to deny his license suspension appeal. ¹

By The Court,

1 This court believes the delay in this case, which is approaching seven years should warrant dismissal of the suspension. While the delay apparently is the fault of the AOPC (Administrative Office of Pennsylvania Courts) who did not transmit the conviction information the DOT for all these years, they are part of the state apparatus, as is DOT. The court would urge the Commonwealth Court to reexamine this issue if given an opportunity.

Kenneth D. Brown, P.J.

cc: Francis Bach, Esquire
Christian Fry, Esquire
Gary Weber, Esquire (Lycoming Reporter)