

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF : No. 07-02133  
PENNSYLVANIA, DEPARTMENT :  
OF TRANSPORTATION :  
 :  
 :  
vs. :  
 :  
 :  
EZRA J. BURGESS, :  
 : 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 response to the Pennsylvania Department of Transportation's (Penn DOT's) appeal from this Court's order dated August 21, 2008. The relevant facts follow.

On April 19, 2007, police in Snyder County cited Ezra J. Burgess (hereinafter Appellee) for speeding, a violation of 75 Pa.C.S. §3362, and for driving an unregistered vehicle, a violation of 75 Pa.C.S. §1301. Appellee failed to respond to the citation. On June 14, 2007, Penn DOT mailed Appellee a notice that his operating privileges were being suspended effective July 5, 2007 for failing to respond to the citations.

On August 16, 2007, Appellee responded to the citation by appearing at the Magisterial District Judge's office, pleading guilty, and paying the appropriate fines and costs. As a result of the conviction, Penn DOT imposed an additional 15 day suspension of Appellee's driving privileges pursuant to 75 Pa.C.S. §1544. Appellee filed an appeal of this

suspension to the Court of Common Pleas of Lycoming County on September 24, 2007.<sup>1</sup>

A hearing was held on August 21, 2008.<sup>2</sup> Counsel for both parties agreed that the facts were not in dispute. Appellee's counsel argued that the case of Commonwealth, Dept of Transp. v. Cable, 135 Pa.Commw. 475, 580 A.2d 1194 (Pa. Commw. 1990) was directly on point and under that case an indefinite suspension for failing to respond to a citation terminates when the individual responds to the citation and pays any fines and penalties imposed. Since Appellee responded to the citation and paid his fines and costs on August 16, 2007, Appellee's counsel argued Appellee was not under suspension when Penn DOT received his conviction data from his guilty plea to speeding; thus he should have accumulated points on his license and not an additional suspension under 75 Pa.C.S.A. §1544.

Counsel for Penn DOT admitted she was not familiar with the Cable decision, but argued that this appeal was controlled by the more recent Pennsylvania Supreme Court case Rossi v. Commonwealth, Dept. of Transp., 580 Pa. 238, 860 A.2d 64 (Pa. 2004). In Rossi the Court found that for the summary criminal offense of driving under suspension, 75 Pa.C.S.A. §1543(a), an individual is guilty of the offense if he drives a vehicle any time after his operating privilege is suspended and before it has been restored. In essence, although the aggregate 30-days for Rossi's speeding and stop sign violations had passed, she was still

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1 When Appellee filed his appeal in the form of a complaint to the Court of Common Pleas, the caption of the case was Commonwealth of Pennsylvania v. Burgess. The caption got transposed when the attorneys submitted a form order for the Court's decision. This transposition also appears on Mr. Edwards' entry of appearance, his statement of matters on appeal and the appellate docket sheet.

2 Appellee's appeal/complaint contained neither a monitoring form required for civil complaints nor a cover sheet required for motions or petitions, documents necessary to get a civil scheduling order or a hearing scheduled, respectively. Thus, the appropriate scheduling personnel did not become aware of this case until June 2008.

driving while her operating privileges were suspended because her operating privileges had not yet been restored.

After reading the cases and shepherding Cable, the Court ruled in Appellee's favor. The Court noted that Rossi involved section 1543, as opposed to section 1544, and the statutory language was different. Section 1543(a) states in relevant part: "any person who drives a motor vehicle on any highway or trafficway of this Commonwealth **after the commencement of a suspension...of the operating privilege and before the operating privilege has been restored** is guilty of a summary offense..." 75 Pa.C.S.A.

§1543(a)(emphasis added). In comparison, section 1544(a) states: "When any person's record show an accumulation of additional points **during a period of suspension** or revocation, the department shall extend the existing period of suspension or revocation at the rate of five days for each additional point and the person shall be so notified in writing." 75 Pa.C.S.A. §1544(a)(emphasis added). The Cable court found that the period of suspension for failing to respond to a citation terminates when the individual responds to the citation and pays any fines and costs imposed. Since Cable appeared to be good law and Appellee had responded to the citation and paid his fines and costs on August 16, 2007 before Penn DOT's records showed an accumulation of additional points, the Court ruled in Appellee's favor.

Penn DOT filed a timely appeal. On appeal, Penn DOT's issue is not that the Court incorrectly failed to follow Rossi, but that Cable is no longer good law because the Legislature amended the provisions regarding the suspension of one's operating privileges for failing to respond to a citation such that the period of suspension continues until the individual pays the restoration fee prescribed in section 1960. See 75 Pa.C.S.A. §1533. Neither counsel for Penn DOT nor counsel for Appellee even mentioned this section during

the hearing. If they had, despite Appellee's counsel's convincing policy arguments, the Court would have ruled in Penn DOT's favor. The Court can understand Appellee's perception that he is getting suspended twice for not responding to the citation, because if he had initially responded and pleaded guilty he would not have been suspended at all but only accumulated three points. The Court also shares Appellee's concerns that a decision in Penn DOT's favor would be counter to the interests of judicial economy. When an individual pleads not guilty to a citation, he or she generally must pay the amount of the fines and costs and an additional small fee (approximately \$6) to enter the not guilty plea. If Appellee had been aware that a plea of guilty would result in an additional 15-day suspension instead of the accumulation of three points, he would have pleaded not guilty (despite knowing that he was guilty) and paid the fines, costs and small additional fee to get a hearing sometime in the future to give him time to pay his restoration fee and get his license restored before getting a conviction on the underlying citation so he would only accumulate points and not an additional suspension. This would create unnecessary work for the Magisterial District Judge (MDJ) and an unnecessary hearing for both the MDJ and the prosecuting police officer, but it would be the only chance an individual like Appellee would have to avoid the additional period of suspension. Nevertheless, the amendment to section 1533 would result in Appellee still being under suspension at the time he accumulated three points for speeding, as it is not disputed that Penn DOT took action on his speeding conviction on August 24, 2007 and Appellee did not pay his restoration fee until November 2, 2007. See Commonwealth Exhibit A (Appellee's certified driving record).

DATE: \_\_\_\_\_

By The Court,

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Kenneth D. Brown, P. J.

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