IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CR-755-2013
	:	
vs.	:	
	:	
COREY VEER,	:	
Defendant	:	

OPINION AND ORDER

This matter came before the court on June 6, 2013 for an argument to determine whether Defendant's current driving under the influence (DUI) offense is a first or second offense within ten years.

The parties agree that Defendant has a 2011 conviction in the state of New York for driving while ability impaired (DWAI), N.Y. VEH. & TRAF. §1192(1). Citing **Commonwealth v. Shaw**, 560 Pa. 296, 744 A.2d 739 (2000), the defense argued that this conviction would not count as a "prior offense" and therefore, Defendant's current DUI should be considered his first offense. The Commonwealth argued that **Shaw** was not applicable, because that case was decided under the prior DUI law which defined a "prior offense" as an "equivalent offense" from another jurisdiction, whereas the current DUI statute only required an offense which is "substantially similar."

The same arguments were made in **Commonwealth v. Pombo**, 26 A.3d 1155 (Pa. Super. 2011). Relying on **Commonwealth v. Northrip**, 603 Pa. 544, 985 A.2d 734, 738 n.5 (2009) and **Wroblewski v. Commonwealth**, 570 Pa. 249, 809 A.2d 247 (2002), the Superior Court agreed with the Commonwealth and found that New York's DWAI offense was a substantially similar offense.

In light of the ***Pombo*** case, which is directly on point, the court finds that Defendant's current DUI offense is a second offense within ten years.

ORDER

AND NOW, this ___ day of June 2013, the Court finds that Defendant's 2011conviction in New York for DWAI is a substantially similar offense; therefore, his current DUI is a second offense within ten years. Accordingly, Count 2 should be graded as a misdemeanor of the first degree and the mandatory minimum sentence would be 90 days of incarceration and a fine of $1,000.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
        Ronald Travis, Esquire (defense attorney)
        Work file