

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-1454-2014
	:
vs.	:
	:
	:
JOSEPH JENNINGS	:
Defendant	:

**OPINION AND ORDER**

This matter came before the court on the Commonwealth’s proposed point for charge for the offense of habitual offender, 75 Pa.C.S.A. §6503.1. The relevant facts follow.

Defendant Joseph Jennings is charged with being a habitual offender as a result of allegedly driving a motor vehicle on July 27, 2014 while his operating privilege was suspended or revoked due to three or more enumerated Vehicle Code violations within a five year period. According to the Commonwealth’s proposed point for charge, Defendant qualifies as a habitual offender due to a combination of three violations of driving without a license and driving under suspension within a five (5) year period in the early 1990s. The Pennsylvania Department of Transportation (Penn DOT) designated him a habitual offender and his license has never been restored. Therefore, relying on *Drudy v. Dep’t of Transp.*, 795 A.2d 508, 511 & n.7 (Pa. Commw. 2002), which held that a driver retains the habitual offender designation until his license is restored as well footnote 7 which rejected an argument that Act 143 of 1994 could automatically remove habitual offender status, the Commonwealth contends a jury charge that lists driving without a license and driving under suspension as enumerated offenses is appropriate in this case. The court cannot agree.

*Drudy* deals with the appropriate length of a suspension or revocation for a habitual offender; it does not concern the criminal offense for a habitual offender contained in 75 Pa.C.S. §6503.1. Suspensions and revocations are remedial sanctions, which are civil in nature. *Bell v. Commonwealth*, 96 A.3d 1005, 1018-1019 (Pa. 2014); *Zanotto v. Dep't. of Transp.*, 475 A.2d 1375, 1376 (Pa. Commw. 1984). The statutes that require these sanctions are construed liberally to effect the statute's remedial goals. *Rawson v. Dep't. of Transp.*, 99 A.3d 143, 153 (Pa. Commw. 2014). Although section 6503.1 borrows the definition of "habitual offender" from section 1542, section 6503.1 is a penal statute. Penal statutes are construed strictly. 1 Pa.C.S. 1928(b)(1); *Commonwealth v. Moran*, 104 A.3d 1136, 1145 (Pa. 2014).

Defendant is charged with being a habitual offender when he allegedly drove on July 27, 2014. On that date, three convictions arising from separate acts of any one or more of the following offenses within a five year period would result in habitual offender status: (1) any violation of Subchapter B of Chapter 37 (relating to serious traffic offenses); (2) any violation of Chapter 38 (relating to driving after imbibing alcohol or utilizing drugs) except for sections 3808(a)(1) and (b)(relating to operating a motor vehicle not equipped with ignition interlock) and 3809 (relating to restriction on alcoholic beverages); (3) any violation of section 1543(b)(1.1)(relating to driving while operating is suspended or revoked for a DUI offense with an amount of alcohol or controlled substances in his blood); (4) any violation of section 3367 (relating to racing on highways); (5) any violation of section 3742 (relating to accidents involving death or personal injury); (6) any violation of section 3742.1 (relating to accidents involving death or personal injury while not properly licensed); (7) any

violation of section 3743 (relating to accidents involving damage to attended vehicle or property). 75 Pa.C.S.A. §1542. Noticeably absent from this list of enumerated offenses are section 1501 (relating to driving without a license) and section 1543(a)(relating to driving while operating privilege is suspended or revoked).

Moreover, driving without a license and driving under suspension were removed from enumerated offenses that can trigger a habitual offender designation in 1994. Section 6503.1, the criminal “habitual offender” statute, was not passed until 1998. Therefore, driving without a license and driving under suspension were never offenses that could trigger the criminal penalties for habitual offenders.

Section 6503.1 was designed to provide greater criminal penalties for individuals who drive after their operating privileges have been suspended for multiple serious traffic offenses. While the court certainly does not condone the actions of individuals who repeatedly continue to drive without a license or drive after their operating privileges have been suspended or revoked, the criminal penalties for such individuals are contained in section 6503, not section 6503.1.

**ORDER**

**AND NOW**, this \_\_\_ day of December 2015, the court denies the Commonwealth’s requested jury instruction for the charge of habitual offender.

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)  
Edward J. Rymza, Esquire  
Lori Rexroth, Esquire

Gary Weber, Esquire  
Work file