

**IN THE COURT OF COMMON PLEAS OF  
LYCOMING COUNTY, PENNSYLVANIA**

**THOMAS STARK,  
Plaintiff**

**vs.**

**COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF TRANSPORTATION,  
Defendant**

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:  
: **NO. 15-00568**  
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***Date: September 17, 2015***

**I. PROCEDURAL HISTORY**

Thomas Stark, (hereinafter "Plaintiff") has appealed three Official Notices of Suspension issued by the Department of Transportation which suspended the Plaintiff's driver's license for a period in total of 18 months beginning March 5, 2015, due to his violation of Section 1532C of the Pennsylvania Vehicle Code. Plaintiff was convicted of violations of the Controlled Substance, Drug Device and Cosmetic Act, Section 13(a)(30). The Appeal was filed on February 27, 2015. The hearing was held August 25, 2015, before this Court. At the time of the hearing, Kelly Solomon, Esquire, was present on behalf of the Commonwealth, and Lori Rexroth, Esquire, was present on behalf of Mr. Stark. Both attorneys submitted briefs on September 1, 2015. Plaintiff argues that his convictions were due to one criminal episode and that only one 6-month period of suspension should have been imposed.

## **II. FACTS**

On August 25, 2015, after oral argument of the attorneys and entry of exhibits in the matter of ***Thomas Stark v. Commonwealth of Pennsylvania Department of Transportation***, the following facts were determined to have occurred.

Both attorneys were given the opportunity to request a further hearing or rely on briefs. Both attorneys submitted briefs to the Court.

Plaintiff entered a guilty plea for the seven Counts listed in the Criminal Information, including Counts under the Controlled Substance, Drug Device and Cosmetic Act, Section 13(a)(30). Plaintiff was sentenced for Count Three, Possession with the Intent to Deliver Marijuana, and Count 4, Conspiracy to Deliver Marijuana. The sentencing Judge merged Count One, Count Two and Count Five for the purposes of sentencing. The Department received notice of three separate convictions, occurring on three separate dates, and sent to the Plaintiff three separate and consecutive license suspensions.

## **II. DISCUSSION**

The Department suspended Plaintiff's license pursuant to Section 1532(c) of the Vehicle code, which reads:

(c) Suspension – The department shall suspend the operating privileges of any person upon receiving a certified record of the person's conviction of any offense involving the sale, delivery, offering for sale, holding for sale or giving away any controlled substance under the laws of the United States, this Commonwealth or any other state... (1) The period of suspension shall be as follows: For a first offense, a period of six months from the date of suspension”.

The Department bears the burden of making prima facie showing that multiple offenses were not part of single criminal episode. ***Giambrone v. Department of Transportation, Bureau of Driver Licensing***, 929 A.2d 1265, 1269 (Pa. Cmwlth. 2003)(internal citations omitted). The Department meets its burden by submitting into evidence its certified record of conviction demonstrating that each offense was separately charged and occurred on different days. ***Id.*** Upon this showing, the burden of proof shifts to the licensee to present “clear and convincing evidence” to rebut the presumption of correctness raised by the Department’s certified record. ***Id.***

The Department has clearly met its burden of prima facie showing that each offense was separately charged and occurred on different days through introduction of the certified record. The certified record reveals three separate dates of violation, November 16, 2012; April 26, 2012; and April 1, 2012. The certified record further shows three separate convictions under the Controlled Substance, Drug Device and Cosmetic Act, Section 13(a)(30).

Plaintiff offers the Criminal Information filed on March 3, 2014, and Sentencing Order of January 13, 2015. The Criminal Information charges the Plaintiff with seven separate counts. Plaintiff entered a guilty plea to all charges. Specifically, Count One alleges the Plaintiff delivered marijuana on April 26, 2012. Count Three charges the Plaintiff with Possession with intent to deliver in the period of “April 2012 through on or about November 2012”. However, Count Three specifically excludes “the above-charged delivery” date from this count.

Count Four specifically excludes “the date of the above-charged delivery and conspiracy”. Count Five charged Plaintiff with Possession with Intent to Deliver on November 16, 2012.

Plaintiff further relies on the Sentencing Order merging Counts One, Two and Five for the purposes of sentencing. The Department need not consider how the Plaintiff’s sentence was structured, but must find three separately charged, and separate date of violation convictions.

Plaintiff relies on ***Freundt v. Department of Transportation, Bureau of Licensing***, 883 A.2d 503 (Pa. 2005). This case is distinguished from *Freundt* in that the victim/employer could not conclusively demonstrate the particular dates of the misappropriations, only the time period in which the criminal activity took place. ***Freundt v. Department of Transportation, Bureau of Licensing***, 883 A.2d 503, 507-508 (Pa. 2005.) In Plaintiff’s case he entered a plea to all Counts. The Criminal Information set out separate dates. Plaintiff admitted guilt to both Count One and Count Five which list two separate dates. Counts Three and Four specifically exclude the dates of the delivery and conspiracy charge.

**CONCLUSION**

The Plaintiff has failed to meet his burden by clear and convincing evidence. The Plaintiff's three separate six-month license suspensions are reinstated.

BY THE COURT,

Joy Reynolds McCoy, Judge

JRM/jan

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