

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

**SHE DEVIL DASHER,
Appellant**

vs.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Appellee**

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NO. 20-0960

OPINION

A hearing on Appellant’s Petition for Appeal From a Suspension of Operating Privilege was held on April 15, 2021 at which time Appellant appeared and was unrepresented and Kelly Solomon, Esquire appeared on behalf of the Appellee. At the outset of the hearing, Attorney Solomon indicated that he would have requested a continuance in this matter pending the outcome of the *Commonwealth v. Chichkin* decision. However, he did not do so initially because Appellant filed her appeal untimely and therefore, he asked that her appeal be dismissed.

Generally, an appellant has thirty (30) days from the mailing date of the notice of suspension to file an appeal. 42 Pa.C.S. § 5571(b). If he or she fails to do so, the appeal is considered untimely. One exception is the three-part “non-negligent circumstances” exception in which appellant must show that: (1) the appellant's notice of appeal was filed late as a result of non-negligent circumstances . . . ; (2) the appellant filed the notice of appeal shortly after the expiration date; and (3) the appellee was not prejudiced by the delay. *Baum v. Com.*, 949 A.2d 345, 348 (Pa. Commw. Ct. 2008).

Here, the mailing date of the notice of suspension is August 24, 2020. The Verification signed by Appellant is dated September 24, 2020 but the appeal was not docketed until September 25, 2020. The Court finds that Appellant, who is proceeding pro se, attempted in good faith to file the appeal in a timely manner. The appeal was only one day late and therefore, no prejudice would have come to the Commonwealth. Therefore, Appellant's appeal will be permitted *nunc pro tunc*. Since the Court will allow the appeal to go forward, Appellant's license privilege is also hereby reinstated until a final determination of the appeal is entered. This matter will be rescheduled for October 21, 2021.

ORDER

AND NOW, this **21st** day of **April, 2021**, for the reasons set forth above, this matter is **CONTINUED** to October 21, 2021 at 10:00 a.m. in Courtroom No. 3 of the Lycoming County Courthouse. Pursuant to 75 Pa.C.S.A. § 1550(b)(1)(i), this appeal functions as a supersedeas and Appellant retains his driver's license until final determination of the suspension of operating privilege.¹

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

CC: Kelly Solomon, Esq.
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¹ 75 Pa.C.S.A. § 1550(b)(1)(i) ("Except as provided in subparagraphs (ii) and (iii), filing and service of a petition for appeal from a suspension or revocation shall operate as a supersedeas until final determination of the matter by the court vested with the jurisdiction of such appeals.").