

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF TRANSPORTATION, :
Appellee :
:
vs. : No. 22-0459
:
BRYAN BRAKER, :
Appellant :
:

Elizabeth S. Van Wert, Esquire Counsel for Appellee
Craig A. Sopin, Esquire Counsel for Appellant

MEMORANDUM OPINION

Matika, J. - July 16, 2026

This Opinion is written in response to the Notice of Appeal filed by the Appellant, Bryan Braker (hereinafter "Braker") from the Order of Court denying his driver's license appeal and directing that the suspension issued by the Commonwealth of Pennsylvania, Department of Transportation (hereinafter "PennDOT"), be reinstated. For the reasons stated herein, due to the untimeliness of said appeal, this Court asks that the appeal be quashed, or in the alternative, that the Order of Court dated April 17, 2026 be affirmed and this appeal denied.

FACTUAL AND PROCEDURAL BACKGROUND

On March 23, 2022, Braker filed a "Petition to Appeal From Order of Department of Transportation Suspending Motor Vehicle

Operating Privileges." This petition challenged the suspension of his driving privileges as set forth in a letter sent to Braker, mailed February 25, 2022, advising him that "as a result of your February 3, 2022 conviction of violating section 3733 of the Vehicle Code FLEEING POLICE OFFICER on 8/14/21: your driving privilege is SUSPENDED for a period of 1 year(s) effective 04/01/22 at 12:01 A.M."

A hearing was ultimately held on this petition on November 10, 2025¹. At that hearing, counsel for PennDOT offered into evidence a copy of PennDOT's "Certification and Attestation" dated April 27, 2022. Contained in that document, attested to by Yassmin Gramina, P.E. Secretary of the Department of Transportation, were the following documents: 1) a copy of the official Notice of Suspension sent to Braker with a mailing date of February 25, 2022 as a result of his February 3, 2022 conviction for FLEEING POLICE OFFICER on August 14, 2021; 2) the "Report of the Clerk of Courts showing the conviction or acquittal of any violation of the Vehicle Code"² (more commonly referred to as a "DL-21 Form"); and 3) a copy of Braker's Certified Driving Record. Thereafter the Commonwealth rested.

¹ The hearing in this case was delayed as this appeal was filed in conjunction with appeals in 22-0460 and 22-0461, and counsel for Appellant had requested numerous continuances due to a pending appeal before the Commonwealth Court which have a bearing on the appeal in 22-0460.

² This document clearly evidences the conviction of the aforementioned charge which gave rise to the Notice of Suspension set forth in the first document of this exhibit.

As to this appeal, Braker did not present any evidence or testimony.³

Thereafter, in conjunction with the complex legal issues involved in 22-0460, this matter was placed under advisement and decided in conjunction with 22-0461 and 22-0460. In this case, this Court denied Braker's appeal and directed the reinstatement of the suspension of his driving privileges.

On May 21, 2026, Braker filed this appeal, thirty-one (31) days after the Order was docketed on April 20, 2026. Notwithstanding, the untimeliness of that appeal, this Court issued its 1925(b) Order directing Braker to file a Concise Statement of Errors Complained of on Appeal. This Order was issued on May 22, 2026. Thereafter, on July 1, 2026 Braker filed his Concise Statement. In that statement Braker alleged two things, namely that:

1. The trial court erred in denying appellant's appeal where the Department failed to establish with sufficient and competent evidence the requisite conviction where the DL-21 Form and the driving record admitted into evidence reflect a conviction for a felony of the second degree as a major offense neither of which is supported; and
2. The trial court erred in denying appellant's appeal where

³ While Braker did testify, it was in relation to 22-0460, a case not involved in this Appeal.

the Department failed to establish with sufficient and competent evidence where Section 1532(a) does not provide for a one year suspension for a conviction under Section 3733(a) and where Section 1532(b)(2) provides for a "12-month suspension" when the conviction is reported to the Department under Article III of Section 1581 pertaining to driver license compact. There was no evidence of any report under the driver license compact.

LEGAL DISCUSSION

I. UNTIMELINESS OF APPEAL

Pursuant to Pa.R.A.P. Rule 903, "Except as otherwise prescribed by this Rule, the Notice of Appeal required by Rule 902 (Manner of Taking Appeal) shall be filed within 30 days after the entry of the order from which the appeal is taken." Rule 903A. "Because the timeliness of an appeal implicates our jurisdiction, we cannot address the merits of an appeal or cross-appeal before determining whether it was timely." *Krankowski v. O'Neil*, 972 A.2d 284, 285 (Pa. Super. 2007) citing, *In Re: Adoption of W.R.*, 823 A.2d 1013, 1015 (Pa. Super. 2003).

In the case *sub judice*, the order being appealed was dated April 17, 2026, but not docketed until April 20, 2026, thus Braker's right to file an appeal commenced on April 20, 2026. As noted, the Notice of Appeal was not docketed in this case until

Thursday, May 21, 2026, the thirty-first (31st) day after the Order was entered on the dockets.⁴

"Pennsylvania Rule of Appellate Procedure 903(a) mandates that "the notice of appeal . . . shall be filed within 30 days after the entry of the order from which the appeal is taken." This Court "is without jurisdiction to excuse failure to file a timely notice of appeal, as [the] 30-day period for appeal must be strictly construed; [an] untimely appeal divests the Superior Court of jurisdiction. *Young v. S.B. Conrad, Inc.*, 216 A.3d 267, 271 (Pa. Super. 2019) (internal citations omitted).

"In order to preserve the right to appeal from a final order of the Court of Common Pleas, a notice of appeal must be filed within 30 days after the date of the entry of that order. This Court is without jurisdiction to excuse a failure to file a timely notice, as the 30-day period must be strictly construed. Further, we note that an untimely appeal divests this Court of jurisdiction. *Valley Forge Center Associates v. RIB-IT/K.P., Inc.*, 693 A.2d 242, 245 (Pa. Super. 1997) (internal citations omitted).

⁴ It should also be noted no petition to allow an appeal nunc pro tunc was ever filed in this case.

Thus, as a result of the late and untimely filing of this appeal, the Commonwealth Court is divested of jurisdiction over this matter and the appeal should be quashed.

II. MERITS OF THE APPEAL

Assuming arguendo, that the Appellate Court allows the appeal to be maintained, our decision to deny Baker's underlying appeal of his operating privileges should be affirmed.

a. Sufficiency of Evidence Claim

In his first perceived error, Braker argues that the evidence to sustain the burden of PennDOT is insufficient. However, he does not suggest what it is that PennDOT lacked in that regard.

PennDOT presented a certified record, Exhibit 1 to support its burden. In that record were the following documents: 1) the official Notice of Suspension sent to Braker on February 25, 2022 informing him of its authority under 75 Pa.C.S.A. §1532B to suspend his driving privileges for one (1) year as a result of a February 3, 2022 conviction for violating §3733 of the Vehicle Code, to wit, "FLEEING POLICE OFFICER"; 2) The DL-21 form submitted by the Carbon County Clerk of Courts Office which set forth thereon all necessary identifying information for Braker, the date of violation (August 14, 2021), the date of conviction (February 3, 2022), the charge (FLEEING OR ATTEMPTING TO ALLUDE POLICE), and the grading of the offense (F2); and 3) a certified driving history

for Braker dated April 27, 2022 on page 5 thereof, and this same relevant and pertinent information.

Upon offering this record into evidence, and without objection from Braker, the certified record was admitted.⁵ PennDOT then rested and no defense nor argument was presented by Braker.

Hearings on appeal to the Court of Common Pleas from a Notice of Suspension of Operating Privileges is *de novo*. In such hearings, PennDOT has the burden to show by a preponderance of the evidence that there was a basis for the suspension. *Comm. of PA, Dept of Transportation, Bureau of Traffic Safety v. Critchfield*, 305 A.2d 748 (Pa. Cmwlth. 1973). "An essential part of satisfying this burden in the production of an official record of the conviction supporting the suspension." *Spagnoletti v. Comm. of PA, Dept. Of Transportation, Bureau of Driver Licensing*, 90 A.3d 759, 766 (Pa. Cmwlth. 2013). In the case *sub judice*, included in the official record, Exhibit 1, is Braker's driving record which notes this conviction for fleeing or attempting to elude police, a violation of 75 Pa.C.S.A. §3733 as well as the DL-21 which also reflects that conviction. These documents satisfy PennDOT's burden here. Thus, PennDOT was correct in suspending Brake's driving privileges for a period of one (1) year pursuant to 75 Pa.C.S.A. §1532(b) (3).

⁵ See 75 Pa.C.S.A. §1550(d) (1).

Next, Braker seems to argue that PennDOT did not establish through its evidence that neither §1532(a) of Title 75 nor §1532(b)(2) of that same title was applicable to warrant this one (1) year suspension. Braker's argument, however, is meritless as PennDOT did not seek to suspend Braker under either of those sections of §1532 but rather under §1532(b)(3) which reads, in pertinent part, "[T]he department shall suspend the operating privilege of any driver for 12 months upon receiving a certified record of the driver's conviction of section 3733 (relating to fleeing or attempting to elude police officer)." §1532(b)(3).

CONCLUSION

Based on the foregoing, this Court would request that this appeal be quashed for want of appellate jurisdiction based upon an untimely appeal or, in the alternative, for an affirmance of our decision to deny Braker's License Suspension Appeal and accordingly allow for the reinstatement of his suspension.

BY THE COURT:

/s/ Judge Joseph J. Matika
Joseph J. Matika, J.