

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

DAVID A. KOCIS, :  
Petitioner/Appellant :  
 :  
Vs. : No. 15-0936  
 :  
COMMONWEALTH OF PENNSYLVANIA :  
DEPARTMENT OF TRANSPORTATION :  
BUREAU OF DRIVER LICENSING, :  
Respondent/Appellee :

MEMORANDUM OPINION

Matika, J. - February 4, 2016

The Appellant, David A. Kocis, (hereinafter "Kocis") has appealed from the Order of Court date December 14, 2015 on the basis that this Court erred in denying his request to reverse the driver's license suspension imposed by the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing (hereinafter "Bureau").

The salient facts which placed this case in motion began on March 15, 2014 when Kocis was charged in Carbon County with a violation of 75 Pa. C.S.A. §3802(a), Driving Under the Influence - General Impairment. Shortly thereafter, and before the first matter was resolved, Kocis was arrested on June 1, 2014 in Columbia County for the same offense. On January 12, 2015, Kocis was convicted and sentenced in that latter case in Columbia County on that DUI charge, a first offense for sentencing purposes. Thereafter, in Carbon County on February 24, 2015, Kocis was

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convicted and sentenced in Carbon County for the March 15, 2014 offense.

On or about April 7, 2015, the Bureau notified Kocis that effective May 19, 2015, his driving privileges were being suspended for a period of one (1) year. On May 6, 2015, Kocis filed an appeal from the suspension of operating privileges. On June 29, 2015, this Court conducted a hearing on that appeal and thereafter issued the December 14, 2015 Order which is the subject of this appeal.

On January 6, 2016, Kocis filed the instant appeal. Thereafter, on January 14, 2016 this Court, pursuant to Pennsylvania Rule of Appellate Procedure 1925, directed Kocis to file a concise statement of matters complained of on appeal, which he timely filed on February 3, 2016.

In that concise statement, Kocis alleges that: " . . . the trial court erred by applying the new version of 75 Pa. C.S. §3806(b), which was enacted over nine (9) months after the time of Petitioner's violation occurred, and which application thereof causes Petitioner to be subjected to a greater punishment both criminally and civilly as opposed to the law that was in effect at the time of Petitioners (sic) violation?"

Kocis further states that by allowing this suspension to stand, it would result in a retroactive application of 75 Pa. C.S. §3806(b) which violated the *ex post facto* clause and Pennsylvania

Law.

The Court would first point out that the denial of Kocis' Appeal in no way affects his underlying criminal case nor subjects him to greater punishment criminally. In fact, at the time of sentencing in Carbon County, Judge Roger N. Nanovic apparently agreed with Kocis that sentencing him as a second time DUI offender would violate the *ex post facto* clause in a criminal case. In the case *sub judice* (suspension appeal), the Court is dealing with civil consequences imposed by the Bureau, not criminal consequences imposed by a Trial Judge.

In further reviewing Kocis' concise statement, the Court believes the issue raised therein is otherwise fully and adequately addressed in the footnote to the Order of December 14, 2015. Our brief, yet succinct explanation and rationale is sufficient to explain this Court's reasoning for denying Kocis' appeal. The Court has appended that Order to this Memorandum Opinion for ease of reading and access by the Appellate Court.

BY THE COURT:

  
Joseph J. Matika, J.

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
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DAVID A. KOCIS,  
Petitioner

Vs.

No. 15-0936

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION  
BUREAU OF DRIVER LICENSING,  
Respondent

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ORDER OF COURT

AND NOW, this 14<sup>th</sup> day of December, 2015, upon consideration of the "Appeal From the Suspension of Operating Privileges" filed by the Petitioner, David A. Kocis, and after hearing held thereon along with briefs lodged by both parties, it is hereby ORDERED and DECREED that the Appeal is DENIED<sup>1</sup>.

<sup>1</sup> In this case, the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing bears the burden of establishing a *prima facie* case that a record of conviction supports a suspension. *Sivak v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing*, 9 A.3d 247 (Pa. Commw. Ct. 2010). To overcome that burden, the Petitioner must show by clear and convincing evidence that the record was erroneous. *Mateskovich v. Department of Transportation, Bureau of Driver Licensing*, 715 A.2d 100 (Pa. Commw. Ct. 2000). The facts of this case are not in dispute; however, the applicable law is. Petitioner was charged with a violation of 75 Pa.C.S.A. §3802(a) in Carbon County on March 15, 2014. On June 1, 2014, Petitioner was charged with the same offense in Columbia County. On January 12, 2015, Petitioner was sentenced as a first time DUI offender in Columbia County. In accordance with the statute, no suspension of his operating privileges resulted from that conviction. On February 24, 2015, Petitioner was sentenced in Carbon County on a charge of 75 Pa.C.S.A. §3802(a), also as a first offender for sentencing purposes. Apparently, Petitioner was able to successfully convince the Sentencing Judge that the amendment to 75 Pa.C.S.A. § 3806, effective December 26, 2014, would result in an improper *ex post facto* application of the law. As a result, Petitioner was sentenced once again as a first time offender. He now makes the same argument here in the context of a license suspension case. However, the outcome differs for the reasons stated below.

Petitioner first argues that the statute in effect at the time of violation of this offense (hereinafter referred to as "Old Law") applied here

and not the statute in effect on February 24, 2015. This Old Law reads as follows:

(b) **Repeat offenses within ten years.**-- The calculation of prior offenses for purposes of sections 1553(d.2) (relating to occupational limited license), 3803 (relating to grading) and 3804 (relating to penalties) shall include any conviction, adjudication of delinquency, juvenile consent decree, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition within the ten years before the present violation occurred for any of the following:

- (1) An offense under section 3802 . . . (emphasis ours)

The statute in place at the time of sentencing for the Carbon County conviction reads as follows:

(b) **Repeat offense within ten years.**--The calculation of prior offenses for purposes of sections 1553(d.2) (relating to occupational limited license), 3803 (relating to grading) and 3804 (relating to penalties) shall include any conviction, whether or not judgment of sentence has been imposed for the violation, adjudication of delinquency, juvenile consent decree, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition within the ten years before the sentencing on the present violation for any of the following:

- (1) An offense under section 3802 . . . (emphasis ours)

Clearly, the ten year lookback periods would run from different dates depending upon the version of the laws applicable in this case. Accepting Petitioner's version would result in no prior offenses and Petitioner would succeed in arguing that no license suspension should be forthcoming because 75 Pa.C.S.A. §3804 (e)(2)(iii) dictates that conclusion. On the other hand, in considering the statute in effect at the time of sentencing, the ten year look back period would be identified as February 24, 2015. This look back would result in the locating of a prior conviction on or before Petitioner's sentencing on January 12, 2015 in Columbia County. Accordingly, for purposes of 75 Pa.C.S.A. §3804, Petitioner's operating privileges would be suspended under the law existing at the time of sentencing for the Carbon County conviction for a period of twelve (12) months. 75 Pa.C.S.A. §3804(e)(2)(i).

75 Pa.C.S.A. §3806(a) defines a "prior offense" in both the new version and prior version of the statute as: " . . . a conviction, . . . before the sentencing on the present violation . . . ." This language is consistent with the language contained in the new version of 3806(b). It does, however, conflict with the language in the old version and as argued by Petitioner should result in a ruling in his favor. This Court disagrees with Petitioner that the version of the law in effect at the time of violation applies; an argument that implicitly suggest a violation of *ex post facto* laws.

Case law is clear that a statute cannot be made applicable retroactively in imposing criminal penalties on a defendant. However, suspensions of operating privileges are civil consequences stemming from a conviction for DUI. It is a collateral civil consequence, not a criminal penalty, and separated as such in §3804. *Thorek v. Department of Transportation, Bureau of Driver Licensing*, 938 A.2d 505, 509, n.4 (Pa. Commw. Ct. 2007)

Accordingly, the suspension of the operating privileges of David A. Kocis shall stand as notified by the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing.

BY THE COURT:

  
Joseph J. Matika, J.

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It should also be noted that the historical and statutory notes to §3806 as amended and effective December 26, 2014 "provides that [t]he amendment of 75 PA. C.S.A. §3806(b) shall apply to persons sentenced on or after the effective date of this section." This is consistent with the change in the language regarding the look back date.

Accordingly, the Court finds that while the timing of the effective date of the amendment to §3806(b) may have benefited the Defendant in the context of his criminal case, that same argument does not work to his benefit in the context of his license appeal. The evidence and the law in effect and applicable in this case dictates and demands that Petitioner's operating privileges be suspended for twelve (12) months.