

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

CHRISTOPHER T. WINKLER, :  
 :  
Appellant :  
 :  
v. : No. 20-0723  
 :  
COMMONWEALTH OF PENNSYLVANIA :  
DEPARTMENT OF TRANSPORTATION, :  
 :  
Appellee :

FILED  
2020 OCT 15 AM 8:25  
CARBON COUNTY  
PROTHONOTARY

Christopher T. Winkler Pro Se  
Robert J. Kopacz, Esquire Counsel for Appellee

**MEMORANDUM OPINION**

Serfass, J. - October 15, 2020

Here before the Court is the Pennsylvania Department of Transportation's Appeal of our Order dated August 14, 2020 wherein we granted the driver's license suspension appeal of Christopher T. Winkler. We file the following Memorandum Opinion pursuant to Pa. R.A.P. 1925(a) and respectfully recommend that our Order of August 14, 2020 be affirmed for the reasons set forth in this Memorandum Opinion.

**FACTUAL AND PROCEDURAL BACKGROUND**

On June 11, 2018, Christopher T. Winkler (hereinafter "Winkler") was convicted in this Court of DUI- General Impairment (75 Pa. C.S.A. § 3802(a)(1)). The Office of the Clerk of Courts of Carbon County sent notice of Winkler's conviction to the

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Commonwealth of Pennsylvania Department of Transportation (hereinafter "PennDOT") on March 16, 2020. Via an "Official Notice of Suspension" dated March 24, 2020, PennDOT notified Winkler of a one-year suspension of his driving privilege. He then filed an appeal in this Court contesting that suspension on May 4, 2020. A hearing on Winkler's license suspension appeal was held before the undersigned on July 13, 2020.

During the license suspension appeal hearing, Winkler testified that he had not driven for one year following his DUI conviction under the assumption that his driver's license was suspended immediately upon conviction. (N.T. 7/13/20, p. 5). Winkler further testified that although he was subsequently admitted into the Accelerated Rehabilitation Disposition Program (ARD) in Lehigh County for an earlier Driving Under the Influence charge, he has been driving again for the past year without incident.<sup>1</sup> (N.T. 7/13/20, pp. 5-6)

Additionally, counsel for PennDOT asked Winkler on cross examination whether there has been any substantial change in his life since the time of his conviction on June 11, 2018. Winkler stated that he was going through a divorce at the time of the

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<sup>1</sup> A review of the documents attached to Winkler's "Petition for Appeal from a Suspension of Operating Privilege" reveals that he was admitted to the ARD Program in Lehigh County on July 24, 2018 (approximately one month after his Carbon County conviction) based upon an underlying DUI offense which occurred on September 20, 2017. Therefore, the Lehigh County violation pre-dated the Carbon County violation, which occurred on February 16, 2018.

conviction and that he has since been working<sup>2</sup>, taking medication to help with drinking, and has been helping to raise his children (N.T. 7/13/20, pp. 7-8). Winkler further testified that having his driver's license back has made it easier for him to work during the past year (N.T. 7/13/20, p. 7).

PennDOT did not contest that the notice of driver's license suspension was sent over twenty-one (21) months after Winkler's conviction for Driving Under the Influence. However, PennDOT's counsel asserted that Winkler's license suspension should stand because the Department was not at fault for the delay.<sup>3</sup>

After considering the testimony presented at the hearing and the caselaw surrounding delayed notice of driver's license suspensions where PennDOT is not at fault, we issued an order granting Winkler's license suspension appeal on August 14, 2020.

### ISSUES

In its Concise Statement of Matters Complained of on Appeal, which was filed in this Court on September 21, 2020, PennDOT states:

1. The trial court erred as a matter of law and/or fact when it relied upon the decisions in *Middaugh v. Department of Transportation, Bureau of Driver Licensing*, 196 A.3d 1073

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<sup>2</sup> Winkler has been employed with Sobrinski Painting in Allentown, Pennsylvania for eight (8) years.

<sup>3</sup> The Clerk of Courts failed to notify PennDOT of Winkler's conviction, which caused the delay in this case.

(Pa. Cmwlth. 2018), *appeal granted*, 208 A.3d 460 (Pa. 2019), and *Gingrich v. Department of Transportation, Bureau of Driver Licensing*, 134 A.3d 528 (Pa. Cmwlth. 2016) because they were wrongly decided. The correct standard was established by the Pennsylvania Supreme Court in *Terraciano v. Department of Transportation, Bureau of Driver Licensing*, 134 A.2d 233, 236 (Pa. 2000), in which the Court held that "[i]n order to sustain an appeal of a license suspension based on delay, the licensee must prove that: (1) an unreasonable delay chargeable to PennDOT led the licensee to believe that her operating privileges would not be impaired; and (2) prejudice would result by having the operating privileges suspended after such delay." In the subject matter any delay in the reporting of the conviction is attributable to the Criminal Clerk of Court of Carbon County and there is no delay attributable to PennDOT in the imposition of suspension; and

2. The Department reserves the right to argue any additional issues that may be raised by the Common Pleas Court's Opinion filed in support of that Court's Order dated and filed August 14, 2020.

## DISCUSSION

Regardless of how PennDOT believes the Pennsylvania Commonwealth Court should have decided the issue of delays in driver's license suspension notification, Gingrich and Middaugh are the controlling cases on this issue in this Commonwealth.

Though typically relief from a delayed driver's license suspension is only granted where the Pennsylvania Department of Transportation is at fault, the Pennsylvania Commonwealth Court created an exception in Gingrich v. Com., Dept. of Transportation, Bureau of Licensing. To qualify for the exception, a petitioner must satisfy three (3) factors when the delay is caused by the clerk of courts. The factors are: (1) there is a conviction that is not reported for an extraordinary period of time; (2) the licensee has a lack of further violations; and (3) the petitioner must demonstrate prejudice as a result of the delay. Gingrich v. Com., Dept. of Transportation, Bureau of Licensing, 134 A.3d 528, 535 (Pa. Cmwlth. 2016).

While the Commonwealth Court has upheld relief for a delay as short as four months, clarification was provided on what qualifies as an "extraordinarily extended period of time" in Middaugh v. Department of Transportation, Bureau of Driver Licensing. The Commonwealth Court determined that when the delay by the clerk of courts exceeds the applicable period of the license suspension

plus ten days and the other Gingrich factors are met, a court of common pleas may grant relief. Middaugh v. Department of Transportation, Bureau of Driver Licensing, 196 A.3d 1073, 1086 (Pa. Cmwlth. Ct. 2018).

PennDOT asserts that the case of Terraciano v. Department of Transportation, Bureau of Driver Licensing should be the controlling case on this issue. However, Terraciano was decided in 2000, and was overturned by Gingrich and Middaugh as Gingrich created an exception to the general rule in Terraciano that PennDOT must be responsible for a delayed license suspension in order for a licensee to obtain relief based on such a delay. Gingrich, 134 A.3d (generally). Further, the decision in Middaugh clarified the Gingrich element of an "extraordinarily extended period of time." Middaugh, 196 A.3d at 1086.

Despite PennDOT's stated preference concerning Terraciano, our decision in this case was properly based upon the precedents established in Gingrich and Middaugh. Here, Winkler was convicted of Driving Under the Influence on June 11, 2018. He did not receive notice of his one year license suspension until March 24, 2020, which is over twenty-one months later. Twenty-one months clearly exceeds the duration of Winkler's one year license suspension plus ten days. Therefore, the notification delay in this matter meets the Middaugh standard of the first Gingrich

factor that an extraordinarily extended period of time must have passed since the conviction.

Second, other than Winkler's July 24, 2018 acceptance into the ARD program in Lehigh County for a DUI offense which pre-dated his conviction in Carbon County, Winkler contends that he has not had any further violations of the Vehicle Code. Therefore, the second Gingrich factor, a lack of further violations of the Pennsylvania Vehicle Code for an extended period of time, is satisfied in this case.

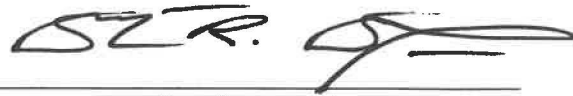
Lastly, at the time of Winkler's conviction, he believed that his license was suspended, and thus refrained from driving for one year. Additionally, Winkler testified that driving for the past year has made it easier for him to continue working and caring for his children. Therefore, the third Gingrich factor, that the petitioner must demonstrate prejudice as a result of the delay, is met in this case. If Winkler were required to serve the one year license suspension now, he would be prejudiced relative to his work and child care commitments.

We found Winkler's testimony at the July 13, 2020 hearing to be credible and granted his driver's license suspension appeal based on the delay in notification to PennDOT, the fact that Winkler meets the Middaugh and Gingrich standards, and that the remaining Gingrich factors are satisfied.

**CONCLUSION**

For the reasons set forth hereinabove, this Court respectfully recommends that the appeal of the Pennsylvania Department of Transportation be denied and that our Order of August 14, 2020 be affirmed accordingly.

**BY THE COURT:**

A handwritten signature in black ink, appearing to read "S.R. Serfass", written over a horizontal line.

**Steven R. Serfass, J.**