

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

COMMONWEALTH OF	:	AUGUST TERM, 2007
PENNSYLVANIA, DEPARTMENT OF	:	
TRANSPORTATION,	:	NO. 3782
Appellant,	:	
v.	:	2317 CD 2007
	:	
AUSTIN MEEHAN, III	:	
Appellee.	:	

RAU, J.

OPINION

I. Introduction

Justice Holmes explained in 1920 that “[m]en must turn square corners when they deal with the Government.” Rock Island, Arkansas & Louisiana R.R. Co. v. United States, 254 U.S. 141, 142 (1920). This appeal deals with what happens when the Government misses a turn. The Pennsylvania Department of Transportation (hereinafter “PennDOT”) has gone off the road not once, but twice while trying to suspend petitioner Austin Meehan, III’s license. Any car-racing aficionado knows what should happen next: the errant driver concedes the race and learns for next time. However, PennDOT—perhaps intending to salve its wounded pride—persists in trying to wrench its vehicle back onto the track. It falls to this Court to wave the yellow flag, stop the race, and declare PennDOT disqualified.

In this case, PennDOT's first mistake was suspending Mr. Meehan's license after a judge ordered it to keep Mr. Meehan's license in effect during the pendency of his appeal to the Commonwealth Court. Second, once the Commonwealth Court decided the appeal, PennDOT completely failed both to notify Mr. Meehan that it was going to suspend his license and to effectuate the suspension. It was not until over 6 years after the illegal suspension and over 5 years after PennDOT had authority to suspend Mr. Meehan that PennDOT learned serendipitously of these two significant errors. In 2007 during a routine traffic stop in New Jersey, Mr. Meehan was surprised to learn that his license was suspended in Pennsylvania. Mr. Meehan filed a nunc pro tunc appeal in an effort to unravel the mystery of his Pennsylvania suspension.

Having twice failed to comply with the law, once by commission and once by omission, PennDOT is now creatively attempting to rely on its own initial illegal suspension action to supplant the suspension it negligently forgot to instate when it had legal authority. This Court rejected PennDOT's two-wrongs-make-a-right argument and rescinded Mr. Meehan's March 2001 suspension. PennDOT's statement of errors complained of on appeal, submitted pursuant to Pa.R.A.P. 1925(b), is a combination of efforts to trip Mr. Meehan in the procedural snares its own errors created and objections to this Court's findings. As none of PennDOT's arguments have merit, this Opinion reviews what happened, explains the legal consequences of PennDOT's miscues, and demonstrates that the suspension was properly rescinded.

II. Factual Background

On November 21, 1998, Austin Meehan III was arrested in New Jersey for driving under the influence of alcohol.¹ (Appellant's Ex. C-1 #13.) New Jersey convicted him on February 10, 1999, and suspended his New Jersey operating privileges for six months. (Appellant's Ex. C-1 #12; Trial Tr. 82:4-13.) Mr. Meehan fully served the New Jersey suspension in 1999. (Trial Tr. 82:21-25; 83:1-2.)

New Jersey promptly informed PennDOT of Mr. Meehan's conviction under the Interstate Driver's License Compact, 75 Pa.C.S. § 1581. PennDOT proceeded to suspend Mr. Meehan's Pennsylvania driver's license for the period given under Pennsylvania law for driving under the influence—one year. (Appellant's Ex. C-1 #6; Trial Tr. 83:3-18.) Believing that the Compact's application of two suspensions for the same incident was unconstitutional, Mr. Meehan appealed his suspension to the Court of Common Pleas. (Trial Tr. 83:19-25; 84:1-5.) His appeal was consolidated for trial with those of others similarly situated. (Trial Tr. 84:6-18.) Judge Willis Berry denied the appeals² on October 20, 2000. (Appellant's Ex. C-1 #3.) Mr. Meehan then appealed once again, to the Commonwealth Court. (Trial Tr. 84:22-25; 85:1-19.)

This, unfortunately, is where things began to go awry. Mr. Meehan, wanting to retain his driving privileges while the Commonwealth Court considered his case, requested a supersedeas from the Court of Common Pleas. See generally 75 Pa.C.S. § 1550(b)(iii) (providing that appeals to the Commonwealth

¹ Mr. Meehan has had no further arrests for driving under the influence of alcohol.

² The record suggests, but does not confirm, that all of the appeals were denied.

Court do not automatically act as a supersedeas). On December 15, 2000, Judge Joseph Papalini granted the supersedeas and ordered that Mr. Meehan's license could not be suspended based on the New Jersey conviction until the Commonwealth Court had decided the appeal. (Appellee's Pet. to Appeal License Suspension Nunc Pro Tunc (hereinafter "Appellee's Pet.") Ex. 4, at 6; Trial Tr. 85:20-25; 86:1-25; 87:1-8.) Yet, that is exactly what PennDOT did: on March 20, 2001, while the matter was still before the Commonwealth Court, PennDOT defied Judge Papalini's order by sending Mr. Meehan a letter of suspension and reinstating his suspension effective April 24, 2001.³ (Appellant's Ex. C-1 #1; Trial Tr. 9:8-15; 23:24-25; 24:1.)

At trial, PennDOT's counsel—though skilled and zealous in his advocacy—could not explain why PennDOT had erred so egregiously. Indeed, he was obliged as a matter of honesty to concede that "[i]t is my client's duty to comply with an order of Court." (Trial Tr. 29:9-10.) The simplest explanation is that when Mr. Meehan's case was consolidated, he was not the first name in the

³ At trial, PennDOT briefly contended that Mr. Meehan had the burden of enforcing Judge Papalini's order, and that because he did not petition Judge Papalini for redress the suspension now must be considered valid. (Trial Tr. 60:17-23.) This position is entirely without merit and was not pursued in PennDOT's appeal. It amounts to a preposterous argument that court orders are mere suggestions unless someone complains. Any inquiry into the logic of that idea falls instantly into paradox: it postulates that orders are not legally binding until someone asks for their enforcement, but an order can never be enforced if it is not already legally binding. The only reasonable view is that Judge Papalini's order created rights and obligations, and Mr. Meehan was entitled to expect PennDOT's compliance with them.

Given that PennDOT's April 2001 suspension of Mr. Meehan's license directly violated a court order, the suspension was invalid from the outset rendering the issue of notice to Mr. Meehan and the need for him to timely appeal the illegal suspension irrelevant. Mr. Meehan testified credibly that he did not receive this notice or otherwise learn of PennDOT's April 24, 2001 suspension of his license until July 2007. (Trial Tr. 98:4-7.) Mr. Meehan had hired counsel and promptly appealed his initial suspension and took the additional step of getting Judge Papalini's order to keep his license in place during the appeal to the Commonwealth Court. Certainly, if Mr. Meehan had ever learned that PennDOT had defied Judge Papalini's order by prematurely suspending his license, he would have acted promptly as he had in the past and contacted his counsel to deal with PennDOT's error.

caption, and PennDOT lost track of his Commonwealth Court appeal and Judge Papalini's order prohibiting suspension pending appeal. It is likely that PennDOT miscategorized him as a routine case and sought to reinstate his suspension after he lost his appeal in the Court of Common Pleas. The timing of Mr. Meehan's March 20, 2001 reinstatement notice is consistent with that theory: it arrived around the time it would have if he had not appealed the Court of Common Pleas decision. Indeed, PennDOT agreed that the letter was sent "in the way that they normally do for cases that are not appealed to the higher courts." (Trial Tr. 70:21-25.) Given how unusual consolidation of license suspension cases is, the mistake is understandable, but it was a mistake nonetheless.

That was the first error PennDOT made. The second came, ironically, after PennDOT won. On February 22, 2002, the Commonwealth Court dismissed Mr. Meehan's appeal without opinion. (Appellee's Pet. Ex. 4, at 7.) At that point, PennDOT was free to reimpose his suspension but needed to follow the statutory guidelines for doing so. Notable among those guidelines is 75 Pa.C.S. § 1540(b)(1), which provides that "[u]pon the suspension or revocation of the operating privilege . . . of any person by the department, the department shall forthwith notify the person in writing" This notice is vital, because a person must turn in his or her license pursuant to a notice before they can get credit for serving a suspension—merely being suspended and not driving is not enough. (Appellant's Ex. C-1 #1.) However, PennDOT entirely neglected this part of its obligations. At trial, it admitted that it did not send a new reinstatement notice

after the Commonwealth Court’s ruling, nor did it otherwise act to reimpose the suspension.⁴ (Trial Tr. 31:23-25; 32:1-20.)

While time may have stopped in 2001 for PennDOT, it kept moving for Mr. Meehan.⁵ Lacking any word as to the status of his appeal or his suspension—“I never heard anything,” he testified—Mr. Meehan had little to go on but the authorities’ behavior in dealing with his license. (Trial Tr. 92:25.) In 2001 he turned his Pennsylvania license in to New Jersey, and received a new license from New Jersey without incident or mention of a Pennsylvania suspension. (Appellee’s Pet. Trial Tr. 87:9-13, 25; 88:1-4.) New Jersey renewed his license in 2005 without complaint or mention of a suspension problem in Pennsylvania. (Trial Tr. 89:5-11.) With PennDOT silent and New Jersey’s licensing officials saying nothing about a PennDOT suspension—and Mr. Meehan knew from personal experience that they were in communication—he apparently believed that the suspension had simply gone away.

Mr. Meehan’s life was changing rapidly. At the turn of the millennium, Mr. Meehan was a project manager for General Asphalt Paving Company, the Meehan family business which has been operating for over 100 years. (Trial Tr. 94:21-25; 95:1-2.) “When you’re a project manager,” he explained, “. . . if you’re running the site specifically, you’re in the same location every day . . . You do everything from preparing the project, to overseeing the execution through your final billings and paperwork . . .” (Trial Tr. 95:10-14; 97:8-10.) Thus, until

⁴ PennDOT, of course, argues now that it did not need to provide notice because it can rely on the March 20, 2001 suspension letter that was inadvertently sent in violation of Judge Papalini’s order.

⁵ Mr. Meehan’s testimony was credible in its entirety.

approximately 2002 Mr. Meehan's work was focused on a single location at a time, and his intent was to work only at New Jersey job sites if his Pennsylvania operating privileges were suspended. (Trial Tr. 95:15-18; 97:8-10.)

In approximately 2003, Mr. Meehan was promoted to the presidency of General Asphalt Paving. (Trial Tr. 94:20-22; 112:18-25; 113:1-3.) Mr. Meehan credibly testified about the change in his responsibilities as follows:

"As the president of the company, our main office is based in Philadelphia, and driving is crucial to my job. I mean, I'm all over the place with clients, customers, generating business, following up on business, checking job sites. Our job sites are located everywhere from Allentown to North Jersey down to Maryland . . . I check everybody's job costing. I check everybody's progress. I check billings. I check the job site safety. I check customer relationships."

(Trial Tr. 96:9-15;109:13-17.) At trial, Mr. Meehan credibly testified that none of his other employees can drive him to and from his various destinations. "I would have to hire additional people," he testified. "No one person has a job where they have enough time to be at my beck and call. Everybody in the company is very busy." (Trial Tr. 111:13-25; 112:1-17.) Moreover, he cannot reassign his duties. When PennDOT suggested the company's vice president as someone who could shoulder some of Mr. Meehan's obligations, he credibly testified that the vice president is not trained to do the president's work. (Trial Tr. 112:5-17.)

From a more personal perspective, Mr. Meehan's children have gotten older since the conviction of 2000. They have begun to participate in league sports, and he transports them to their games. (Trial Tr. 97:15-19; 98:1-2; 120:18-25; 121:1-2.) In addition, his mother-in-law is now disabled. Mr. Meehan drives her to her doctor's appointments. (Trial Tr. 97:19-21; 98:2-3.)

PennDOT was pulled into the current day by a New Jersey police officer, who detected the improperly imposed April 2001 Pennsylvania suspension during a traffic stop of Mr. Meehan in July 2007. (Trial Tr. 98:4-10.) He was cited only for driving while under suspension. (Trial Tr. 100:3-7.) Mr. Meehan asked his lawyer to investigate and got an abstract summarizing his license status. (Trial Tr. 89:16-25; 99:3-7.) Upon determining that there was a suspension on his driving record, they promptly filed this appeal with a motion *nunc pro tunc* in August 2007.

III. **Procedural History**

Since PennDOT never sent Mr. Meehan a notice of a suspension following the Commonwealth Court's decision in 2002, Mr. Meehan filed his appeal with a motion to proceed *nunc pro tunc* in August 2007 promptly after he learned during the July 2007 traffic stop that his license was suspended in Pennsylvania. With PennDOT's agreement, argument on the *nunc pro tunc* motion was consolidated with the trial on the merits, and hearings were held on October 25, 2007 and November 9, 2007.⁶ (Trial Tr. 14:1-3; 22:17-19.) This Court granted Mr. Meehan's motion to file *nunc pro tunc* and sustained his appeal on November 20, 2007. PennDOT appealed to the Commonwealth Court

⁶ In its Rule 1925(b) statement, PennDOT takes the position that Mr. Meehan should have been required to file a separate appeal petition after a hearing on his motion to proceed *nunc pro tunc*. Appellant's Statement of Errors Complained of on Appeal, ¶ 5. Since PennDOT agreed to have all of the issues heard at once, it cannot now claim that it was error for this Court to proceed directly to the merits. See generally Pa.R.Civ.P. 227.1(b)(1) (waiving issues on appeal where no objection was made at trial).

and responded to a request for a concise statement of errors complained of on appeal in a timely manner.

IV. Legal Discussion

This Court correctly rescinded Mr. Meehan's suspension because PennDOT cannot violate court orders, act without jurisdiction, and then claim that by piling error upon error it has built itself a legally sound edifice. Under the law, PennDOT's missteps mean that it did not legally suspend Mr. Meehan's operating privileges, and that it cannot do so now, five years after it had authority to do so. That is patently an undue delay, and this Court found that unfair prejudice will result if the suspension goes through. Mr. Meehan was permitted to appeal *nunc pro tunc* in the interest of justice due to the breakdown in PennDOT's system that led to these unusual events and according to correct practice in these matters.⁷

In order to cut through the procedural snarl this case is caught in, this Opinion will proceed in three parts. First, in part (A), it finds that the April 2001 suspension, sought to be imposed in violation of a court order, was invalid for lack of jurisdiction. As a result, Mr. Meehan's operating privileges were never

⁷ In its Rule 1925(b) statement, PennDOT makes much of the fact that Mr. Meehan's counsel orally moved to amend his petition to be, not a motion to file a *nunc pro tunc* appeal based on undue delay and unfair prejudice, but rather a motion to strike the March 2001 suspension reinstatement notice. (Trial Tr. 63:16-25; 64:1-3.) Counsel's attempt to amend his motion can only be described as an effort to find a path through the fog which PennDOT's improper actions have cast over this case. (See Trial Tr. 50:16-23 ("[A]s I sit here and I hear myself talk . . . I believe that what's really before this Court is a motion to have . . . the first letter of March 20th 2001[] stricken.")) Although this Court allowed argument on the point, the Order disposing of this case responded only to the matters formally before the court—the motion to proceed *nunc pro tunc* and the question of delay and prejudice. PennDOT's concerns in this regard are therefore unfounded. (Trial Tr. 81:1-9.)

legally suspended. Then, in part (B), the Opinion considers who is responsible for the delay in imposing the suspension once there was jurisdiction and what effect imposing the suspension now will have. It concludes that the delay is unreasonable and chargeable to PennDOT, and that beginning the suspension this late will unfairly prejudice Mr. Meehan. Finally, in part (C), it explains why Mr. Meehan was properly allowed to file his appeal *nunc pro tunc*.

A. **Mr. Meehan's driver's license was not legally suspended because PennDOT lacked jurisdiction when it imposed the suspension in April 2001.**

Mr. Meehan's operating privileges cannot be suspended at this time because PennDOT has yet to take valid legal action to suspend them. PennDOT had an obligation, under Judge Papalini's order, not to suspend Mr. Meehan's driver's license from December 2000 when the order was issued until February 2002 when the Commonwealth Court decided the appeal. PennDOT therefore imposed the April 2001 suspension in violation of a court order, when it had no jurisdiction or legal authority. Once the Commonwealth Court denied the appeal, PennDOT regained the legal authority to suspend Mr. Meehan; however, it then failed to act as required. PennDOT has run afoul of legal obligations and cannot now argue that it should get the benefit of that illegal suspension when it tripped up a second time by failing to suspend Mr. Meehan when it finally had authority. Thus, this Court rescinded the illegally imposed suspension and refused to allow PennDOT to bootstrap its first mistake to correct the second. This is a conclusion of law, and as such is reviewed *de novo*. In re Hickson, 821 A.2d 1238, 1242 (Pa. 2003).

The principle that actions taken without jurisdiction are nullities *ab initio*—“from the beginning”—and have no legal effect is deeply ingrained in Pennsylvania law. See, e.g., Patterson’s Estate, 19 A.2d 165, 167 (Pa. 1941) (“An adjudication of a court without jurisdiction is ‘void and of no legal efficacy.’”); Black’s Law Dictionary 4 (7th ed. 1999). From December 15, 2000, when Judge Papalini granted Mr. Meehan’s request that his license not be suspended until the Commonwealth Court decided his appeal through the Commonwealth Court’s decision in early 2002, PennDOT had no jurisdiction to suspend Mr. Meehan’s operating privileges. (See Appellee’s Pet. Ex. 4, at 6, 7 (giving dates of previous events in this case).) See also Pa.R.A.P. 1701(a) (“Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter.”). See also 16 Standard Pennsylvania Practice 2d § 85:127 (expanding on Rule 1701(a) by explaining that “[t]he trial court is divested of jurisdiction over the subject matter until further order of the appellate court reinstating jurisdiction”). PennDOT only recovered jurisdiction after the Commonwealth Court’s decision of February 22, 2002.

These basic legal facts about this case have two implications. First, the the April 24, 2001 suspension was void. PennDOT cannot impose a punishment without jurisdiction any more than any other adjudicatory body can. Mr. Meehan could only be suspended after February 22, 2002, when PennDOT had jurisdiction again.

The difficulty for PennDOT, of course, is that it is undisputed that it has done nothing whatsoever with regard to Mr. Meehan since that date. During the period when it had jurisdiction to impose a suspension upon Mr. Meehan, it neglected to do so. Just as there was a breakdown in the PennDOT administrative process that led to the suspension when it had no authority, there was a breakdown once PennDOT regained its authority. It is quite likely that the consolidation of the actions for the appeal on the constitutional issue led to internal errors in complying with court orders both during the pendency of the appeal and after its conclusion.⁸ As a result, there is, at this moment, no legal suspension at all—only the potential to impose one.

At trial and in its Rule 1925(b) statement, PennDOT creatively argued that even if the March 20, 2001 suspension letter was sent improperly and the April 24, 2001 suspension illegally instituted, it could now use these mistakes to make up for its later fumbling when PennDOT failed to send notice and reinstate the suspension when it finally had authority to do so after the Commonwealth Court's decision. PennDOT essentially argues: premature notice and illegal suspension can make up for a forgotten notice and suspension. PennDOT is an adjudicatory body with extensive authority but it is still subject to judicial review. PennDOT cannot expect windfalls from its own errors. Rather, it must expect to be held to the fundamental principles of American law. Those principles dictate that

⁸ PennDOT was present and represented by counsel during the proceeding when Judge Papalini ordered that Mr. Meehan's suspension not be imposed during the pendency of the Commonwealth Court appeal. (Trial Tr. 25:4-25; 26:1-25; 27:1.) In addition, the docket for Mr. Meehan's previous appeal, which was admitted into evidence with PennDOT's consent, reflects that the court gave notice of Judge Papalini's supersedeas order as required by Pa.R.Civ.P. 236. (Appellee's Pet. Ex. 4, at 6.)

PennDOT can only act while it has jurisdiction. It cannot hurl penalties about and then expect the court to approve of its actions because the licensee “deserved it.” Rather, this Court must enforce the principle of jurisdiction and find that the reinstatement letter of March 20, 2001 and the subsequent April 24, 2001 license suspension were “of no legal efficacy,” and determine that PennDOT cannot claim any benefit from them. Patterson’s Estate, 19 A.2d at 167.

Since PennDOT tried to suspend Mr. Meehan’s operating privileges when it had no jurisdiction to do so, and then did nothing to suspend his license after the Commonwealth Court rendered a decision and it gained authority to act, PennDOT has not legally suspended his operating privileges at all. It can only be understood to be trying to suspend him now, five years after it was supposed to do so.

B. Mr. Meehan established that he has changed his circumstances in reliance on PennDOT’s apparent intent not to suspend him, and would be unfairly prejudiced if the suspension was now imposed after an undue delay.

In its Rule 1925(b) statement, PennDOT argues that it is not responsible for the delay in imposing Mr. Meehan’s suspension, and in the alternative that Mr. Meehan has not been prejudiced by the over five year delay in suspending his operating privileges. PennDOT’s position is completely at odds with analogous Pennsylvania cases. This Court found that precedent compels a finding in Mr. Meehan’s favor.

“In 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.” Terraciano v. Commw. of Pa., Dept. of Trans., 753 A.2d 233, 236 (Pa. 2000). The Commonwealth Court’s “scope of review of a decision in a license suspension case is limited to determining whether the trial court’s findings of fact are supported by competent evidence and whether the trial court committed an error of law or an abuse of discretion in reaching its decision.” Id. at 236.

1. **The over five year delay in suspending Mr. Meehan is chargeable to PennDOT because it failed to impose Mr. Meehan’s suspension after it was notified of the Commonwealth Court’s decision in its favor.**

PennDOT is responsible for the five-year delay in imposing Mr. Meehan’s suspension because it had notice, authority and an obligation to suspend him after the Commonwealth Court’s decision but did not. The mere fact that Mr. Meehan’s case was procedurally complicated does not mean that the weight of PennDOT’s errors should fall on his shoulders. PennDOT had free rein to suspend him; it is only just that it be held responsible for its failure to do so.

Pennsylvania’s courts have had many occasions to consider what constitutes undue delay in imposing a license suspension. The analysis proceeds along two lines. The first is whether or not the length of the delay alleged is adequate. “What constitutes an unreasonable delay will depend upon the circumstances of each individual case.” Terraciano, 753 A.2d at 236. As delays substantially shorter than five years have been considered undue in the

past, this issue need not detain us. See, e.g. Id. at 236 n.7 (collecting previous cases of undue delay, including cases involving delays of eight and nineteen months).

The second relates to who bears responsibility for the delay. Past cases have established the principle that where PennDOT has the obligation to suspend a driver's operating privileges, delays in its execution of its duty are charged to it. Two cases exemplify this rule.

In Walsh v. Commonwealth of Pennsylvania, Department of Transportation, petitioner Walsh appealed one of his two suspensions, but then withdrew his appeal shortly thereafter. 586 A.2d 1034, 1035 (Pa. Commw. Ct. 1991). PennDOT became aware at some point that his suspension was withdrawn but did not reinstate his suspension until Mr. Walsh's file came up during an administrative review four years later. Id. at 1035-36. The Commonwealth Court found that, regardless of when PennDOT received notice, it had to be held responsible for the delay in imposing the suspension. "DOT became aware of the disposition of Walsh's appeal only after an administrative review of old appeals which happened to take place over four years after Walsh's appeal was withdrawn," the Court pointed out.

"Conceivably, this administrative review might have taken place even later . . . To allow DOT to reinstate a suspension after an unreasonable period of time following the dismissal or withdrawal of an appeal, resulting in prejudice to the operator, because the delay is 'attributable' to the judiciary, would create an unjust and unreasonable result."

Id. at 1037.

In Rea v. Commonwealth of Pennsylvania, Department of Transportation, petitioner Rea appealed in 1978 his suspension for driving under the influence of alcohol in 1978. 572 A.2d 236, 236 (Pa. Commw. Ct. 1990). The appeal was dismissed in early 1979. Id. at 236-37. PennDOT never received notice of the dismissal and believed that the supersedeas from that appeal was still in effect. As a result, PennDOT refrained from instituting the suspension in that case or in another case which arose in 1981. Id. at 237. It was 1988 before the suspensions were finally reimposed. Id. at 237. The Commonwealth Court found that, even if the trial court had failed to notify PennDOT, “[Rea] surely should not suffer now on account of that court’s apparent oversight.” Id. at 238-39.

In both Walsh and Rea, PennDOT could have instituted its suspension any time, but failed to do so because of an administrative error. The Commonwealth Court found that the source of the error was irrelevant, and pointed to the key factor: PennDOT was authorized to suspend and did not. Since the petitioner had not made the mistakes, he could not be held responsible for them. The delay had to be put on PennDOT’s shoulders.

This principle applies here. Once the Commonwealth Court issued its ruling on the appeal against Mr. Meehan, PennDOT had notice, authority and an obligation to reinstate the suspension. Any delay after this time is chargeable to PennDOT. By its own admission PennDOT failed to act after the Commonwealth Court’s decision. In fact, had Mr. Meehan not been stopped in New Jersey in July 2007, PennDOT’s administrative error in failing to impose a legally

authorized suspension may have gone unnoticed indefinitely. It is undisputed that after the Commonwealth Court's decision in 2002, PennDOT had authority to act. It had an obligation to act promptly but failed to act at all. Consequently, the over five year delay is charged to it. See Walsh, 586 A.2d at 1037 (finding that even if a delay resulted from the court's actions rather than PennDOT's, it could not be charged to the driver); Rea, 572 A.2d at 238-39 (making a similar finding).

2. **Mr. Meehan was prejudiced as a matter of law because he changed his circumstances to his detriment based on a belief that his driving privileges would not be limited.**

"Prejudice is shown when the licensee is able to demonstrate that he changed his circumstances to his detriment in reliance on his belief that his operating privileges would not be impaired." Bennett v. Commw. of Pa., Dept. of Trans., 642 A.2d 1139, 1141 (Pa. Commw. Ct. 1994). Hence, the driver must prove (1) adequate detriment and (2) reliance. The Commonwealth Court has found prejudice in a case with nearly parallel facts to those presented here. Orloff v. Commonwealth of Pennsylvania, Department of Transportation, 912 A.2d 918, 925 (Pa. Commw. Ct. 2006).

In Orloff, the Commonwealth Court was confronted with a person similarly situated to Mr. Meehan. The Court noted the following relevant facts:

1. Mr. Orloff had moved from a sedentary office role at the company he owned to a sales and delivery role.
2. If suspended, Mr. Orloff "would be required to hire a delivery driver and a less effective salesman which could lead to excess inventory and would increase his payroll."
3. Also in reliance on being able to drive, Mr. Orloff arranged a \$200,000.00 line of credit (apparently for his business), bought a

home, leased a car, and became a member of a gym distant from public transportation.

4. Mr. Orloff drove for his mother, who had been able to drive when he was originally to be suspended but who could no longer do so.

Orloff, 912 A.2d at 921. In Orloff, the Commonwealth Court recognized that a business owner can be prejudiced by a suspension if required to hire or reassign other employees to attend to necessary travel. The Commonwealth Court explained, “We disagree that prejudice can only be established by the loss of a job or the closing of a business; it can also be established by showing that an owner changed his job duties so that a license is necessary for the financial well-being of his company.” Orloff, 912 A.2d at 924-25.

Analogues to all four of the factors cited in Orloff can be found here. After the lengthy delay during which no suspensions were imposed, both Mr. Orloff and Mr. Meehan took on a more active, out-of-the-office role in their companies, and had businesses which did not have anyone on staff who could take over their work. They also both developed personal reasons to travel: for Mr. Orloff the gym and for Mr. Meehan his childrens’ sports, and a family member becoming disabled and requiring driving. In both cases, then, the burden of the suspension increased dramatically between the time when it should have been imposed and the time when PennDOT finally sought to put it into effect.⁹

PennDOT’s Rule 1925(b) statement appears to focus its complaint on the question of whether or not Mr. Meehan changed his professional and personal circumstances in reliance on an unimpaired Pennsylvania driver’s license. The evidence in this case clearly demonstrates such reliance.

⁹ It is also worth noting that, unlike Mr. Orloff, Mr. Meehan already served a six-month suspension in New Jersey for driving while intoxicated. (Trial Tr. 82:21-15; 83:1-2.)

The structure of Mr. Meehan's life, with extensive travel for both personal and professional reasons, is only sensible if it is predicated upon an abiding conviction that his driver's license would not be suspended. Mr. Meehan properly relied upon PennDOT to comply with Judge Papalini's order forbidding it from suspending his license until his appeal had been resolved. Furthermore, Mr. Meehan turned in his Pennsylvania license¹⁰ to New Jersey in 2001, received clearance for a new license even though PennDOT had imposed a suspension in violation of Court order, and then he renewed that license in 2005 when PennDOT had authority to suspend him, with nary a word of complaint or warning that his operating privileges were subject to suspension. Thus, up through 2005, there was affirmative evidence that Mr. Meehan was not going to have to serve Pennsylvania's suspension in addition to the suspension he had already served in New Jersey.

In addition, the first time PennDOT intended to suspend Mr. Meehan it sent his suspension notice within months of his conviction; one can only imagine that when years had gone by without news of his case and he received repeated New Jersey license clearances, Mr. Meehan reasonably assumed that PennDOT had lost interest in him. Indeed, PennDOT has never imposed a legal suspension on Mr. Meehan and the improper suspension of 2001 would have gone unnoticed if Mr. Meehan had not had a July 2007 traffic stop.

¹⁰ Alternatively, since PennDOT argues that Mr. Meehan has been under suspension since April 24, 2001 and Mr. Meehan surrendered his Pennsylvania license to the New Jersey licensing authorities in June 2001, Mr. Meehan arguably has served the suspension of his Pennsylvania license for a period in excess of 6 years.

This Court was required by Commonwealth Court precedent to find that Mr. Meehan has been unfairly prejudiced by the delay in imposing his suspension. See Orloff, 912 A.2d at 921, 924-25 (holding that a driver was unfairly prejudiced on similar facts). Mr. Meehan relied on having unimpaired operating privileges as he has built his day-to-day life over the past seven years. Hence, Mr. Meehan has shown “that he changed his circumstances to his detriment in reliance on his belief that his operating privileges would not be impaired,” and this Court properly rescinded his suspension on that basis. Bennett, 642 A.2d at 1141.

C. Mr. Meehan was properly permitted to proceed *nunc pro tunc* since it was a breakdown in PennDOT’s administrative process that led both to the suspension that violated a court order and the failure to suspend once it had authority.

PennDOT’s errors in administering Mr. Meehan’s suspension have created a harm which he could not have anticipated at the outset of this matter: an undue delay in imposing the suspension which will create unfair prejudice if it is imposed at this late date. It is entirely within reason, and the normal ambit of cases of this ilk, to permit him to file an appeal *nunc pro tunc*. A trial court’s decision to grant a *nunc pro tunc* petition is reviewed for abuse of discretion. Union Elec. Corp. v. Bd. of Prop. Assessment, 746 A.2d 581, 583 (Pa. 2000).

The Pennsylvania Supreme Court has explained that *nunc pro tunc* petitions can be granted where there is “fraud or some breakdown in the court’s operation through a default of its officers.” Bass v. Commonwealth, 401 A.2d 1133, 1135 (Pa. 1979), quoting Nixon v. Nixon, 198 A. 154, 157 (Pa. 1938). In

applying this principle to administrative agencies, that Court has stated that “there is a breakdown in the court's operations where an administrative board or body is negligent, acts improperly or unintentionally misleads a party. Thus, where an administrative body acts negligently, improperly or in a misleading way, an appeal nunc pro tunc may be warranted.” Union Elec. Corp., 746 A.2d at 584.

There were two breakdowns in this case. The first was PennDOT’s error of commission: sending the March 20, 2001 notice despite the fact that it directly contradicted Judge Papalini’s order. This attempt at reinstating the suspension was illegal owing to PennDOT’s lack of jurisdiction. PennDOT violated a court order when it issued Mr. Meehan’s suspension in April 2001. PennDOT seems to argue now that notwithstanding its negligence and improper actions, Mr. Meehan should be blamed for the problem it caused. PennDOT’s position is that Mr. Meehan, who had a court order saying his license would not be suspended until the Commonwealth Court’s decision, should have complained earlier that PennDOT ignored the court order. Because Mr. Meehan did not challenge PennDOT’s negligently issued suspension immediately, PennDOT should now benefit from its administrative error and Mr. Meehan who was victimized by it should be out of a remedy.

This position ignores the fact that the 2001 suspension should be considered void upon its issuance since it violated a clear court order. The notion that an administrative agency’s action in direct violation of a court order could survive makes no sense. PennDOT’s position if played out would invite major administrative mischief: PennDOT could violate court orders for

supersedeas, lodge suspensions, hope licensees would be confused and then when their actions were discovered at a later date claim that the licensee missed a timing deadline in complaining. Chaos would ensue. Mr. Meehan's 2001 suspension was a vivid example of an administrative agency acting negligently and improperly thereby justifying a nunc pro tunc appeal. Union Elec. Corp., 746 A.2d at 584.

The second breakdown was PennDOT's error of omission—failing to send a new reinstatement notice when it had jurisdiction once again, and indeed was under statutory obligation to send the notice. Noncompliance with this statutory requirement by a governmental body can only be understood as a breakdown in court operations when it results in a license suspension not being imposed for five years. In fact, if the 2001 illegal suspension is voided as it certainly should be, the delay is eight years, going back to 1999 when PennDOT first suspended Mr. Meehan.

Both of PennDOT's acts were "negligent" in that they seem to have resulted from a failure to keep track of consolidated appeals. They were also clearly "improper," in that they involve violations of court orders and statutory requirements. Perhaps most importantly, they are directly causally linked to the harm that is being appealed from, as they have resulted in the undue delay and unfair prejudice which is the reason for this appeal.

This situation is not new or unusual. There is nothing novel about the idea that when the imposition of a motorist's suspension has been delayed by administrative error, they can file an appeal even though it would normally be

untimely. See, e.g., Commw. of Pa, Dept. of Trans. v. Emery, 580 A.2d 909, 911-12 (Pa. Commw. Ct. 1990) (holding that a motorist could appeal *nunc pro tunc* when PennDOT imposed a suspension on the basis of an erroneous entry of a guilty plea, and then refused to lift the suspension when presented with evidence of Mr. Emery's not-guilty verdict).

PennDOT's administration has broken down in its timing twice in this case: it prematurely issued a suspension without jurisdiction and it failed to issue a suspension with due diligence once it had legal authority. It would be a harsh system if Mr. Meehan were told that he was too late now to address PennDOT's timing mistakes. PennDOT seriously stumbled to Mr. Meehan's detriment. Fairness dictates that he be permitted to obtain redress for those errors. Mr. Meehan has responded with alacrity to see that harm redressed. Once Mr. Meehan became aware that PennDOT considered his license suspended in July 2007, he investigated, and filed his appeal in August of that year. On these facts, it was correct to allow Mr. Meehan to proceed *nunc pro tunc*.

V. Conclusion

PennDOT is the champion of the technical in Pennsylvania's driver's license administration system. This is not a critique; rather, it is an accolade. Consistent application of rules ensures that everyone is treated equally and fairly, without bias or prejudice. However, PennDOT cannot use technical rules when those rules are advantageous and then argue that its best effort should be good enough when it makes serious and preventable errors. Having made egregious

mistakes in this matter, PennDOT must now accept that it has caused undue delay in imposing a suspension of Mr. Meehan's operating privileges, and has unfairly prejudiced him thereby.

BY THE COURT:

Lisa M. Rau, J.

DATED: March 6, 2008