

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John William Cardell, :
Appellant :
v. : No. 2138 C.D. 2012
 : Submitted: May 3, 2013
Commonwealth of Pennsylvania, :
Department of Transportation, :
Bureau of Driver Licensing :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: July 5, 2013

John William Cardell (Licensee) appeals an order of the Court of Common Pleas of Northampton County (trial court), which denied Licensee's statutory appeal of a five-year suspension of his driving privileges following his third violation for driving under the influence of alcohol in a five-year period. We affirm.

On September 2, 2011, the Pennsylvania Department of Transportation (PennDOT) sent an Official Notice of Revocation to Licensee, informing him that he had been designated a habitual offender and, thus, his driving privilege would be revoked for a period of five years, pursuant to Section 1542 of the Vehicle Code, 75 Pa. C.S. §1542.¹ Reproduced Record at 14a (R.R.

¹ It states, in relevant part, as follows:
(Footnote continued on the next page . . .)

___). This designation was prompted by Licensee's June 7, 2011, conviction for driving under the influence of alcohol in violation of Section 3802(b) of the Vehicle Code, 75 Pa. C.S. §3802(b). At the time of his conviction, Licensee had two prior convictions for driving under the influence in the state of New Jersey. Licensee appealed PennDOT's license revocation to the trial court.

On June 14, 2012, the trial court conducted a hearing. On July 6, 2012, the trial court sustained Licensee's appeal, finding that his third conviction fell outside the five-year habitual offender period in 75 Pa. C.S. §1542(a) because PennDOT had improperly listed the date of Licensee's third conviction as the date of his guilty plea, June 7, 2011, rather than the date of his sentencing, August 5,

(continued . . .)

- (a) General rule.--The department shall revoke the operating privilege of any person found to be a habitual offender pursuant to the provisions of this section. A "habitual offender" shall be any person whose driving record, as maintained in the department, shows that such person has accumulated the requisite number of convictions for the separate and distinct offenses described and enumerated in subsection (b) committed after the effective date of this title and within any period of five years thereafter.
- (b) Offenses enumerated.--Three convictions arising from separate acts of any one or more of the following offenses committed by any person shall result in such person being designated as a habitual offender:

- (1.1) Any violation of Chapter 38 (relating to driving after imbibing alcohol or utilizing drugs) except for sections 3808(a)(1) and (b) (relating to illegally operating a motor vehicle not equipped with ignition interlock) and 3809 (relating to restriction on alcoholic beverages).

- (d) Period of revocation.--The operating privilege of any person found to be a habitual offender under the provisions of this section shall be revoked by the department for a period of five years.

75 Pa. C.S. §1542.

2011. The trial court remanded the case to PennDOT to rescind the revocation. PennDOT moved for reconsideration. On August 2, 2012, the trial court granted PennDOT's motion and vacated its July 6, 2012, order.²

On September 6, 2012, the trial court held a *de novo* hearing. PennDOT submitted several documents, including Licensee's Certified Driving Record, reports of his three convictions received by PennDOT and a document titled "Certification and Attestation." Supplemental Reproduced Record at 1b, 4b, 9b, 12b, 16b-17b.³ All of these documents identified Licensee's multiple arrests and convictions for driving under the influence. On March 26, 2006, Licensee was cited for driving under the influence in New Jersey and convicted on June 27, 2006. R.R. 33a. On March 1, 2008, Licensee was again cited for driving under the influence in New Jersey and convicted on February 11, 2009. R.R. 34a. On October 30, 2010, Licensee was cited for driving under the influence in Pennsylvania and pled guilty on June 7, 2011. *Id.*

Licensee introduced a document entitled "Certification Statement," signed by the Pennsylvania Secretary of Transportation. R.R. 37a. The Certification Statement listed the date of Licensee's first violation for driving under the influence as "3-26-05." *Id.* Counsel for PennDOT asserted that the "05"

² The trial court granted reconsideration after realizing it had erred in determining the applicable five-year period for purposes of declaring Licensee a habitual offender under 75 Pa. C.S. §1542(a). The relevant dates for determining if a licensee is a habitual offender under Section 1542 are the dates on which the violations occurred, not the dates of conviction. *Sanders v. Department of Transportation*, 493 A.2d 794, 795 (Pa. Cmwlth. 1985). Therefore, whether Licensee's third conviction occurred on August 5, 2011, or on June 7, 2011, is irrelevant.

³ Some documents that were introduced at the hearing, and which are contained in the Certified Record, were not included in Licensee's Reproduced Record. PennDOT included these documents in a Supplemental Reproduced Record attached to its brief.

on the Certification Statement was a typographical error and the correct date for the first violation was March 26, 2006. R.R. 27a. In support, counsel directed the court to the report of Licensee's first conviction from the state of New Jersey, which stated that the date of the violation was March 26, 2006. R.R. 25a. Licensee did not testify on his own behalf.

On October 25, 2012, the trial court issued an order and opinion denying Licensee's appeal. The trial court held that PennDOT met its burden of proving that Licensee had been convicted of three DUI offenses that occurred within a five-year period, and that Licensee failed to rebut PennDOT's evidence. The trial court found that the actual date of Licensee's first DUI offense was March 26, 2006, as indicated in Licensee's certified driving record, the 2006 New Jersey report of conviction and PennDOT's Certification and Attestation. The trial court held that the March 26, 2005, date on the Certification Statement was attributable to a clerical error and did not detract from the trustworthiness of PennDOT's other certified documents.

On appeal,⁴ Licensee argues that PennDOT presented insufficient evidence to meet its burden of proving that he is a habitual offender under 75 Pa. C.S. §1542. Licensee contends that because PennDOT's documents are inconsistent on the critical date of his first violation, all of PennDOT's documents are unreliable and inadmissible. Absent evidence of the date of Licensee's first DUI offense, PennDOT could not prove he committed three DUI offenses within the statutory five-year period.

⁴ Our scope of review 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. *Richards v. Department of Transportation, Bureau of Driver Licensing*, 827 A.2d 575, 578 n.7 (Pa. Cmwlth. 2003).

Having reviewed the record and the arguments of the parties, we agree with the trial court that PennDOT satisfied its burden of proof and that Licensee was not entitled to relief. Because the trial court accurately articulated and thoroughly analyzed the issues, and correctly applied the law, this Court affirms the trial court's order on the basis of the well-reasoned opinion by the Honorable Michael J. Koury, Jr. in *John William Cardell v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing*, (Northampton County Court of Common Pleas, No. C-48-CV-2011-9465, filed October 25, 2012).

MARY HANNAH LEAVITT, Judge

