

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
WILLIAM TAYLOR REIL,	:	
	:	
Appellant	:	No. 294 MDA 2015

Appeal from the Judgment of Sentence Entered January 12, 2015,
in the Court of Common Pleas of Schuylkill County,
Criminal Division, at No(s): CP-54-SA-0000168-2014

BEFORE: ALLEN, OTT, and STRASSBURGER, JJ.*

MEMORANDUM BY STRASSBURGER, J.: **FILED JULY 31, 2015**

William Taylor Reil (Appellant) appeals *pro se* from the judgment of sentence entered October 11, 2013, following his conviction for the summary offenses of driving while exceeding the maximum speed limit by 20 miles per hour and driving while operating privileges are suspended or revoked.¹ After review, we affirm Appellant’s convictions, vacate his sentence, and remand for resentencing.

The trial court summarized the factual background of the case from the *de novo* trial held on January 12, 2015.

[T]he Commonwealth presented testimony from Pennsylvania State Trooper Paul Hardnock (“Trooper Hardnock”). He testified that he was on roving patrol duty on September 12, 2014 when he encountered [Appellant] at approximately 12:35 PM in a vehicle travelling northbound on State Route 61 between Ashland and Frackville, going up a long hill. Trooper Hardnock

¹ 75 Pa.C.S. §§ 3362(a)(3) and 1543(a), respectively.

*Retired Senior Judge assigned to the Superior Court.

followed [Appellant] for a mile and concluded that [Appellant] was exceeding the speed limit for that road by 20 miles per hour, as [Appellant] was travelling at 65 miles per hour in a posted 45 mile per hour zone. Trooper Hardnock used his own vehicle to determine the speed of [Appellant's] vehicle, and the Commonwealth introduced a Certificate of Speedometer Accuracy for the Trooper's vehicle.

Trooper Hardnock initiated a traffic stop, with which [Appellant] complied. [Appellant] was driving a 2004 Jaguar XJ8 four door sedan. [Appellant] provided his name but refused to produce his driver's license. Trooper Hardnock had already run [Appellant's] license plate for the Jaguar and was able to pull up licensing information identifying the driver as [Appellant]. Trooper Hardnock identified [Appellant] in the courtroom.

Trooper Hardnock learned of the suspended license through Pennsylvania Department of Transportation ("PennDOT") records while running [Appellant's] vehicle registration. According to PennDOT's certified copy of [Appellant's] driver's record, [Appellant's] license expired on May 31, 1997. According to the record, [Appellant] was driving without a valid driver's license on September [12], 2014. During the stop, [Appellant] provided other documentation, including an identification card, to Trooper Hardnock.

Trooper Hardnock issued a traffic citation for speeding to [Appellant]. Trooper Hardnock also issued a traffic citation for driving with a suspended or expired license. The citations were printed at the Trooper's station and filed with Magistrate [Judge] Hale because the printer in the Trooper's vehicle was not working at the time of the traffic stop. They were mailed to [Appellant]. The citations were introduced into evidence.

The citation for 75 Pa.C.S. § 1543(a), suspended or revoked license, indicates that this is [Appellant's] sixth violation for operating a vehicle without a current driver's license, subjecting him to a \$1,000 fine and 90 days in the Schuylkill County [jail pursuant to 75 Pa.C.S. § 6503(a.1)].

[Appellant] took the witness stand in his own defense and on cross examination admitted that he was operating an

automobile on September 12, 2014 and that he had no driver's license on the day in question. [Appellant] admitted speeding but challenged the speed at which he was clocked. [Appellant] challenged the prior suspensions indicated on his PennDOT certified record. [The trial court] found the Commonwealth's evidence credible, and found [Appellant] guilty of both charges and sentenced him accordingly.

Trial Court Opinion, 3/13/2015, at 1-3.

Appellant was sentenced to a flat-term of 90 days' incarceration and a fine of \$1,000 pursuant to 75 Pa.C.S. § 1543(a) and 42 Pa.C.S. § 6503(a.1). Appellant timely filed a notice of appeal. The trial court did not order Appellant to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925, but did file an opinion.

On appeal, Appellant presents an incoherent and rambling dissertation as to why he believes he is entitled to relief. He claims that the trial court lacked jurisdiction because Appellant did not have a driver's license; and therefore, provisions of the Motor Vehicle Code do not apply to him. Appellant's Brief at 14. Appellant further contends that the trial court erred by denying him a jury trial. *Id.* at 17. Next, Appellant contends that his driver's license is "expired" rather than "suspended;" thus, he could not be convicted of driving while his operating privileges are suspended. *Id.* at 28. Finally, he contends that he is constitutionally entitled "to use his automobile (private property) on the public highways and in public places in the ordinary course of life and business as long as he does not interfere with another's

rights.” *Id.* at 29. He suggests that “while exercising this right, all those in government are required to protect the traveler, and his automobile, in his person and his safe conduct. *Id.*

After a thorough review of Appellant’s 40-page brief and 28-page reply brief, we conclude that Appellant’s arguments are unavailing. First, we remind Appellant of the following. “The movement of motor vehicles over the highways is attended by constant and serious dangers to the public, and is also abnormally destructive to the ways themselves.” *Hendrick v. Maryland*, 235 U.S. 610, 622 (1915). Therefore, A state may enact general regulations pertaining to vehicular traffic designed for the enforcement of good order and for the protection of the general public (which includes all people no matter what their citizenship status might be). *Id.* Such general regulations may include requirements for registration and licenses. *Id.* Thus, contrary to Appellant’s arguments, the trial court did not err in applying the Motor Vehicle Code to Appellant, who was driving his vehicle on a public road in the Commonwealth.

Appellant was convicted pursuant to 75 Pa.C.S. § 1543(a), which provides: “[A]ny person who drives a motor vehicle on any highway or trafficway of this Commonwealth after the commencement of a suspension, revocation or cancellation of the operating privilege **and before the operating privilege has been restored** is guilty of a summary offense and

shall, upon conviction, be sentenced to pay a fine of \$200." **Id.** (emphasis added).

Appellant's driver's record reveals that his last license was issued on April 16, 1993 and expired on May 31, 1997. Appellant's first license suspension occurred on March 29, 1994. On January 30, 1995, Appellant was convicted for the first time under section 1543 for driving while operating privileges are suspended or revoked. Appellant was convicted subsequently of this offense on March 15, 1996, June 25, 1997, July 27, 2000, August 15, 2005, and March 27, 2006. At no point has Appellant ever taken steps to restore his license. **See Rossi v. Commonwealth**, 860 A.2d 64, 67 (Pa. 2004) (holding that section 1543 "requires an individual to complete the proper administrative steps after a statutory suspension has ended before being entitled to drive without restriction"). Accordingly, the trial court did not err in convicting Appellant for driving while operating privileges are suspended, because Appellant has never taken the steps necessary to restore his license.

Additionally, it is well-settled that Appellant was not entitled to a jury trial in this matter.

The test is clear. The decisions of the Supreme Court of the United States have established a fixed dividing line between petty and serious offenses: those crimes carrying [a sentence of] more than six months [] are serious [crimes] and those carrying [a sentence of six months or] less are petty crimes. It is well-settled that a legislature's determination that an offense carries

a maximum prison term of six months or less indicates its view that an offense is petty.

Commonwealth v. Kerry, 906 A.2d 1237, 1239 (Pa. Super. 2006) (internal quotations and citations omitted).²

Instantly, Appellant was sentenced pursuant to 75 Pa.C.S. § 6503(a.1), which provides that “[a] person convicted of a sixth or subsequent offense under section 1543(a) shall be sentenced to pay a fine of not less than \$1,000 and to imprisonment for not less than 30 days but not more than six months.” Because the maximum available term of imprisonment was six months, Appellant’s conviction was for a petty offense, and he was not entitled to a jury trial.

We now turn to an issue set forth by the trial court but, curiously, not discussed by either Appellant or the Commonwealth. The trial court asks us to vacate Appellant’s sentence because it is illegal.³

We note that after the sentencing and appeal in this matter, the Pennsylvania Superior Court decided ***Commonwealth v. Postie***, [110 A.3d 1034 (Pa. Super. 2015)], in which the Court concluded that the imposition of a “flat” sentence pursuant to a violation of § 1543(a) is illegal, and that a minimum and maximum term is required pursuant to the

² We point out that “petty” is a term of art for the dividing line between those crimes that carry a maximum punishment of less than 6 months incarceration. It does not imply that the crime is not important or less important in any way.

³ “[C]hallenges to an illegal sentence ... may be reviewed *sua sponte* by this Court. An illegal sentence must be vacated.” ***Commonwealth v. Tanner***, 61 A.3d 1043, 1046 (Pa. Super. 2013) (quotations and citations omitted).

Sentencing Code, § 9756. It is apparent then that the sentence imposed in this case was illegal, and that the Superior Court will remand this case for resentencing once the appeal has been decided.

Trial Court Opinion, 3/13/2015, at 3.

We agree with the trial court that Appellant's flat-sentence of 90 days' incarceration sentence is illegal pursuant to this Court's holding in **Postie**.⁴ Therefore, we vacate Appellant's sentence and remand to the trial court to re-sentence Appellant to a sentence that complies with 42 Pa.C.S. § 9756(a).

Convictions affirmed. Judgment of sentence vacated. Case remanded. Jurisdiction relinquished.

⁴ The trial court applied the new case law appropriately where, as here, Appellant's case was pending on direct appeal. **See Commonwealth v. Cabeza**, 469 A.2d 146, 148 (Pa. 1983) ("[W]here an appellate decision overrules prior law and announces a new principle, unless the decision specifically declares the ruling to be prospective only, the new rule is to be applied retroactively to cases where the issue in question is properly preserved at all stages of adjudication up to and including any direct appeal.").

J-S47040-15

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/31/2015