

00-819-CD
COMMONWEALTH OF PA -vs- RICHARD MATTHEW MCCLOSKEY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PA

Number 00- 819 - CD

Type of Case: CIVIL

v.

Type of Pleading: LICENSE SUSPENSION
APPEAL

RICHARD MATTHEW MCCLOSKEY,
Defendant

Filed on behalf of: DEFENDANT

Counsel of Record for DEFENDANT:
Mark Andrew Wheeler
Pa. Sup. Ct. I.D. # 64335

512 Main St. / P.O. Box 176
Reynoldsville, PA 15851
(814) 653-2000
(814) 653-2200 FAX

FILED

JUL 14 2009

William J.
Prothonotary

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

COMMONWEALTH OF
PENNSYLVANIA

vs.

RICHARD MATTHEW MCCLOSKEY :

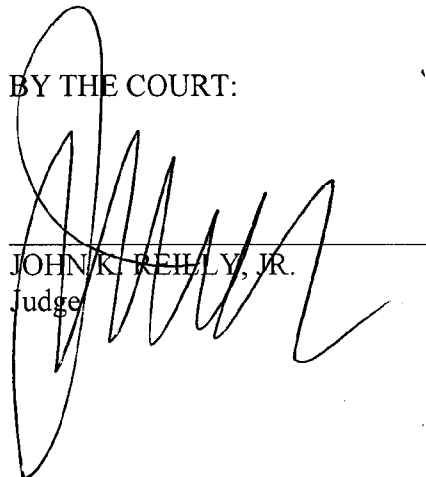
:
:
:
: No. 00-819-CD
:

ORDER

AND NOW, this 18th day of July, 2000, the Defendant having filed a Petition appealing the Order of the Department of Transportation suspending the Defendant's motor vehicle operating privileges, it is hereby Ordered that the Court Administrator's Office is directed to schedule the matter for hearing on the next available License Suspension Appeal hearing date.

It is further Ordered that the defendant herein shall send a certified copy of this Order and of the Petition for Appeal by certified United State mail to Pennsylvania Department of Transportation, Office of Chief Counsel, Third Floor, Riverfront Office Center, Harrisburg, PA 17104-2516.

BY THE COURT:



JOHN K. REILLY, JR.
Judge

FILED

JUL 19 2000

William A. Shaw
Prothonotary

FILED

JUL 19 2000

~~William A. Shaw~~
~~Prothonotary~~

FILED

JUL 19 2000

09:04 KC

William A. Shaw

Prothonotary atty

Wheeler

~~Shaw~~

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PA

v.

Number 00-_____-CD

RICHARD MATTHEW MCCLOSKEY,
Defendant

LICENSE SUSPENSION APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, Richard Matthew McCloskey, by and through his undersigned counsel, moves this Court to grant him a hearing upon the merits of the following License Suspension Appeal:

1. Defendant was not convicted of violating Section 6308 of the Vehicle Code, (offenses related to alcohol) on 7-12-98, the charge was nolle prossed;
2. Defendant avers that the resulting two year suspension is an unconstitutional second punishment which violates both his due process rights as well as his right not to suffer double jeopardy pursuant to both Federal and Pennsylvania State constitutions;
3. Defendant requests a hearing upon the validity of the imposition of this license suspension;
4. The Defendant is full time employed and the surrendering of his license will make it practically impossible for him to continue his employment;
5. At the time of filing, the Defendant has already successfully completed his minimum period of incarceration and is on parole through Clearfield County Probation;

6. The Defendant is a resident of Clearfield County which is a rural area and the Defendant's license suspension has a greater effect and negative punishing influence on the Defendant than a person losing their license who lives in an urban area such as Philadelphia or Pittsburgh and such a greater penalty is a violation of the Defendant's equal protection rights pursuant to both the Federal and Pennsylvania State Constitutions;

7. Defendant received his notice of license suspension as attached and marked "Defendant's Exhibit One";

8. The filing of this appeal should act as a supersedeas and restrict the Department of Transportation from suspending the Defendant's license until final disposition of this case;

WHEREFORE, the Defendant would request that this court disallow the Department of Transportation to suspend the Defendant's license for the reasons previously suggested.

RESPECTFULLY SUBMITTED:



WHEELER LAW OFFICES

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PA

v.

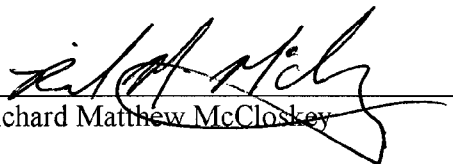
Number 00-_____-CD

RICHARD MATTHEW MCCLOSKEY,
Defendant

VERIFICATION

I verify that the statements made in this LICENSE SUSPENSION APPEAL are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Date: 7/14/00


Richard Matthew McCloskey

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PA

v.

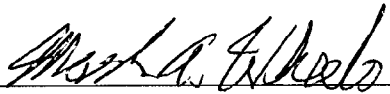
Number 00-_____-CD

RICHARD MATTHEW MCCLOSKEY,
Defendant

CERTIFICATE OF SERVICE

I, Mark Andrew Wheeler, Esquire, attorney for the Defendant, hereby certify that I have caused to be served on the attorney for the Department of Transportation a true and correct copy of the foregoing License Suspension Appeal by first class mail, CERTIFIED, RETURN RECEIPT REQUESTED, at the address indicated:

PA Department of Transportation
Office of Chief Counsel
Third Floor, Riverfront Office Center
Harrisburg, PA 17104



Mark Andrew Wheeler, Esq.

Wheeler Law Offices
512 Main St./P.O. Box 176
Reynoldsville, PA 15851
(814) 653-2000

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Harrisburg, PA 17123
JUNE 09, 2000

RICHARD MATTHEW MCCLOSKEY
633 TREASURE LAKE

DU BOIS PA 15801

001546258410265 001
06/02/2000
24814130
05/30/1979

Dear MR. MCCLOSKEY:

As a result of your violation on 07/12/1998 of violating Section 6308 (offenses related to alcohol), your driving privilege is being SUSPENDED for a period of 2 YEAR(S) as mandated by section 1532D of the vehicle code.

In order to comply with this sanction you are required to return any current driver's license, learner's permit and/or temporary driver's license (camera card) in your possession no later than the effective date listed. If you cannot comply with the requirements stated above, you are required to submit a DL16LC Form or a sworn affidavit stating that you are aware of the sanction against your driving privilege. Failure to comply with this notice shall result in this Bureau referring this matter to the Pennsylvania State Police for prosecution under SECTION 1571(a)(4) of the Vehicle Code.

Although the law mandates that your driving privilege is under suspension even if you do not surrender your license, Credit will not begin until all current driver's license product(s), the DL16LC Form, or a letter acknowledging your sanction is received in this Bureau.

WHEN THE DEPARTMENT RECEIVES YOUR LICENSE OR ACKNOWLEDGEMENT, WE WILL SEND YOU A RECEIPT. IF YOU DO NOT RECEIVE THIS RECEIPT WITHIN 15 DAYS CONTACT THE DEPARTMENT IMMEDIATELY. OTHERWISE, YOU WILL NOT BE GIVEN CREDIT TOWARD SERVING THIS SANCTION.

The effective date of suspension is 09/12/2000, 12:01 a.m.

Defendant's Exhibit One

001546258410265

Sincerely,

*Rebecca L. Bickley*Rebecca L. Bickley, Director
Bureau of Driver Licensing

SEND FEE/LICENSE/DL-16LC/TO:
Department of Transportation
Bureau of Driver Licensing
P.O. Box 68693
Harrisburg, PA 17106-8693

INFORMATION (7:00 AM TO 9:00 PM)
IN STATE 1-800-932-4600
OUT-OF-STATE 717-391-6190
TDD IN STATE 1-800-228-0676
TDD OUT-OF-STATE 717-391-6191

Atty Wheeler pd. 80.00
1 cc CA
1 cc Atty w/out order
1 cc Atty w/order

01350201
JUL 14 2000
William A. Shaw
Prothonotary

CP

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

Commonwealth of Pennsylvania

vs.

No. 2000-819-CD

Richard Matthew McCloskey,
Defendant.

Motion to Quash Appeal

Filed on Behalf of:
Commonwealth of Pennsylvania,
Department of Transportation

Counsel for this Party:

William A. Kuhar, Jr., Esquire
Pa. ID #38885

Office of Chief Counsel
Firm #052
1209 State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

412.565.7555

FILED

MAY 30 2001

William A. Shaw
Prothonotary

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

| | | |
|------------------------------|---|-----------------|
| COMMONWEALTH OF PENNSYLVANIA | : | |
| | : | |
| vs. | : | No. 2000-819-CD |
| | : | |
| RICHARD MATTHEW McCLOSKEY, | : | |
| Defendant. | : | |

MOTION TO QUASH APPEAL

AND NOW, comes the Department of Transportation and requests the Court quash this appeal by the defendant/petitioner, Richard Matthew McCloskey, from a reinstatement of a suspension of his operating privilege that he had previously appealed and, in support thereof, avers the following:

1. On or about February 18, 1999, the Department mailed to the defendant/petitioner, Richard Matthew McCloskey, an official notice of a two (2) year suspension of the defendant/petitioner's privilege to operate a vehicle in Pennsylvania, which, pursuant to Section 1532(d) of the Vehicle Code, was imposed due to the defendant/petitioner's reported conviction on January 19, 1999 in the Court of Common Pleas of Washington County for a third violation of Section 6308 of the Crimes Code, with the date of that offense being July 12, 1998. A copy of that February 18, 1999 suspension notice is attached hereto as Exhibit A.
2. On March 10, 1999, the defendant/petitioner filed a petition for appeal from the above-mentioned February 18, 1999 suspension notice. That statutory appeal was docketed at No. 1999-268-CD.
3. On April 10, 2000, the Honorable John K. Reilly, Jr. of this Court entered an order which dismissed the defendant/petitioner's statutory appeal from the February 18,

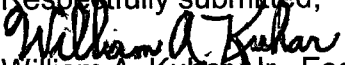
1999 suspension notice referred to in Paragraph 1 of this Motion. A copy of Judge Reilly's April 10, 2000 order of court is attached hereto as Exhibit B.

4. On June 9, 2000, the Department issued the defendant/petitioner a notice which informed him that the two (2) year operating privilege suspension that is referred to in Paragraph 1 of this Motion was now scheduled to go into effect on September 12, 2000. A copy of that suspension reinstatement notice is attached hereto as Exhibit C.

5. The defendant/petitioner filed this appeal from the June 9, 2000 suspension reinstatement notice referred to in Paragraph 4 of this Motion.

6. After a common pleas court enters an order dismissing a licensee's statutory appeal from a suspension of his operating privilege, and thirty days pass from the entry of that order without the licensee appealing the order to the Commonwealth Court of Pennsylvania, no right of appeal to the common pleas court lies from the Department's reinstatement of that operating privilege suspension. *Rinck v. Commonwealth*, 429 A.2d 1255 (Pa. Cmwlth. 1981).

WHEREFORE, the Department of Transportation requests that the Court issue a rule upon the defendant/petitioner, Richard Matthew McCloskey, to show cause, if any, why this appeal from the nonappealable action of the Department in reinstating the two (2) year suspension of the defendant/petitioner's operating privilege pursuant to Section 1532(d) of the Vehicle Code should not be quashed.

Respectfully submitted,

William A. Kuhar, Jr., Esquire
Assistant Counsel

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Harrisburg, PA 17123
FEBRUARY 18, 1999

RICHARD MATTHEW MCCLOSKEY
631 TREASURE LAKE

DU BOIS PA 15801

990426101048843 001
02/11/1999
24814130
05/30/1979

LICENSE IN BUREAU

Dear MR. MCCLOSKEY:

As a result of your violation on 07/12/1998 of violating Section 6308 (offenses related to alcohol), your driving privilege is being SUSPENDED for a period of 2 YEAR(S) as mandated by section 1532D of the vehicle code.

The effective date of suspension is 03/30/1999, 12:01 a.m.

The above mentioned sanction is in addition to any previously issued sanction(s).

You have the right to appeal the Department's action to the Court of Common Pleas (Civil Division) within 30 days of the mail date (FEBRUARY 18, 1999) of this notice. PLEASE NOTE that this Civil Appeal is in addition to any appeal you have to file from the criminal conviction.

THE APPEAL MUST BE SENT BY CERTIFIED MAIL TO:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
OFFICE OF CHIEF COUNSEL
THIRD FLOOR, RIVERFRONT OFFICE CENTER
HARRISBURG, PA. 17104

Sincerely,

Rebecca L. Bickley

Rebecca L. Bickley, Director
Bureau of Driver Licensing

Exhibit A

990426101048843

SEND FEE/LICENSE/DL-16LC/TO:
Department of Transportation
Bureau of Driver Licensing
P.O. Box 68693
Harrisburg, PA 17106-8693

INFORMATION (7:00 AM TO 9:00 PM)
IN STATE 1-800-932-4600
OUT-OF-STATE 717-391-6190
TDD IN STATE 1-800-228-0676
TDD OUT-OF-STATE 717-391-6191

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

-vs-

: Nos. 99-267 & 268-CD

RICK MCCLOSKEY

:

O R D E R

NOW, this 10th day of April, 2000, this being the day and date set for hearing into the above-captioned Appeal from License Suspension; the Court having been advised that the Defendant, through counsel, wishes to withdraw said Appeal, it is the ORDER of this Court that the Appeal be and is hereby DISMISSED and the action of the Department SUSTAINED.

BY THE COURT,

/s/JOHN K. REILLY, JR.

President Judge

I hereby certify that the above is a true and correct copy of the original
FILED

ALL-

APR 19 2000

Exhibit B

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Harrisburg, PA 17123
JUNE 09, 2000

RICHARD MATTHEW MCCLOSKEY
631 TREASURE LAKE

DU BOIS PA 15801

001546258410265 001
06/02/2000
24814130
05/30/1979

Dear MR. MCCLOSKEY:

As a result of your violation on 07/12/1998 of violating Section 6308 (offenses related to alcohol), your driving privilege is being SUSPENDED for a period of 2 YEAR(S) as mandated by section 1532D of the vehicle code.

In order to comply with this sanction you are required to return any current driver's license, learner's permit and/or temporary driver's license (camera card) in your possession no later than the effective date listed. If you cannot comply with the requirements stated above, you are required to submit a DL16LC Form or a sworn affidavit stating that you are aware of the sanction against your driving privilege. Failure to comply with this notice shall result in this Bureau referring this matter to the Pennsylvania State Police for prosecution under SECTION 1571(a)(4) of the Vehicle Code.

Although the law mandates that your driving privilege is under suspension even if you do not surrender your license, Credit will not begin until all current driver's license product(s), the DL16LC Form, or a letter acknowledging your sanction is received in this Bureau.

WHEN THE DEPARTMENT RECEIVES YOUR LICENSE OR ACKNOWLEDGEMENT, WE WILL SEND YOU A RECEIPT. IF YOU DO NOT RECEIVE THIS RECEIPT WITHIN 15 DAYS CONTACT THE DEPARTMENT IMMEDIATELY. OTHERWISE, YOU WILL NOT BE GIVEN CREDIT TOWARD SERVING THIS SANCTION.

The effective date of suspension is 09/12/2000, 12:01 a.m.

EXHIBIT C

001546258410265

Sincerely,

Rebecca J. Bickley

Rebecca L. Bickley, Director
Bureau of Driver Licensing

SEND FEE/LICENSE/DL-16LC/TO:
Department of Transportation
Bureau of Driver Licensing
P.O. Box 68693
Harrisburg, PA 17106-8693

INFORMATION (7:00 AM TO 9:00 PM)
IN STATE 1-800-932-4600
OUT-OF-STATE 717-391-6190
TDD IN STATE 1-800-228-0676
TDD OUT-OF-STATE 717-391-6191

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

COMMONWEALTH OF PENNSYLVANIA

vs.

No. 2000-819-CD

RICHARD MATTHEW McCLOSKEY,
Defendant.

ORDER OF COURT

AND NOW, this 29th day of May, 2001, it is ORDERED, ADJUDGED AND DECREED that a rule be issued upon the defendant/petitioner, Richard Matthew McCloskey, to show cause, if any, why this appeal from the action of the Department of Transportation in reinstating the two (2) year suspension of the defendant/petitioner's operating privilege pursuant to Section 1532(d) of the Vehicle Code should not be quashed for having been filed from an action of the Department from which no right to appeal lies.

Said rule is returnable on the 26th day of June, 2001, at 1:30 p.m., in Courtroom No. 1 of the Clearfield County Courthouse.

BY THE COURT:



J.

FILED

MAY 30 2001

William A. Shaw
Prothonotary

FILED

MAY 30 2001

Shaw 111031 cc cathy kuchen
William A. Shaw
Prothonotary

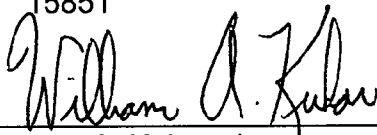
CERTIFICATE OF SERVICE

The undersigned does hereby certify that, on the date set forth below, he served a true and correct copy of the foregoing Motion to Quash Appeal upon counsel for the defendant/petitioner by regular United States first class mail, postage pre-paid, addressed as follows:

Mark Andrew Wheeler, Esquire
512 Main Street
P.O. Box 176
Reynoldsville, PA 15851

Date: _____

5/25/2001



William A. Kuhar, Jr.

FILED

MAY 30 2001

Wm
William A. Shaw
Prothonotary
city kitchen

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

COMMONWEALTH OF PENNSYLVANIA :
VS : NO. 00-817 & 00-819-CD
RICHARD MATTHEW MCCLOSKEY :

O R D E R

NOW, this 26th day of June, 2001, the Court hereby
GRANTS the Commonwealth's Motion to Quash to the appeals to
2000-817-CD and 2000-819-CD.

BY THE COURT,

President Judge

FILED

JUN 26 2001

William A. Shaw
Prothonotary

