

01-755-CD
ROBERT A. MALTATS III -vs- COMMONWEALTH OF PA

Supreme Court of Pennsylvania



Allocatur Docket Sheet

Docket Number: 167 WAL 2002

Page 1 of 4

December 10, 2003

(B34 C101)

Robert Maltais, III, Petitioner

v.

Commonwealth of Pennsylvania, Department of Transportation,
Bureau of Driver Licensing, Respondent

Initiating Document: Petition for Allowance of Appeal and Reproduced Record

Case Status: Closed

Journal Number:

Date Listed Submitted:

Case Category: Civil

Case Type: Driver's License
Suspension

Consolidated Docket Nos.:

Related Docket Nos.:

COUNSEL INFORMATION

Attorney: Dennis Luttenauer, Esq.

Bar No.: 37879

Address: 2 Greeves St PO Box 279
Kane, PA 16735
Phone No.: (814)837-7190

Fax No.: (814)837-7766

Receive Mail: Yes

Representing: Robert Maltais, III, Petitioner

Pro Se: No

IFP Status:

Attorney: Timothy P. Wile, Esq.

Bar No.: 30397

Address: 1101 South Front Street
3rd Fl. Riverside Off. Cntr.
Harrisburg, PA 17104-1516
Phone No.: (717)787-2830

Fax No.:

Receive Mail: Yes

Representing: Bureau of Driver Licensing, Respondent

Pro Se: No

IFP Status:

Attorney: Harold Cramer, Esq.

Bar No.: 4390

Address: Riverfront Office Center
1101 S. Front Street 3rd Floor
Harrisburg, PA 17104-2515
Phone No.: (717)787-2830

Fax No.:

Receive Mail: Yes

Representing: Bureau of Driver Licensing, Respondent

Pro Se: No

FILED
11:35 AM
DEC 15 2003

William A. Shaw
Prothonotary/Clerk of Courts

Supreme Court of Pennsylvania



Allocatur Docket Sheet

Docket Number: 167 WAL 2002

Page 2 of 4

December 10, 2003

IFP Status:

SUPREME COURT INFORMATION

Appeal From:

Notice of Appeal Filed Below:

Probable Jurisdiction

Noted:

Docketed Date: March 26, 2002

Allocatur Grant Date:

Allocatur Docket No.:

Allocatur Grant Order:

FEE INFORMATION

Fee Date	Fee Name	Reason Waived	Fee Amt	Paid Amount	Receipt Number
3/26/02	Petition for Allowance of Appeal Filed		55.00	55.00	2002SUPW000583

INTERMEDIATE APPELLATE COURT INFORMATION

Court Name: Commonwealth Docket Number: 1834 CD 2001
 Date of Order: February 27, 2002 Reargument Denied:
 Judge(s): Cohn, Renee L.
 Colins, James Gardner
 Mirarchi Jr., Charles P.

Intermediate Appellate Court Action: Order affirmed

Referring Court:

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas
 Lower Court Docket Number: 01-755-CD
 County: Clearfield Division: Civil
 Date of Trial Court/Agency Order: July 13, 2001 OTN:
 Order Type:
 Judge: Reilly, Jr., John K., President Judge

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Record Remittal:

BRIEFS

REARGUMENT/RECONSIDERATION REMITTAL

Reargument/Reconsideration Filed Date:

12/10/2003

1055

Supreme Court of Pennsylvania



Allocatur Docket Sheet

Docket Number: 167 WAL 2002

Page 3 of 4

December 10, 2003

Reargument Disposition:

Date:

Reargument Order:

Record Remitted:

SESSION INFORMATION

Consideration Type:

Date Listed/Submitted:

DISPOSITION INFORMATION

Related Journal Number: Judgment Date: February 21, 2003

Disposition Category: Decided Disposition Author: Per Curiam

Disposition: Order Denying Petition for Disposition Date: February 21, 2003
Allowance of Appeal

Dispositional Filing: Author:

Filed Date:

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
March 25, 2002	Petition for Allowance of Appeal and Reproduced Record		
		Petitioner	Maltais III, Robert
April 26, 2002	Praecipe for Appearance Wile, Timothy P.		
		Respondent	Bureau of Driver Licensing
May 2, 2002	Application for Supersedeas		
		Petitioner	Maltais III, Robert
May 7, 2002	Answer to Application for Supersedeas		
		Respondent	Bureau of Driver Licensing
May 22, 2002	Order Granting Application for Supersedeas and Reserving		
			Per Curiam
Comments:	ORDER: AND NOW, this 22nd day of May 2002, the Motion for Supersedeas is granted. The Petition for Allowance of Appeal is held pending Wroblewski v. Commonwealth of Pennsylvania, Department of Transportation, 25 WAP 2001. PC		
May 22, 2002	Order Exited		

Office of the Prothonotary

Supreme Court of Pennsylvania



Allocatur Docket Sheet

Docket Number: 167 WAL 2002

Page 4 of 4

December 10, 2003

Per Curiam

Comments: ORDER: AND NOW, this 21st day of February, 2003, the Petition of Allowance of Appeal is hereby DENIED. See, Wroblewski v. Commonwealth of Pennsylvania, Department of Transportation, 809 A.2.d 247 (Pa. 2002).

Mr. Justice William H. Lamb did not participate in the consideration or decision of this matter.

February 21, 2003 Order Exited

Office of the Prothonotary

March 10, 2003 Notice of Disposition Sheet Exited

Office of the Prothonotary

Cross Court Actions

Docket Number: 1834 CD 2001



Commonwealth Court of Pennsylvania

Charles R. Hostutler
Deputy Prothonotary/Chief Clerk

December 10, 2003

Irvis Office Building, Room 624
Harrisburg, PA 17120
717-255-1650

Certificate of Remittal/Remand of Record

TO:

RE: Maltais III v. Bur. Driver Licensing
No. 1834 CD 2001

Trial Court/Agency Dkt. Number: 01-755-CD

Trial Court/Agency Name: Clearfield County Court of Common Pleas
Intermediate Appellate Court Number:

FILED
m/11/35 AM
DEC 15 2003

William A. Shaw
Prothonotary/Clerk of Courts

Annexed hereto pursuant to Pennsylvania Rules of Appellate Procedure 2571 and 2572 is the entire record for the above matter.

Contents of Original Record:

Original Record Item	Filed Date	Description
Trial Court Record	September 25, 2001	1
Supplemental Record - transcript	October 11, 2001	1

Date of Remand of Record:

ORIGINAL RECIPIENT ONLY - Please acknowledge receipt by signing, dating, and returning the enclosed copy of this certificate to our office. Copy recipients (noted below) need not acknowledge receipt.

CR Hostutler

William A. Shaw
Signature

December 15, 2003
Date

William A. Shaw
Printed Name

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert Maltais, III,

Appellant

V.

Commonwealth of Pennsylvania,
Department of Transportation,
Bureau of Driver Licensing

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: No. 1834 C.D. 2001

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FILED
M 11 35
DEC 15 2003

DEC 15 2003

William A. Shaw
Prothonotary/Clerk of Courts

BEFORE: HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE RENÉE L. COHN, Judge
HONORABLE CHARLES P. MIRARCHI, JR., Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN**

FILED: February 27, 2002

This is an appeal by Robert A. Maltais, III (Licensee) from an order of the Court of Common Pleas of Clearfield County that dismissed his statutory appeal from a one year suspension of his operating privileges by the Department of Transportation, Bureau of Driver Licensing, (Bureau) based upon Sections 1532(b)(3) and 1581, Article IV(a)(2), of the Vehicle Code, 75 Pa. C.S. §§1532(b)(3), 1581, Article IV(a)(2).¹ We affirm.

¹ Section 1532(b)(3) provides:

The department shall suspend the operating privilege of any driver for 12 months upon receiving a certified record of the driver's conviction of section 3731 (relating to driving under influence of alcohol or controlled substance) or 3733 (relating to fleeing or attempting to elude police officer), or substantially similar

The undisputed facts are that Licensee was arrested in New York state on February 24, 2001, and charged with driving while ability impaired, a violation of N.Y. Veh. & Traf. Law §1192(1). He was convicted on March 13, 2001. New York is a party state to the Driver License Compact, along with Pennsylvania.

Pursuant to the Driver License Compact, the Bureau treated the conviction as if Licensee had been convicted in Pennsylvania of driving under the influence of alcohol or a controlled substance. See 75 Pa. C.S. §3731. It notified Licensee that his license was being suspended for one year. He appealed and at the hearing the Bureau entered into evidence a packet of documents certified by the Secretary of Transportation and the Director of the Bureau. The Bureau then rested. Licensee presented no evidence. The trial court dismissed the statutory appeal and this appeal ensued.

On appeal Licensee presents four arguments and we shall address them *seriatim*.

offenses reported to the department under Article III of section 1581 (relating to Driver's License Compact), or an adjudication of delinquency based on section 3731 or 3733....

Section 1581, Article IV(a), pertinently provides:

The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state in the case of convictions for:

...
(2) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle; ...

First, Licensee asserts that the evidence was insufficient to prove that his New York conviction related to the operation of a motor vehicle while impaired by or under the influence of alcohol or other intoxicating substances. He maintains that because the notice forwarded by the New York Department of Motor Vehicles to the Bureau merely indicated “driving while impaired” there is no evidence that the impairment was alcohol related. The Bureau points out that New York law contains only one driving while impaired statute and it states, “[n]o person shall operate a motor vehicle while the person’s ability to operate such a motor vehicle is impaired *by the consumption of alcohol.*” (Emphasis added.) Since Licensee admits he was convicted of a violation of Section 1192(1), he has, in fact, admitted that the conviction was for alcohol-related activity. Thus, his argument that his conduct was not the type envisioned by the Compact is unavailing.

Second, Licensee argues that the conduct at issue is not substantially similar to that identified in Article IV(a)(2) of the Compact. Counsel for Licensee conceded at the de novo hearing that this Court has already decided that issue contrary to his position in Squire v. Department of Transportation, Bureau of Driver Licensing, 769 A.2d 1224 (Pa. Cmwlth. 2001), and Horvath v. Department of Transportation, Bureau of Driver Licensing, 773 A.2d 199 (Pa. Cmwlth. 2001), and that he wished only to preserve the issue for appeal. (N.T., 6.) We adhere to our holdings in those cases.

Third, Licensee asserts that by treating 1192(1) of the New York Traffic Law as substantially similar to Section 3731 of Pennsylvania’s Vehicle Code, Licensee is denied equal protection of the law. Specifically, he argues that treating

the two offenses as substantially similar creates two classes of Pennsylvania drivers: (1) those who consume alcohol and drive in Pennsylvania while impaired to an extent less than that which would render them incapable of safe driving, and (2) those who engage in similar conduct in New York and are convicted in that state. He posits that the first class would be subject to no penalty and the second would.

Licensee concedes, in making his equal protection challenge, that there is no fundamental right or suspect classification involved and, hence, that the rational relations test must be applied when reviewing the statute. See e.g., Plowman v. Department of Transportation, Bureau of Driver Licensing, 535 Pa. 314, 635 A.2d 124 (1993). He asserts, however, that if Section 1586 of the Vehicle Code is construed to make the New York offense substantially similar to Article IV(a)(2), even the rational relations test is not met.

We disagree. Our state supreme court has stated that where a Pennsylvania driver operates a vehicle in another state while impaired, he or she has demonstrated an unwillingness to comply with the vehicle and traffic laws of this Commonwealth as well. Department of Transportation v. McCafferty, 563 Pa. 146, 758 A.2d 1155 (2000). That court has also recognized Pennsylvania's "compelling" interest in protecting its own citizenry as well as the citizens of other jurisdictions from impaired Pennsylvania drivers. Id. We, thus, conclude that it was certainly rational for the General Assembly to find that Pennsylvania drivers who demonstrate a disregard for other states' vehicle laws, and drive while

impaired by alcohol, also pose a threat to this Commonwealth and, hence, should be treated as though they have violated our driving under the influence statutes.

Finally, Licensee contends that Section 1586 creates an unconstitutional presumption that the driver was incapable of safely operating a vehicle as a result of the out-of-state conviction. Licensee asserts that application of the Compact prevents him from demonstrating *in this proceeding* that his conduct in New York did **not** rise to a level where he was incapable of safe driving. We reject this argument. Aside from the fact that the 1998 amendments to the Compact expanded which driving offenses in other jurisdictions would be deemed “substantially similar” to Pennsylvania law, Licensee’s argument is, more importantly, an attempted collateral attack on the out of state conviction. The cases are legion where this court has refused to allow a licensee in a civil license suspension proceeding to attack the underlying criminal conviction. See, e.g., Department of Transportation, Bureau of Driver Licensing v. Granberg, 633 A.2d 1334 (Pa. Cmwlth. 1993); Commonwealth v. Duffey, 536 Pa. 436, 639 A.2d 1174 (1994), cert. denied, 513 U.S. 884 (1994). This case presents no reason to depart from that well-settled precedent.

Accordingly, based upon the foregoing discussion, the order of the trial court is affirmed.



RENÉE L. COHN, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert Maltais, III, :
Appellant :
v. : No. 1834 C.D. 2001
Commonwealth of Pennsylvania, :
Department of Transportation, :
Bureau of Driver Licensing :
:

O R D E R

NOW, February 27, 2002, the order of the Court of Common Pleas of Clearfield County in the above-captioned matter is hereby affirmed.



RENÉE L. COHN, Judge

1834 Oct 2001

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

I, William A. Shaw, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

ROBERT A. MALTAIS III

VS

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

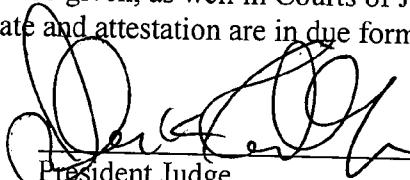
So full and entire as the same remains of record before the said Court, at No. 2001-755-CD

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 13th Day of Sept., 2001.



Prothonotary/Clerk of Courts

I, John K. Reilly, Jr., President Judge of the Forty-sixth Judicial District, do certify that William A. Shaw, by whom the annexed record, certificate and attestation were made and given, and who in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by proper officer.



President Judge

I, William A. Shaw, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable John K. Reilly, Jr., President Judge by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is President Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere:

In Testimony Whereof, I have
hereunto set my hand and affixed
the seal of said Court, this 24th day
of September, 2001.



Prothonotary/Clerk of Courts

2001 SEP 25 A 9:12

U. S. PENNSYLVANIA
COMMONWEALTH COURT
PROTHONOTARY & CLERK

Commonwealth Court of Pennsylvania

August 13, 2001

RE: Maltais III v. Bur. Driver Licensing
No.: 1834 CD 2001
Agency Docket Number: 01-755-CD
Filed Date: August 10, 2001

Notice of Docketing Appeal

A Notice of Appeal, a copy of which is enclosed, from an order of your court has been docketed in the Commonwealth Court of Pennsylvania. The docket number in the Commonwealth Court is endorsed on this notice. The Commonwealth Court docket number must be on all correspondence and documents filed with the court.

Under Chapter 19 of the Pennsylvania Rules of Appellate Procedure, the Notice of Appeal has the effect of directing the Court to transmit the certified record in the matter to the Prothonotary of the Commonwealth Court.

The complete record, including the opinion of the trial judge, should be forwarded to the Commonwealth Court within forty (40) days of the date of filing of the Notice of Appeal. Do not transmit a partial record.

Pa.R.A.P. 1921 to 1933 provides the standards for preparation, certification and transmission of the record.

The address to which the Court is to transmit the record is set forth on Page 2 of this notice.

Notice to Counsel

A copy of this notice is being sent to all parties or their counsel indicated on the proof of service accompanying the Notice of Appeal. The appearance of all counsel has been entered on the record in the Commonwealth Court. Counsel has thirty (30) days from the date of filing of the Notice of Appeal to file a praecipe to withdraw their appearance pursuant to Pa. R.A.P. 907 (b).

Appellant or Appellant's attorney should review the record of the trial court, in order to insure that it is complete, prior to certification to this Court. (Note: A copy of the Zoning Ordinance must accompany records in Zoning Appeal cases).

The addresses to which you are to transmit documents to this Court are set forth on Page 2 of this Notice.

If you have special needs, please contact this court in writing as soon as possible.

Attorney Name	Party Name	Party Type
Harold Cramer, Esq.	Bureau of Driver Licensing	Appellee
William Kuhar Jr., Esq.	Bureau of Driver Licensing	Appellee
Dennis Luttenauer, Esq.	Robert Maltais, III	Appellant

FILED

AUG 15 2001
m/1:50pm
William A. Shaw
Prothonotary

#6

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

1834 CD 2001

CIVIL ACTION - STATUTORY APPEAL

Type of Case - Civil

No. 01-755-CD

ROBERT MALTAIS, III
Petitioner

vs.

Type of Pleading: Notice of Appeal
and Request for Transcript

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Respondent

Filed on behalf of:
Petitioner

Counsel of Record for this
Party:

Dennis Luttenauer
Supreme Court No. 37879
2 Greeves St., PO Box 279
Kane, PA 16735
(814) 837-7190

Dated: 8/8/01

William A. Kuhar, Jr.
Counsel for Adverse Party

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

AUG 09 2001

Attest.

William A. Kuhar
Prothonotary

Address all written communication

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
P.O. Box 11730
Harrisburg, PA 17108
(717) 255-1650

Filings may be made in person at the following address (except on Saturdays, Sundays and holidays observed by Pennsylvania Courts) between 9:00 a.m. and 4:00 p.m.

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Room 624
Sixth Floor
South Office Building
Harrisburg, PA 17120
(717) 255-1650

Pleadings and similar papers (but not paperbooks or certified records) may also be filed in person only at:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Filing Office
Suite 990
The Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 560-5742

The hours of the Philadelphia Filing Office are 9:00 a.m. to 4:00 p.m.

Under Pa.R.A.P. 3702, writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office.

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

A

5012 - 10/99

10/1/99

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(C)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

2001-755-CD

ROBERT MALTAIS, III
VS.
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION

In compliance with Pa. R.A.P. 1931 (c).

The documents compromising the record have been numbered from **No. 1 to No. 7**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages compromising the document.

The date on which the record had been transmitted to the Appellate Court is
Sept. 24, 2001.



Prothonotary/Clerk of Courts

(seal)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

CASE # 01-755-CD

ROBERT A. MAILTAIS III

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

ITEM NO.	DATE of FILING	NAME of DOCUMENT	NO of PAGES
01	05/18/01	PETITION FOR REVIEW OF ORDER SUSPENDING OPERATING PRIVILEGE	07
02	06/01/01	ORDER	01
03	07/13/01	ORDER	01
04	08/09/01	APPEAL TO HIGH COURT	05
05	08/13/01	ORDER	01
06	08/15/01	NOTICE OF DOCKETING APPEAL	04
07	08/31/01	STATEMENT OF MATTERS COMPLAINED OF ON APPEAL	07

Date: 09/12/2001

Time: 10:36 AM

Page 1 of 1

Clearfield County Court of Common Pleas
ROA Report

User: BHUDSON

Case: 2001-00755-CD

Current Judge: John K. Reilly Jr.

Robert A. Mailtais III vs. Commonwealth of Pennsylvania

Civil Other

Date	Judge	
05/18/2001	Filing: Petition for Review of Order Suspending Operating Privilege Paid by: Dennis Luttenauer, Esquire Receipt number: 1825441 Dated: 05/18/2001 Amount: \$80.00 (Check) No CC	No Judge
06/01/2001	ORDER, AND NOW, this 30th day of May, 2001, re: Hearing de novo scheduled for 26 Jun 01, at 2:30 p.m. 1 cc atty Luttenauer	John K. Reilly Jr.
07/13/2001	Order, NOW, this 12th day of July, 2001, appeal is dismissed and the action of the Department of Transportation affirmed. BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Luttenauer One CC Attorney Kuhar for Dept. of Transportation	John K. Reilly Jr.
08/09/2001	Filing: Appeal to High Court Paid by: Luttenauer, Dennis (attorney for Mailtais, Robert A. III) Receipt number: 1829697 Dated: 08/09/2001 Amount: \$45.00 (Check) Notice of Appeal w/\$55.00 check to Commonwealth Court.	John K. Reilly Jr.
08/13/2001	ORDER, filed. Cert. to Luttenauer & Kuhar NOW, this 13th day of August, 2001, ORDER for Atty. Luttenauer for Appellant to file concise statement.	John K. Reilly Jr.
08/15/2001	Notice of Docketing Appeal from Commonwealth Court, filed No. 1834 CD 2001	John K. Reilly Jr.
08/31/2001	Statement of Matters Complaint of on Appeal. Filed by s/Dennis Luttenauer, Esq. Service, s/Dennis Luttenauer no cc	John K. Reilly Jr.

I hereby certify this to be a true and attested copy of the original statement of matters complaint.

Sept 12 2001

Attest:

John K. Reilly
Presiding Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
No. _____ C.D. 2001

ROBERT A. MAILTAIS, III
Petitioner

vs.

COM., DEPARTMENT OF TRANSPORTATION,
Respondent

PETITION FOR REVIEW OF ORDER
SUSPENDING OPERATING PRIVILEGE

FILED

MAY 18 2001
DWM/11:56/Acty
William A. Shaw
Prothonotary

luttenauer
pd \$80.00
no cc.

DENNIS LUTTENAUER

ATTORNEY AT LAW

2 GREEVES STREET
SUITE 100

P. O. BOX 279

KANE, PENNSYLVANIA 16735

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

01-755-CD

CIVIL ACTION - LAW

ROBERT A. MAILTAIS III,
Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Respondent

Type of Case - Statutory Appeal
No. ____ C.D. 2001

Type of Pleading: Petition for Review
Of Order Suspending Operating
Privilege

Filed on Behalf of:
Petitioner

Counsel of Record for This Party:

Dennis Luttenauer
Supreme Court No. 37879
2 Greeves St., PO Box 279
Kane, PA 16735
(814) 837-7190

Dated: 5/10/01

FILED

MAY 18 2001

William A. Shaw
Prothonotary

#1

ROBERT A. MALTAIS, III
Petitioner

vs.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION : No. ___ C.D. 2001
Respondent

ORDER

AND NOW, this 30th day of May, 2001, upon consideration of the petition for review filed in this matter, a hearing de novo is hereby scheduled for the 20th day of June, 2001, at 2:30 o'clock P M., at the Clearfield County Courthouse, Clearfield, PA, to determine whether the order of the Department of Transportation, mailed May 3, 2001, should be set aside.

It is further ORDERED that the filing of this petition shall operate as a supersedeas with respect to the order of suspension, and that no suspension of the petitioner's operating privilege shall be imposed against him for the reasons set forth in the said notice and order of suspension until final determination of this matter, pursuant to 75 Pa.C.S. §1550(b).

The attorney for the petitioner is hereby directed forthwith to serve the Department of Transportation with a copy of this Order and of the accompanying petition for review at the address shown on the notice of suspension, by certified mail, return receipt requested.

BY THE COURT:

FILED

JUN 01 2001

William A. Shaw
Prothonotary

#2

FILED 1 cc Attn:
O'Donnell Lutterauer
JUN 01 2001

William A. Shaw
Prothonotary

ROBERT A. MALTAIS, III
Petitioner

: IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
:
CIVIL ACTION - LAW

vs.
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION : No. ____ C.D. 2001
Respondent

PETITION FOR REVIEW OF
ORDER SUSPENDING OPERATING
PRIVILEGE

Petitioner, by and through his attorney, hereby petitions the Court, pursuant to 75 Pa.C.S. §1550, for review of the order of the Department of Transportation, mailed May 3, 2001, suspending his operating privilege. Petitioner prays that the filing of this petition shall operate as a supersedeas with respect to the order of suspension, and that no suspension be imposed against him for the reasons stated in the said notice of suspension until final determination of this matter, pursuant to 75 Pa.C.S. §1550(b). The following statements are made in support hereof:

1. Petitioner, Robert A. Maltais, III, is an adult individual whose present address is 1017 Ogden Ave. Ext., Clearfield, Clearfield County, PA 16830.
2. By notice dated May 3, 2001, petitioner was advised that his operating privilege was being suspended for a period of one year, effective at 12:01 A.M. on 06/07/2001, for his conviction in New York State of an offense deemed to be equivalent to §3731 of the

PA Vehicle Code (re: DUI). A copy of the said notice of suspension is attached hereto, marked Exhibit A, and incorporated herein by reference.

3. The proposed suspension is unlawful and improper, as the petitioner specifically denies that he was convicted in New York state for an offense which is substantially similar to §3731 of the PA Vehicle Code or to Article IV(a)(2) of the Driver's License Compact, 75 Pa.C.S. §1581.

4. It is believed and averred that the Department has failed to construe and apply §1586 of the Vehicle Code [75 Pa.C.S. §1586] in pari materia with §1532(b) thereof, and with Article IV(a)(2) of the Driver's License Compact [75 Pa.C.S. §1581], so as to require that a foreign conviction resulting from impairment by alcohol be based upon impairment to an extent which renders the person incapable of driving safely.

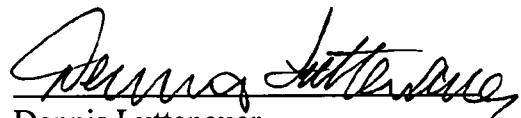
5. If §§1532(b) and 1586 of the PA Vehicle Code [75 Pa.C.S. §§1532(b) and 1586] are construed and applied in such a manner as to treat a New York conviction for Driving While Ability Impaired under §1192(1) of the New York Vehicle and Traffic Law as substantially similar to a Pennsylvania conviction under 75 Pa.C.S. §3731, such a construction and application would deprive petitioner of the equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution, and Article 1 §1 of the Pennsylvania Constitution.

6. If §§1532(b) and 1586 of the PA Vehicle Code [75 Pa.C.S. §1532(b) and 1586] are construed and applied by the Department in such a manner as to treat a New York

conviction for Driving While Ability Impaired under §1192(1) of the New York Vehicle and Traffic Law as evidence of conduct of a substantially similar nature as would support a conviction under §3731 of the Vehicle Code, 75 Pa.C.S. §3731, such construction and application would create an unlawful conclusive presumption, depriving petitioner of his right to due process under the Fourteenth Amendment to the United States Constitution, and Article 1, §1 of the Pennsylvania Constitution.

WHEREFORE, petitioner respectfully requests (1) that this matter be scheduled for de novo hearing, pursuant to 75 Pa.C.S. §1550; (2) that the filing of this appeal shall operate as a supersedeas with respect to the order of suspension, and that no suspension be imposed against him for the reasons stated in the said notice of suspension until final determination of this matter, pursuant to 75 Pa.C.S. §1550(b); and (3) that after hearing, the order of the Department of Transportation be reversed and set aside.

Respectfully submitted,



Dennis Luttenauer
2 Greeves St., PO Box 279
Kane, PA 16735
(814) 837-7190
Attorney for Petitioner

VERIFICATION

I, Robert A. Maltais, III hereby verify that the statements contained in the foregoing Petition are true and correct, to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: 5/10/01

Robert A. Maltais III
ROBERT A. MALTAIS III

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Harrisburg, PA 17123
MAY 03, 2001

ROBERT A MALTAIS III
1017 OGDEN AVE
EXT
CLEARFIELD PA 16830

011166101532733 001
04/26/2001
23558969
08/13/1965

Dear Motorist:

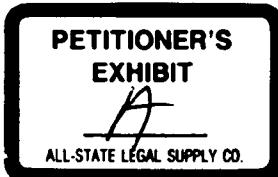
Section 1581 of the Vehicle Code requires the Department to treat certain out of state convictions as though they had occurred in Pennsylvania. Therefore, as a result of the Department receiving notification from NEW YORK of your conviction on 03/13/2001 of an offense which occurred on 02/24/2001, which is equivalent to a violation of Section 3731 of the Pa. Vehicle Code, DRIVING UNDER INFLUENCE, your driving privilege is being SUSPENDED for a period of 1 YEAR(S), as mandated by Section 1532B of the Vehicle Code.

The effective date of suspension is 06/07/2001, 12:01 a.m.

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.



011166101532733

Please see the enclosed application for restoration fee information.

You will be notified of any outstanding restoration requirements approximately 30 days before the eligibility date of the restoration of your driving privilege. You must follow those instructions very carefully in order to have your driving privilege restored.

APPEAL

You have the right to appeal this action to the Court of Common Pleas (Civil Division) within 30 days of the mail date, MAY 03, 2001, of this letter. If you file an appeal in the County Court, the Court will give you a time-stamped certified copy of the appeal. In order for your appeal to be valid, you must send this time-stamped certified copy of the appeal by certified mail to:

Pennsylvania Department of Transportation
Office of Chief Counsel
Third Floor, Riverfront Office Center
Harrisburg, PA 17104-2516

Sincerely,

Rebecca L. Bickley

Rebecca L. Bickley, Director
Bureau of Driver Licensing

SEND FEE/LICENSE/DL-16LC/T0:
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 ACTION

ROBERT A. MAILTAIS III : :

-vs- : No. 01 - 755 - CD

COMMONWEALTH OF PENNSYLVANIA:

DEPARTMENT OF TRANSPORTATION :

ORDER

NOW, this 12th day of July, 2001, this matter coming before the Court upon appeal from license suspension alleging that Appellant's conviction in New York State of the offense of Driving While Ability Impaired §1192(1) of the New York Vehicle and Traffic Law is not substantially similar to Pennsylvania Statute 75 Pa. C.S.A. 3731, it is the ORDER of this Court that said appeal be and is hereby dismissed and the action of the Department of Transportation affirmed based on the following cases: Leo J. Squire v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, 769 A.2d 1224; Stephen Arthur Horvath v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, 1808 C.D. 2000; Lawrence Edward Reiner v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, 3311 C.D. 1999; and Keith John Mundy v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, 873 C.D. 2000, all before the Commonwealth Court of Pennsylvania.

By the Court,

President Judge

FILED

JUL 13 2001

William A. Shaw
Prothonotary

X3

FILED

JUL 13 2001

cc atty Lutteman
cc atty Tuker. Dept. Trans.
William R. Shaw
Prothonotary

1
cc atty Lutteman
cc atty Tuker. Dept. Trans.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA
No. 01-755-CD

ROBERT MALTAIS, III,
Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Respondent

NOTICE OF APPEAL AND REQUEST
FOR TRANSCRIPT

DENNIS LUTTENAUER
ATTORNEY AT LAW
2 GREEVES STREET
SUITE 100
P. O. BOX 279
KANE, PENNSYLVANIA 16735

FILED

AUG 09 2001
AM 11:30 AM
William A. Shaw
Prothonotary

PR 45-

cert to Comm Court
W/55-

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

CIVIL ACTION - STATUTORY APPEAL

Type of Case - Civil

No. 01-755-CD

ROBERT MALTAIS, III
Petitioner

vs.

Type of Pleading: Notice of Appeal
and Request for Transcript

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Respondent

Filed on behalf of:
Petitioner

Counsel of Record for this
Party:

Dennis Luttenauer
Supreme Court No. 37879
2 Greeves St., PO Box 279
Kane, PA 16735
(814) 837-7190

Dated: 8/8/01

William A. Kuhar, Jr.
Counsel for Adverse Party

FILED

AUG 09 2001

William A. Shaw
Prothonotary

WA

ROBERT A. MALTAIS, III,
Petitioner

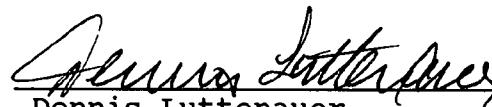
vs.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Respondent

: IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY,
: PENNSYLVANIA
CIVIL ACTION-STATUTORY APPEAL
:
: No. 01-755-CD

NOTICE OF APPEAL

Notice is hereby given that Robert A. Maltais III, petitioner above named, hereby appeals to the Commonwealth Court of Pennsylvania from the order entered in this matter on the July 13, 2001, which order has been entered in the docket as evidenced by the attached copy of the docket entry.



Dennis Luttenauer
Attorney at Law
2 Greeves St., PO Box 279
Kane, PA 16735
(814) 837-7190
Attorney for Petitioner-Appellant

ROBERT MALTAIS, III
Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Respondent

: IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY,
: PENNSYLVANIA
CIVIL ACTION-STATUTORY APPEAL
:
: No. 01-755-CD

REQUEST FOR TRANSCRIPT

A notice of appeal having been filed in this matter, the official court reporter is hereby ordered to produce, certify, and file the transcript of proceedings in this matter (specifically, the evidentiary proceedings and oral argument held on June 26, 2001), in conformity with Rule 1922, Pa.R.A.P.



Dennis Luttenauer
Attorney at Law
2 Greeves St., PO Box 279
Kane, PA 16735
(814) 837-7190
Attorney for Petitioner-Appel

ROBERT A. MALTAIS, III,
Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Respondent

: IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY
: PENNSYLVANIA
CIVIL ACTION-STATUTORY APPEAL
:
: No. 01-755-CD

PROOF OF SERVICE

I hereby certify that I am this date serving the foregoing Notice of Appeal and Request for Transcript upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121 and 906, and Pa.R.J.A. 5000.5:

SERVICE BY FIRST CLASS MAIL
ADDRESSED AS FOLLOWS

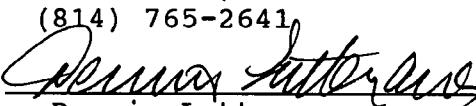
William A. Kuhar, Jr.
Assistant Counsel
Office of Chief Counsel
PA Dept. of Transportation
1209 State Office Bldg.
Pittsburgh, PA 15222
(412) 565-7555

Ms. Cathy Probost
Clearfield County Courthouse
230 E. Market St.
Clearfield, PA 16830
(814) 765-2641

Date: August 8, 2001

Honorable John K. Reilly, Jr.
Clearfield County Courthouse
230 E. Market St.
Clearfield, PA 16830
(814) 765-2641

David S. Meholick
Court Administrator
Clearfield County Courthouse
230 E. Market St.
Clearfield, PA 16830
(814) 765-2641



Dennis Luttenauer
Attorney for Appellant

Case: 2001-00755-CD

Current Judge: John K. Reilly Jr.

Robert A. Mailtais III vs. Commonwealth of Pennsylvania

Civil Other

Date		Judge
05/18/2001	Filing: Petition for Review of Order Suspending Operating Privilege by: Dennis Luttenauer, Esquire Receipt number: 1825441 Dated: 05/18/2001 Amount: \$80.00 (Check) No CC	Paid No Judge
06/04/2001	ORDER, AND NOW, this 30th day of May, 2001, re: Hearing de novo scheduled for 26 Jun 01, at 2:30 p.m. 1 cc atty Luttenauer	John K. Reilly Jr.
	[REDACTED]	John K. Reilly Jr.
	[REDACTED]	John K. Reilly Jr.
	[REDACTED]	John K. Reilly Jr.
07/13/2001	Order, NOW, this 12th day of July, 2001, appeal is dismissed and the action of the Department of Transportation affirmed. BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Luttenauer One CC Attorney Kuhar for Dept. of Transportation	John K. Reilly Jr.

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

ROBERT MALTAIS, III. : :

-vs- : No. 01-755 - CD

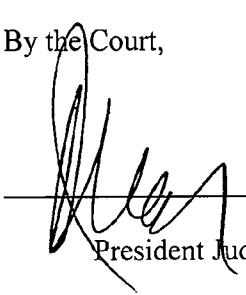
COMMONWEALTH OF PENNSYLVANIA:

DEPARTMENT OF TRANSPORTATION :

ORDER

NOW, this 13th day of August, 2001, the Court having been notified of Appeal to the Commonwealth Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Dennis Luttenauer, Esquire, Attorney for Appellant above-named, file a concise statement of the matters complained of on Appeal as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

By the Court,


President Judge

FILED

AUG 13 2001

William A. Shaw
Prothonotary

#5

FILED

AUG 13 2001

0/10110/672 R.W.H.
William A. Shaw
Prostatory

SENT TO LUTTENAUER
+
Kutten

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA
No. 07-755-C.D.

ROBERT A. MALTAIS III
Petitioner-Appellant

vs.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Respondent-Appellee

STATEMENT OF MATTERS
COMPLAINED OF ON APPEAL

FILED

AUG 31 2001

1/34 (MC)
William A. Shaw
Prothonotary

DENNIS LUTTENAUER
ATTORNEY AT LAW
2 GREEVES STREET
SUITE 100
P. O. BOX 279
KANE, PENNSYLVANIA 16735

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

ROBERT A. MALTAIS III
Petitioner-Appellant

vs.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Respondent-Appellee

CIVIL ACTION - STATUTORY APPEAL
No. 01-755-CD

Type of Pleading: Statement of Matters
Complained of on Appeal

Filed on Behalf of Defendant

Counsel of Record for This Party:

Dennis Luttenauer
Supreme Court No. 37879
2 Greeves St., PO Box 279
Kane, PA 16735
(814) 837-7190

William A. Kuhar, Jr.
Assistant Counsel
Office of Chief Counsel
PA Dept. of Transportation
1209 State Office Building
300 Liberty Ave.
Pittsburgh, PA 15222
(412) 565-7555

Counsel for Adverse Party

FILED
AUG 31 2001
Date: 8/29/01

William A. Shaw
Prothonotary

#7

ROBERT A. MALTAIS, III
Petitioner-Appellant

vs.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - STATUTORY APPEAL

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION : No. 01-755-C.D.

STATEMENT OF MATTERS
COMPLAINED OF ON APPEAL

Comes now the petitioner-appellant, Robert A. Maltais III, and for his statement of matters complained of on appeal, states as follows:

1. The trial court erred in dismissing petitioner's appeal, where the report of petitioner's New York State conviction did not contain sufficient information to relate licensee's conviction to impairment by alcohol or other substance. Although the report (Dept. Ex. 1) identified the petitioner, the court, and the dates of violation and conviction, it did not specify the section or subsection of the statute, code, or ordinance violated, and did not indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond, or other security, as required by Article III of the Compact. Moreover, the report relied upon by the Department to suspend petitioners' license stated only that the conviction was for "DRVG WHILE IMPAIRED." It did not contain sufficient information to indicate that the reported offense related to "driving, operating, or being in actual physical control of a vehicle while impaired by or under the

influence of alcohol, intoxicating liquor, drugs, narcotics, controlled substances or other impairing or intoxicating substances....” *See*, 75 Pa.C.S. §1586 (emphasis added). Thus, even if §1586 of the Vehicle Code was a valid exercise or legislative authority, and can be applied to this case, the reported information was insufficient to sustain the Department’s burden.

2. The trial court erred in finding that New York State Vehicle and Traffic Law §1192(1) (relating to “driving while ability impaired”) is substantially similar to Article IV(a)(2) of the Driver’s License Compact and/or §3731 of the Vehicle Code. *See, e.g.*, *Petrovick v. Com., DOT*, 741 A.2d 1264 (Pa.1999) (holding that a New York conviction for driving while ability impaired is not substantially similar to either Article IV(a)(2) of the Compact (which requires impairment “to a degree which renders the driver incapable of safely driving...”) or §3731 of the Vehicle Code (which also requires “substantial impairment”)).

Moreover, even assuming, *arguendo*, that §1586 of the Vehicle Code may be applied, constitutionally, to this case, there are nevertheless substantial differences, apart from the degree of impairment, between a New York State DWAI conviction, and the offense described under §3731 of the Vehicle Code. A first offense under §3731 is graded as a misdemeanor of the second degree, which is punishable by a maximum sentence of 2 years imprisonment and/or a fine of \$5,000. A conviction under §1192(1) of the New York Vehicle and Traffic Law is classified as a “traffic infraction,” which is

punishable by a fine of not more than \$500, and/or imprisonment for not more than 15 days.

3. The trial court erred in failing to construe §1586 of the Vehicle Code, 75 Pa.C.S. §1586, in *pari materia* with Article IV (a)(2) of the Compact, and with §1532(b) of the Vehicle Code. If so construed, any equivalent or substantially similar foreign offense must be based upon impairment to an extent which would render the driver incapable of driving safely. Licensee's New York State conviction does not meet that threshold.

4. If §§1532(b) and 1586 of the PA Vehicle Code [75 Pa.C.S. §1532(b) and 1586] are construed and applied in such a manner as to treat a New York conviction for DWAI under §1192(1) of the New York Vehicle and Traffic Law as substantially similar to the conduct described under Article IV(a)(2) of the Driver's License Compact and under 75 Pa.C.S. §3731, such construction and application would deprive petitioner of the equal protection of the laws under the 14th Amendment to the United States Constitution, and under the equivalent guarantees of the Pennsylvania Constitution. Such a construction and application would not have a fair and substantial relation to a primary objective of the Driver's License Compact, that is, giving "the same effect to the conduct reported...as it would if such conduct had occurred in the home state in cases of conviction for...driving a motor vehicle while under the influence...to a degree which renders the driver incapable of safely driving a motor vehicle." 75 Pa.C.S. §1581, Article IV(a)(2). In light of that

objective of the legislation, there can be no rational basis for suspending a PA resident's license for conduct which would carry no sanction if it occurred in PA.

5. If §§1532(b) and 1586 of the PA Vehicle Code [75 Pa.C.S. §§1532(b) and 1586] are construed and applied in such a manner as to treat a New York conviction for Driving While Ability Impaired under §1192(1) of the New York Vehicle and Traffic Law as evidence of conduct of a substantially similar nature to that described under Article IV(a)(2) of the Driver's License Compact, and under 75 Pa.C.S. §3731, such construction and application would create an unlawful conclusive presumption that petitioner operated a motor vehicle in New York State while impaired by alcohol to a degree which would have rendered him incapable of driving safely. Such a presumption is not necessarily or universally true, in fact, and the state has reasonable alternative means to make such a factual determination. Accordingly, such a conclusive evidentiary presumption is unlawful under the due process guarantees of the 14th Amendment to the United States Constitution and under Article 1, §1 of the Pennsylvania Constitution. *Compare, Petrovick, supra* (a New York State DWAI conviction is not substantially similar to conduct proscribed under Article IV(a)(2) of the Compact), *with, Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586 (1971) (invalidating license suspension based upon invalid conclusive presumptions).

Respectfully submitted,



Dennis Luttenauer
2 Greeves St., PO Box 279
Kane, PA 16735
(814) 837-7190
Attorney for Defendant

SERVICE

I hereby certify that a copy of the foregoing Statement of Matters Complained of on Appeal was sent this 1st Day of August, 2001, by regular, first-class mail to William A. Kuhar, Jr., Office of Chief Counsel, PA Dept. of Transportation, 1209 State Office Building, 300 Liberty Ave., Pittsburgh, PA 15222. This statement is made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.


Dennis Luttenauer
Dennis Luttenauer
Attorney at Law

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330

*Received & Filed
Supplemental Record*

October 8, 2001

Commonwealth Court of Pennsylvania
Office of the Prothonotary
PO Box 11730
Harrisburg, PA 17108

RE: Commonwealth of Pennsylvania

Vs.

Robert A. Maltais, III
No. 01-755-CD
Commonwealth Court No. 1834 CD 2001

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
2001 OCT 11 A. 4 3b

Dear Prothonotary:

Enclosed, please find the transcript filed in the above referenced case appealed to your office. The record has previously been forwarded to your office. We are forwarding the transcript upon its filing on October 8, 2001.

Sincerely,
The signature of William A. Shaw, which is a cursive script of the name.

William A. Shaw
Prothonotary

Enclosure

WAS/brh

Clearfield County Courthouse
Office of the Prothonotary
PO Box 549
Clearfield, PA 16830

ORIGINAL

1

COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :

VS

NO. 01-755-CD

ROBERT A. MALTAIS, III :

TRANSCRIPT OF PROCEEDINGS
LICENSE SUSPENSION APPEAL

BEFORE: HONORABLE JOHN K. REILLY, JR.
PRESIDENT JUDGE

DATE: JUNE 26, 2001, 2:34 P.M.

PLACE: CLEARFIELD COUNTY COURTHOUSE
COURTROOM NO. 1
CLEARFIELD, PENNSYLVANIA

FILED

OCT 08 2001

6/24/01
William A. Shaw
Prothonotary

APPEARANCES:

WILLIAM A. KUHAR, JR., ESQUIRE

FOR - COMMONWEALTH

erby certify this to be a true
and attested copy of the original
statement filed in this case.

DENNIS LUTTENAUER, ESQUIRE

FOR - DEFENDANT

OCT 08 2001

Attest. *William A. Shaw*
Prothonotary

BETH A. KRUPA, REPORTER
NOTARY PUBLIC

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EXHIBITS

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DEPARTMENT NO.MARKEDADMITTED

1 - Documents

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3

1 MR. KUHAR: Your Honor, this is an appeal by
2 Mr. Maltais from an Order of the Pennsylvania Department of
3 Transportation for the suspension of his driving privilege
4 in Pennsylvania for a period of one year pursuant to
5 Article 4 of Section 1581 and Section 1532 Subsection B(3)
6 of the Pennsylvania Vehicle Code. The appealed suspension
7 was imposed upon Mr. Maltais due to his reported conviction
8 in the State of New York on the charge of driving while
9 impaired.

10 At this time I will give opposing counsel
11 the opportunity to review the documents that I'll be
12 offering for issuance into evidence.

13 (Brief pause.)

14 MR. KUHAR: Your Honor, at this time I will
15 ask that these documents be marked and admitted as
16 Department Exhibit No. 1.

17 (Documents marked as Department Exhibit
18 No. 1.)

19 THE COURT: Mr. Luttenauer.

20 MR. LUTTENAUER: No objection, Your Honor.

21 THE COURT: Exhibit No. 1 is admitted.

22 MR. KUHAR: Your Honor, I would refer your
23 attention to the document, that is document number 2, in
24 the set that is a photocopy of a report that was submitted
25 to the Department by the New York Department of Motor

1 Vehicles and is dated March 26th, 2001.

2 The third set of entries on that document
3 indicate that on March 13, 2001 Mr. Maltais was convicted
4 in a court in the town of New Windsor in Orange County, New
5 York on the charge of Driving While Impaired on February
6 24, 2001.

7 I will next ask that the Court take judicial
8 notice of the provisions of Subsection 1 of Section 1192 of
9 the New York Vehicle and Traffic Law, a copy of which I
10 have provided to counsel for Mr. Maltais and which I will
11 now provide to the Court. I have underlined the applicable
12 subsection of the statute.

13 It is that New York statute which prohibits
14 the conduct of Driving While Impaired from the consumption
15 of alcohol. I would also ask that the Court take judicial
16 notice of the notice that appears at Page 5609 of Volume 24
17 of the Pennsylvania Bulletin, a copy of which I have
18 provided to counsel for Mr. Maltais and which I will now
19 provide to the Court.

20 I'm asking the Court to take judicial notice
21 of this for the purpose of establishing that the State of
22 New York has been a member of the Driver's License Compact
23 of 1961 since at least January 1, 1995.

24 The last thing that I would provide the
25 Court with and this is a number of two reported

1 Commonwealth Court decisions namely the Squire and Horvath
2 decisions as well as two unreported Commonwealth Court
3 decisions involving other clients of Mr. Luttenauer and
4 involving appeals by these cases involving suspensions of
5 Pennsylvania licensees pursuant to the Driver's License
6 Compact of 1961 due to convictions in the State of New York
7 for Driving While Ability Impaired.

8 These decisions address, I believe, all of
9 the various issues raised by -- raised in the appeal
10 petition for this matter.

11 MR. LUTTENAUER: Your Honor, I'm going to
12 object to any reference to any unreported opinion of the
13 Commonwealth Court.

14 MR. KUHAR: Your Honor, these are clients of
15 Mr. Luttenauer. He has these opinions just as I have them
16 so, I'm not ever -- they're not binding on the Court, but
17 they are certainly indicative of the rationale of the Court
18 on these issues.

19 THE COURT: All right. Mr. Luttenauer.

20 MR. LUTTENAUER: The rules of the
21 Commonwealth Court, Your Honor, state that any unreported
22 opinion is not to be cited for any purpose in any other
23 cases.

24 THE COURT: But the Court can consider them,
25 although they are not binding as Mr. Kuhar notes.

1 MR. LUTTENAUER: And they're not to be cited
2 for any purpose. I object to any citation of an unreported
3 opinion of the Commonwealth Court.

4 MR. KUHAR: Your Honor --

5 THE COURT: All right. I'll take a look at
6 them.

7 MR. KUHAR: Your Honor, that's all the
8 Department has and it would rest.

9 THE COURT: Do you have any objections to
10 the Court's taking judicial notice of the documents
11 referred to by counsel, Mr. Luttenauer?

12 MR. LUTTENAUER: No objection, Your Honor.

13 THE COURT: All right. Very well.

14 MR. LUTTENAUER: Your Honor, I'm in the
15 unenviable position of referring the Court's attention to a
16 dissenting opinion in a Commonwealth Court case and that
17 would be the dissenting opinion in Commonwealth versus
18 Squire. The argument I believe this Court is going to be
19 bound by the decisions in Squire and Horvath and those
20 decisions are adverse to the position which I'm taking here
21 today, so the arguments that I'm making are for purposes of
22 preserving these issues for appellate review beyond the
23 Commonwealth Court --

24 THE COURT: All right. I understand.

25 MR. LUTTENAUER: -- or by an unbinding

1 panel. The issues I've raised are essentially as follows:
2 First of all, if you'll refer to the Department's exhibit
3 which lists Mr. Maltais' conviction in New York State, that
4 exhibit states simply that the conviction was for Driving,
5 DRVG While Impaired.

6 It makes no reference to a statutory
7 subsection or statutory section, so there's no basis really
8 for this, although the Commonwealth has asked this Court to
9 take notice of Section 1192.1 of the New York Vehicle and
10 Traffic Code. There is no indication in the Commonwealth's
11 exhibit, in its evidentiary exhibit that his conviction was
12 for Section 1192.1.

13 There's also no reference in the
14 Commonwealth's sole exhibit indicating that this conviction
15 was in any way alcohol related. It says simply DRVG While
16 Impaired and that could be, for all that has been presented
17 to this Court, he could have been convicted for driving
18 while impaired by epilepsy, driving while impaired by
19 Alzheimer's, driving while impaired by diabetic shock,
20 driving while impaired for blindness.

21 There's nothing in the evidence which
22 indicates that this is a conviction for driving while
23 impaired by alcohol and for that reason, Your Honor, I
24 would argue that the Department's evidence is insufficient
25 to establish that the conviction was for driving while

1 ability impaired under Section 1192.1.

2 Assuming -- and I'm sure the Commonwealth or
3 the Department has cited by the Court in Squire and Horvath
4 is relying on the newly added Section 1586 of the Vehicle
5 Code. Section 1586 states that the Court will -- that
6 differences in the degree of impairment between the foreign
7 state statute and the home state statute shall not render
8 the offenses dissimilar.

9 However, I believe as indicated by Judge
10 Smith in her dissenting opinion in Squire that the proper
11 analysis is comparing the New York State statute with
12 Article 4(a)(2) of Section 158.1 of the vehicle code.
13 Article 4(a)(2) was not amended. It still says that any
14 conviction in a foreign state must be for an offense where
15 the degree of impairment was such that the driver would be
16 rendered incapable of driving safely.

17 Our Supreme Court in the Petrovick case has
18 already held that New York State DWAI, driving while
19 ability impaired, is not equivalent to Article 4(a)(2) of
20 the compact and for that reason, I would argue that the
21 Department has failed to construe Article 4(a)(2) in
22 Section 1532(b)(3) comparing with Section 1586. These are
23 all statutes bearing on the same subject matter. They must
24 be construed in pari materia.

25 Article 4(a)(2) still requires that the

1 offense be one in which the driver is incapable of safe
2 driving. If Section 1586 is interpreted in the manner
3 suggested by the Department, then I would suggest that that
4 creates an equal protection problem and the basis for the
5 equal protection argument is this: We thereby have two
6 classes of drivers.

7 One set of drivers would be those who drive
8 in New York State and are convicted of driving while
9 ability impaired, an offense which would carry no sanction
10 if it occurred in Pennsylvania. Pennsylvania, Petrovick
11 has already decided that and construed that New York State
12 DWI statute and held that it is not equivalent. It does
13 not require impairment to a degree that renders the driver
14 incapable of safe driving.

15 One of the primary purposes of the Driver's
16 License Compact is to treat drivers in the home state, to
17 treat them the same for conduct occurring in the foreign
18 state, treat them the same as it would if that conduct
19 occurred in the home state.

20 If Mr. Maltais' conduct had occurred in the
21 home state, there would have been no conviction, no
22 sanction whatsoever and that, I believe, indicates that
23 there is a denial of equal protection because there's no
24 rational basis for treating a Pennsylvania driver
25 differently for an offense in New York State which would

1 carry no sanction in Pennsylvania.

Finally, Your Honor, we argue that if the Department construes Section 1586 in such a manner as to conclusively presume that he was impaired to an extent which rendered him incapable of safely driving, then that inclusive presumption is unconstitutional under the due process clause of the Pennsylvania Constitution and United States Constitution. I wish to preserve those for purposes of appeal.

10 MR. KUHAR: Your Honor, in response, the
11 Commonwealth Court has rejected every single one of the
12 arguments that counsel has made and in particular,
13 initially I would note with response to this the matter of
14 the report only indicating driving while impaired.

15 One, if you review the New York Vehicle and
16 Traffic Law, Your Honor, there's only one statute that
17 deals with driving while impaired and that is the statute
18 dealing with driving while impaired from the consumption of
19 alcohol.

20 So this -- the argument that because the
21 report doesn't indicate driving while ability impaired from
22 alcohol, I would submit is suspicious given in view of the
23 fact that there's only one New York statute dealing with
24 driving while impaired and it's from driving while impaired
25 from alcohol consumption.

3 MR. KUHAR: Yes, it does, Your Honor. With
4 regard to the issue of Section 1586, the Commonwealth Court
5 has ruled that as a result of the enactment of Section 1586
6 of the Pennsylvania Vehicle Code which went into effect on
7 December 21 of 1998, which is prior to the date of both Mr.
8 Maltais' offense in New York and his conviction in New
9 York, they've construed that Section 1586 in conjunction
10 with Sections 1532 and Article 4 of Section 1581 of the
11 vehicle code to say that where a person is convicted of an
12 alcohol impaired -- an offense involving alcohol impaired
13 driving, that that offense is to be treated as being
14 substantially similar to the offense enumerated in Article
15 4(a)(2) of the vehicle code.

25 So logically, if under 1586 a New York DWAI

1 offense is to be treated substantially similar to a
2 violation of 3731 of the Pennsylvania Vehicle Code and
3 under the Supreme Court's decision in Petrovick of
4 violation of 3731 of the vehicle code is substantially
5 similar to the offense set forth in Article 4(a)(2) of
6 the -- of Section 1581 of the vehicle code, then logically,
7 it is a logical conclusion that a violation of New York
8 DWAI offense is substantially similar to an offense
9 enumerated -- the offense enumerated in Article 4(a)(2) of
10 Section 1581 of the vehicle code.

11 The reason why the legislature worded
12 Section 1581(a)(6) of the vehicle code to say that these
13 offenses are to be treated substantially similar to 3731 is
14 that this legislation was enacted prior to the Supreme
15 Court's Petrovick decision.

16 Prior to the Supreme Court Petrovick
17 decision, the Commonwealth Court was using the analysis of
18 determining whether the out-of-state offense was
19 substantially similar to Pennsylvania's DUI offense and
20 they concluded, no, that the New York DWAI offense was not
21 substantially similar to Pennsylvania's DUI offense because
22 the amount of alcohol impairment required for conviction in
23 New York was less than the degree of alcohol impairment
24 required for a conviction for DUI in Pennsylvania.

25 The legislature -- this was what the

1 legislature apparently had intended, that was not what they
2 intended by the term offenses of a substantially similar
3 nature, so they enacted Section 1586 of the vehicle code
4 saying that these offenses are to be treated as being
5 substantially similar to 3731 even though the degree of
6 alcohol impairment required for conviction in the other
7 state is different than the required degree of impairment
8 conviction in Pennsylvania.

9 In other words, they were -- the word of the
10 statute 1586 is because that was the analysis it came down
11 prior to the Supreme Court's analysis of what the analysis
12 should be and it was attempting to address the Commonwealth
13 in a way that the Commonwealth Court's analysis had been
14 but logically, again, 1586 reflects an intent by the
15 legislature to make a person who is convicted of these
16 offenses subject to a suspension of his driving privilege
17 here in Pennsylvania.

18 And I would, addressing this last thing
19 about equal protection, I would respectfully submit in the
20 Commonwealth Court that in the Horvath case, with this
21 argument and that is that Section 1586 in conjunction with
22 Sections 1532 and Article 4 of Section 1581 of the vehicle
23 code do not result in an equal protection violation.

24 The reason being, Your Honor, that the term
25 conduct reported does not simply include the conduct of

1 driving while impaired, it includes the conduct of being
2 convicted of such an offense. And in the -- Commonwealth
3 Court has said that, construe these sections together to
4 say that it creates only one.

5 It does not create a classification, but
6 instead it provides that any Pennsylvania licensee who is
7 convicted of, in Pennsylvania or some other state, of an
8 alcohol impaired driving offense is to be subject to a
9 one-year suspension of his Pennsylvania driving privileges.

10 So, that's what happened here. Mr. Maltais
11 was convicted in New York of an alcohol impaired driving
12 offense and he's being treated the same way as the
13 Pennsylvania licensee who is convicted of an alcohol
14 impaired driving offense in Pennsylvania, gets namely a
15 one-year suspension of his Pennsylvania driving privileges
16 and that's what the Commonwealth Court ruled in the Horvath
17 decision.

18 THE COURT: All right. Mr. Luttenauer.

19 MR. LUTTENAUER: Your Honor, you had asked
20 the question of whether the Commonwealth Court in either
21 Horvath or Squire addressed the question of the sufficiency
22 of the evidence. In Squire, the Court did address that
23 issue in head note three of the opinion, keynote three of
24 the opinion in Squire, Page 1227 of the Atlantic Reporter,
25 the Court addressed the question of sufficiency of the

1 evidence.

11 McCafferty held two things, one, that those
12 reporting requirements are binding only on the state in
13 which the conviction occurred. They're not binding on the
14 receiving state, that is, the state that receives the
15 report. So McCafferty said that if there are technical
16 deficiencies in New York State's Article 3 report which was
17 sent to Pennsylvania, in other words, it doesn't have a
18 statutory subsection or if it doesn't identify with the
19 court or if it doesn't identify how the plea resulted,
20 those technical deficiencies are not going to render the
21 report insufficient and it's not going to be a basis for
22 overturning the Commonwealth's proposed suspension.

1 was deemed sufficient to support the conviction in
2 McCafferty. And in McCafferty, the foreign states
3 reported, there were several licensees, several appellants
4 in McCafferty and those foreign states reported their DUI
5 convictions, they related the underlying conviction to
6 driving under the influence of alcohol.

7 In addressing specifically the contention of
8 one of the licensees that the report of his -- and it
9 referred to a New Jersey conviction, was insufficient to
10 meet Article 3 requirements, the Court noted that the New
11 Jersey report merely failed to identify the court in which
12 the action was taken, the plea, and whether the conviction
13 resulted from a forfeiture of bail bond or other security
14 and this is a quote from McCafferty.

15 "None of this information would have shed
16 any light on the conduct underlying appellee's conviction.
17 It is the conduct underlying the conviction that triggers
18 PennDOT's duties under the compact, end of quote.

19 And then the Court continued, "We fail to
20 see how the technical immaterial defects in the report here
21 rendered PennDOT's suspension of appellee's license
22 erroneous, end quote.

23 I believe that the report in this case
24 contains much less information than the report found
25 sufficient in McCafferty. In this case, it doesn't mention

1 a statute or the subsection, it makes no reference to
2 alcohol, there's nothing in that evidence, if this Court
3 looks at that evidence, there's nothing in that evidence to
4 say that this is an alcohol-related offense.

5 Now, the Horvath decision also made
6 reference to the licensee's claim that the evidence was
7 insufficient. The Horvath says, Horvath's fourth argument
8 is that the trial court's decision is not supported by
9 substantial evidence. Horvath claims that the one-page
10 document from the New York Department of Motor Vehicles is
11 insufficient to establish his conduct in New York.

12 We disagree. The document indicates that on
13 such and such a date Horvath was convicted in New York of
14 driving while impaired. Furthermore, Horvath concedes in
15 his brief that on January 3, 2000, he was convicted in New
16 York on the DWAI charge.

17 There has been no such concession made in
18 this case at this point in time and the Department has the
19 initial burden. The burden of proof of presenting
20 sufficient evidence is on the Department as indicated in
21 the Scott and Zoacki cases. Scott 730 Atlantic Second 539.
22 The initial burden is on the Commonwealth then if the
23 Commonwealth establishes a *prima facie* case, then the
24 burden of persuasion shifts to the licensee.

25 In this case, the licensee's argument is

1 that the Commonwealth has not even met that initial burden
2 by presenting evidence of a conviction which is equivalent
3 to Article 4(a)(2) of the compact.

4 THE COURT: Mr. Kuhar.

5 MR. KUHAR: Your Honor, just briefly, to
6 address that, when Mr. Luttenauer acknowledged that Squire
7 and Horvath involved conviction reports from the State of
8 New York for driving while ability impaired --

9 MR. LUTTENAUER: The Court so found.

10 MR. KUHAR: And, in fact, with the exception
11 of dates and names and ticket numbers, the offense that the
12 licensee in Horvath and Squire was described in the exact
13 same manner that the offense was described in the report
14 regarding Mr. Maltais, Your Honor, DRVG while impaired.

15 And, again, Your Honor, there is only one
16 statute in the State of New York's Vehicle and Traffic Law
17 dealing with making an offense for driving while impaired
18 and it is the statute dealing with driving while impaired
19 from the consumption of alcohol.

20 I don't hear -- there's been no evidence, no
21 contention by Mr. Maltais that he was not convicted of this
22 offense, no evidence to rebut that he was convicted of
23 violating this driving while impaired is the offense
24 prohibited by the New York statute that I asked, Your
25 Honor, to take judicial notice of.

6 And basically, I'll grant it that the
7 Supreme Court in McCafferty only addressed the conviction
8 report from the State of New Jersey, I believe, and
9 Florida, there's no discussion about. I don't believe any
10 of the licensee's or appellee's in the McCafferty case were
11 convicted in New York of DWAI, but Squire and Horvath
12 specifically involve licensees convicted in the State of
13 New York as were Mr. Luttenauer's clients, Mr. Mundy and
14 Mr. Rimen.

15 And each time the Commonwealth Court has
16 said, the conviction report from New York was sufficient to
17 satisfy the Department's burden of proof.

18 THE COURT: All right. Do either of you
19 wish to file a brief with the Court?

20 MR. LUTTENAUER: If the Court would find it
21 helpful.

22 THE COURT: I'm just asking if you want to,
23 I'll let it up to you.

24 MR. KUHAR: Your Honor, I'm not inclined to,
25 because I believe right now the controlling state of the

1 law is the Squire and Horvath case.

2 THE COURT: All right. Mr. Luttenauer.

3 MR. LUTTENAUER: I believe that I've --

4 that's correct, Your Honor, I believe this Court is bound
5 by Squire and Horvath. I feel no need to. I believe I've
6 stated all the arguments that I have and will present them
7 on appeal.

8 THE COURT: Thank you.

9 (The hearing was concluded at 3:03 p.m.)

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CERTIFICATION

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this copy is a correct transcript of the same.

October 4, 2001
DATE

Beth A. Krupa
BETH A. KRUPA, REPORTER
NOTARY PUBLIC

APPROVAL OF COURT

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.

DATE

HONORABLE JOHN K. REILLY, JR.
PRESIDENT JUDGE

01-755-00

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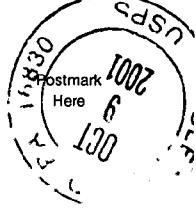
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Prothonotary

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William A. Shaw

Prothonotary

WAS

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330

DAVID S. AMMERMAN

SOLICITOR

COPY

October 8, 2001

Commonwealth Court of Pennsylvania
Office of the Prothonotary
PO Box 11730
Harrisburg, PA 17108

RE: Commonwealth of Pennsylvania

Vs.

Robert A. Maltais, III
No. 01-755-CD
Commonwealth Court No. 1834 CD 2001

Dear Prothonotary:

Enclosed, please find the transcript filed in the above referenced case appealed to your office. The record has previously been forwarded to your office. We are forwarding the transcript upon its filing on October 8, 2001.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Shaw".

William A. Shaw
Prothonotary

Enclosure

WAS/brh

Clearfield County Courthouse
Office of the Prothonotary
PO Box 549
Clearfield, PA 16830

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW
PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK
DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330

DAVID S. AMMERMAN
SOLICITOR

COMMONWEALTH COURT OF PENNSYLVANIA
OFFICE OF THE PROTHONOTARY
P O BOX 11730
HARRISBURG, PA 17108

IN RE: ROBERT A. MALTAIS III
VS
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
CASE # 01-755-CD COMMONWEALTH COURT NO. 1834 CD 2001

DEAR PROTHONOTARY:

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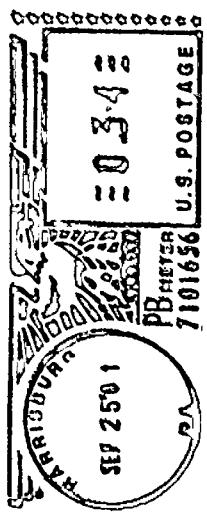
William A. Shaw
WILLIAM A. SHAW
PROTHONOTARY

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William A. Shaw
Prothonotary

COMMONWEALTH COURT OF PENNSYLVANIA
OFFICE OF THE PROTHONOTARY
P. O. Box 11730
HARRISBURG, PENNSYLVANIA 17108



Clearfield County
PA Box 544
Clearfield PA 16830

Attn: William Shaw 153304543

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

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P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330

September 24, 2001

The Honorable John K. Reilly, Jr., President Judge
Clearfield County Courthouse
Clearfield, PA 16830

Dennis Luttenauer
2 Greeves Street
PO Box 279
Kane, PA 16735

William A. Kuhar, Jr.
Office of Chief Counsel
1209 State Office Building
Pittsburgh, PA 15222

Re: Robert A. Maltais III
Vs.
Commonwealth of Pennsylvania
Department of Transportation
01-755-CD
Superior Court #1834 CD 2001

Dear Counsel:

Please be advised that the above-referred records have been forwarded to the Commonwealth Court of Pennsylvania on the 24th day of September, 2001.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

WAS

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330

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September 24, 2001

The Honorable John K. Reilly, Jr., President Judge
Clearfield County Courthouse
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Pittsburgh, PA 15222

Re: Robert A. Maltais III
Vs.
Commonwealth of Pennsylvania
Department of Transportation
01-755-CD
Superior Court #1834 CD 2001

Dear Counsel:

Please be advised that the above-referred records have been forwarded to the Commonwealth Court of Pennsylvania on the 24th day of September, 2001.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

WAS

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

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DAVID S. AMMERMAN

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COMMONWEALTH COURT OF PENNSYLVANIA
OFFICE OF THE PROTHONOTARY
P O BOX 11730
HARRISBURG, PA 17108

IN RE: ROBERT A. MALTAIS III
VS
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
CASE # 01-755-CD COMMONWEALTH COURT NO. 1834 CD 2001

DEAR PROTHONOTARY:

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SINCERELY,

WILLIAM A. SHAW
PROTHONOTARY

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Prothonotary
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

FILED

Robert Maltais, III,	:		
	:		MAR 04 2002
Appellant	:		
	:		William A. Shaw
v.	:	No. 1834 C.D. 2001	Prothonotary
Commonwealth of Pennsylvania,	:	Submitted: January 18, 2002	
Department of Transportation,	:		
Bureau of Driver Licensing	:		

BEFORE: HONORABLE JAMES GARDNER COLINS, President Judge
 HONORABLE RENÉE L. COHN, Judge
 HONORABLE CHARLES P. MIRARCHI, JR., Senior Judge

OPINION NOT REPORTED**MEMORANDUM OPINION
BY JUDGE COHN****FILED: February 27, 2002**

This is an appeal by Robert A. Maltais, III (Licensee) from an order of the Court of Common Pleas of Clearfield County that dismissed his statutory appeal from a one year suspension of his operating privileges by the Department of Transportation, Bureau of Driver Licensing, (Bureau) based upon Sections 1532(b)(3) and 1581, Article IV(a)(2), of the Vehicle Code, 75 Pa. C.S. §§1532(b)(3), 1581, Article IV(a)(2).¹ We affirm.

¹ Section 1532(b)(3) provides:

The department shall suspend the operating privilege of any driver for 12 months upon receiving a certified record of the driver's conviction of section 3731 (relating to driving under influence of alcohol or controlled substance) or 3733 (relating to fleeing or attempting to elude police officer), or substantially similar

The undisputed facts are that Licensee was arrested in New York state on February 24, 2001, and charged with driving while ability impaired, a violation of N.Y. Veh. & Traf. Law §1192(1). He was convicted on March 13, 2001. New York is a party state to the Driver License Compact, along with Pennsylvania.

Pursuant to the Driver License Compact, the Bureau treated the conviction as if Licensee had been convicted in Pennsylvania of driving under the influence of alcohol or a controlled substance. See 75 Pa. C.S. §3731. It notified Licensee that his license was being suspended for one year. He appealed and at the hearing the Bureau entered into evidence a packet of documents certified by the Secretary of Transportation and the Director of the Bureau. The Bureau then rested. Licensee presented no evidence. The trial court dismissed the statutory appeal and this appeal ensued.

On appeal Licensee presents four arguments and we shall address them *seriatim*.

offenses reported to the department under Article III of section 1581 (relating to Driver's License Compact), or an adjudication of delinquency based on section 3731 or 3733....

Section 1581, Article IV(a), pertinently provides:

The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state in the case of convictions for:

...
(2) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle; ...

First, Licensee asserts that the evidence was insufficient to prove that his New York conviction related to the operation of a motor vehicle while impaired by or under the influence of alcohol or other intoxicating substances. He maintains that because the notice forwarded by the New York Department of Motor Vehicles to the Bureau merely indicated “driving while impaired” there is no evidence that the impairment was alcohol related. The Bureau points out that New York law contains only one driving while impaired statute and it states, “[n]o person shall operate a motor vehicle while the person’s ability to operate such a motor vehicle is impaired *by the consumption of alcohol.*” (Emphasis added.) Since Licensee admits he was convicted of a violation of Section 1192(1), he has, in fact, admitted that the conviction was for alcohol-related activity. Thus, his argument that his conduct was not the type envisioned by the Compact is unavailing.

Second, Licensee argues that the conduct at issue is not substantially similar to that identified in Article IV(a)(2) of the Compact. Counsel for Licensee conceded at the de novo hearing that this Court has already decided that issue contrary to his position in Squire v. Department of Transportation, Bureau of Driver Licensing, 769 A.2d 1224 (Pa. Cmwlth. 2001), and Horvath v. Department of Transportation, Bureau of Driver Licensing, 773 A.2d 199 (Pa. Cmwlth. 2001), and that he wished only to preserve the issue for appeal. (N.T., 6.) We adhere to our holdings in those cases.

Third, Licensee asserts that by treating 1192(1) of the New York Traffic Law as substantially similar to Section 3731 of Pennsylvania’s Vehicle Code, Licensee is denied equal protection of the law. Specifically, he argues that treating

the two offenses as substantially similar creates two classes of Pennsylvania drivers: (1) those who consume alcohol and drive in Pennsylvania while impaired to an extent less than that which would render them incapable of safe driving, and (2) those who engage in similar conduct in New York and are convicted in that state. He posits that the first class would be subject to no penalty and the second would.

Licensee concedes, in making his equal protection challenge, that there is no fundamental right or suspect classification involved and, hence, that the rational relations test must be applied when reviewing the statute. See e.g., Plowman v. Department of Transportation, Bureau of Driver Licensing, 535 Pa. 314, 635 A.2d 124 (1993). He asserts, however, that if Section 1586 of the Vehicle Code is construed to make the New York offense substantially similar to Article IV(a)(2), even the rational relations test is not met.

We disagree. Our state supreme court has stated that where a Pennsylvania driver operates a vehicle in another state while impaired, he or she has demonstrated an unwillingness to comply with the vehicle and traffic laws of this Commonwealth as well. Department of Transportation v. McCafferty, 563 Pa. 146, 758 A.2d 1155 (2000). That court has also recognized Pennsylvania's "compelling" interest in protecting its own citizenry as well as the citizens of other jurisdictions from impaired Pennsylvania drivers. Id. We, thus, conclude that it was certainly rational for the General Assembly to find that Pennsylvania drivers who demonstrate a disregard for other states' vehicle laws, and drive while

impaired by alcohol, also pose a threat to this Commonwealth and, hence, should be treated as though they have violated our driving under the influence statutes.

Finally, Licensee contends that Section 1586 creates an unconstitutional presumption that the driver was incapable of safely operating a vehicle as a result of the out-of-state conviction. Licensee asserts that application of the Compact prevents him from demonstrating *in this proceeding* that his conduct in New York did **not** rise to a level where he was incapable of safe driving. We reject this argument. Aside from the fact that the 1998 amendments to the Compact expanded which driving offenses in other jurisdictions would be deemed "substantially similar" to Pennsylvania law, Licensee's argument is, more importantly, an attempted collateral attack on the out of state conviction. The cases are legion where this court has refused to allow a licensee in a civil license suspension proceeding to attack the underlying criminal conviction. See, e.g., Department of Transportation, Bureau of Driver Licensing v. Granberg, 633 A.2d 1334 (Pa. Cmwlth. 1993); Commonwealth v. Duffey, 536 Pa. 436, 639 A.2d 1174 (1994), cert. denied, 513 U.S. 884 (1994). This case presents no reason to depart from that well-settled precedent.

Accordingly, based upon the foregoing discussion, the order of the trial court is affirmed.



RENÉE L. COHN, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert Maltais, III, :
Appellant :
v. : No. 1834 C.D. 2001
Commonwealth of Pennsylvania, :
Department of Transportation, :
Bureau of Driver Licensing :
:

ORDER

NOW, February 27, 2002, the order of the Court of Common Pleas of Clearfield County in the above-captioned matter is hereby affirmed.



RENÉE L. COHN, Judge

Certified from the Record

FEB 27 2002

and Order Exit

FILED

MAR 04 2002

11/8:30 AM
William A. Shaw
Prothonotary





01-755-CD

Supreme Court of Pennsylvania

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Honard
Chief Clerk

Western District
March 26, 2002

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Mr. William A. Shaw
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Robert Maltais, III, Petitioner
v.
Commonwealth of Pennsylvania, Department of Transportation,
Bureau of Driver Licensing, Respondent
Commonwealth Docket Number - 1834 CD 2001

Trial Court/Agency Dkt. Number: 01-755-CD
No. 167 WAL 2002

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: March 25, 2002

Disposition:
Date:

Reargument/Reconsideration Disposition:

Reargument/Reconsideration
Disposition Date:

/dal

FILED

3/28/02
Mar 28 2002

William A. Shaw
Prothonotary

A handwritten signature in blue ink that reads "William A. Shaw".



Supreme Court of Pennsylvania

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

Western District

March 10, 2003

801 City-County Building
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412-565-2816
www.aopc.org

Mr. William A. Shaw
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Robert Maltais, III, Petitioner

v.

Commonwealth of Pennsylvania, Department of Transportation,
Bureau of Driver Licensing, Respondent
Commonwealth Docket Number - 1834 CD 2001

Trial Court/Agency Dkt. Number: 01-755-CD
No. 167 WAL 2002

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: March 25, 2002

Disposition: Order Denying Petition for Allowance of Appeal
Date: February 21, 2003

Reargument/Reconsideration Disposition:

Reargument/Reconsideration
Disposition Date:

/dal

FILED
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MAR 13 2003
cc
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K&P

William A. Shaw
Prothonotary

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

ROBERT MALTAIS, III,	:	No. 167 WAL 2002
Petitioner		:
		Petition for Allowance of Appeal from the
		Order of the Commonwealth Court
v.		:
		:
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF TRANSPORTATION,	:	
BUREAU OF DRIVER LICENSING,	:	
Respondent		:

ORDER

PER CURIAM

AND NOW, this 21st day of February, 2003, the Petition of Allowance of Appeal is hereby DENIED. See, Wroblewski v. Commonwealth of Pennsylvania, Department of Transportation, 809 A.2.d 247 (Pa. 2002).

Mr. Justice William H. Lamb did not participate in the consideration or decision of this matter.

A True Copy Patricia Nicola
As of February 21, 2003
Attest: *Patricia Nicola*
Chief Clerk
Supreme Court of Pennsylvania