03-1427-CD
ARTHUR L. CODER, III vs. COMMONWEALTH OF PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

VS. : NO. 03-1427-CD

ARTHUR L. CODER III : License Suspension Appeal

O R D E R

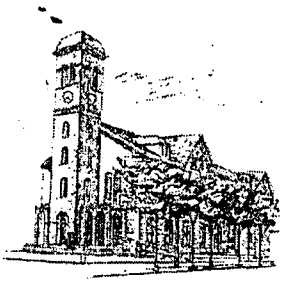
NOW, this 23rd day of September, 2005, this being the day and date set for hearing into the above-captioned Appeal from License upon agreement of the parties, it is the ORDER of this Court that said appeal be and is hereby sustained and the action of the Department rescinded without prejudice to the Department of Transportation exercising such further actions as may be permitted under the Commonwealth Court decisions in Cinquina v. Department of Transportation, Bureau of Driver Licensing, 840 A.2d 525 (Pa. Cmwlth. 2004), McDonald, 845 A.2d 221 (Pa. Cmwlth, 2004) and Mankin, 845 A.2d 249 (Pa. Cmwlth. 2004).

BY THE COURT,

John K. Reilly, Jr.
Senior Judge
Specially Presiding

FILED
12:59 pm
SEP 23 2005
William A. Shaw
Prothonotary/Clerk of Courts

2cc Attys: Collins
Kuhar



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts
David S. Ammerman Solicitor
Jacki Kendrick Deputy Prothonotary
Bonnie Hudson Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

_____ You are responsible for serving all appropriate parties.

__X__ The Prothonotary's office has provided service to the following parties:

__X__ Plaintiff(s)/Attorney(s)

__X__ Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

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

ARTHUR L. CODER, III :
Petitioner

vs. : No. 03-1427-CD

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF TRANSPORTATION,
Respondent

: **PETITION FOR REVIEW**
: Filed on behalf of:
Arthur L. Coder, III

: Counsel for this party:
Ronald L. Collins, Esquire

: Supreme Court No. 36744

: Sobel & Collins
Attorneys at Law
218 South Second Street
Clearfield, PA 16830

: (814)765-5552
FAX (814)765-6210

FILED

SEP 23 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

ARTHUR L. CODER, III :
Petitioner

vs. : No.

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF TRANSPORTATION,
Respondent

PETITION FOR REVIEW

AND NOW comes Petitioner, Arthur L. Coder, III, by and through Ronald L. Collins, Esquire, who Petitions your Honorable Court as follows:

1. That Petitioner is Arthur L. Coder, III, of Box 258 H, Coder Road, Brockport, Pennsylvania, 15823.

2. That Petitioner's Driver License No. 23818447.

3. That Respondent is the Commonwealth of Pennsylvania, Department of Transportation.

4. That by Official Notice dated September 3, 2003, Respondent notified Petitioner that his operating privileges were being suspended for a one (1) year period of time as the result of his conviction of the offense of Driving Under the Influence on July 8, 2003. A copy of said Notice is hereinafter attached as Exhibit "A".

5. That in addition, said Notice also imposed upon Petitioner the Ignition Interlock requirement for the year immediately following his period of suspension.

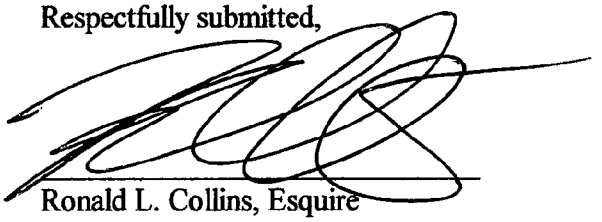
6. That no Ignition Interlock requirement was imposed upon Petitioner by the sentencing Court nor included in his sentence for the aforementioned DUI conviction. Said conviction was in the Court of Common Pleas of Clearfield County at No. 03-325-CRA, and a copy of the Sentence entered to that number is hereinafter attached as Exhibit "B".

7. That Respondent is without the authority to impose said requirement pursuant to Schneider v. PennDOT.

8. That, in addition, said interlock requirement does otherwise not apply to Petitioner in that his first conviction for DUI preceded the effective date of the statute setting forth the ignition interlock requirement and its application to Petitioner would, therefore, be ex post facto.

WHEREFORE, Petitioner respectfully requests your Honorable Court to review the action of Respondent in imposing said interlock requirement and vacate that action.

Respectfully submitted,



Ronald L. Collins, Esquire

Ron Collins 765-3552
fax: 765-6210

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Mail Date: SEPTEMBER 03, 2003

ARTHUR L CODER III
BOX 258-H
CODER RD
BROCKPORT PA 15823

WID # 03239611707879L 001
PROCESSING DATE 08/27/2003
DRIVER LICENSE # 23818447
DATE OF BIRTH 02/28/1976

LICENSE IN BUREAU

Dear MR. CODER:

This is an **Official Notice of the Suspension** of your Driving Privilege as authorized by Section 1532B of the Pennsylvania Vehicle Code. As a result of your 07/08/2003 conviction of violating Section 3731 of the Vehicle Code DRIVING UNDER INFLUENCE on 02/22/2003:

- Your driving privilege is **SUSPENDED for a period of 1 YEAR(S) effective 07/08/2003 at 12:01 a.m.**

****
| WARNING: If you are convicted of driving while your |
| license is suspended/revoked the penalties will be a |
| MINIMUM of 90 days imprisonment AND a $1,000 fine AND |
| your driving privilege will be suspended/revoked for |
| a MINIMUM 1 year period |
****

Before PennDOT can restore your driving privilege, you must follow the instructions in this letter for COMPLYING WITH THIS SUSPENSION, PAYING THE RESTORATION FEE and PROVIDING PROOF OF INSURANCE. You should follow ALL instructions very carefully. Even if you have served all the time on the suspension/revocation, we cannot restore your driving privilege until all the requirements are satisfied.

EXHIBIT
" A "

032396117078796

PROVIDING PROOF OF INSURANCE

Within the last 30 days of your suspension/revocation, we will send you a letter asking that you provide proof of insurance at that time. This letter will list acceptable documents and what will be needed if you do not own a vehicle registered in Pennsylvania.

Important: Please make sure that PennDOT is notified if you move from your current address. You may notify PennDOT of your address change by calling any of the phone numbers listed at the end of this letter.

APPEAL

You have the right to appeal this action to the Court of Common Pleas (Civil Division) within 30 days of the mail date, SEPTEMBER 03, 2003, 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

Remember, this is an OFFICIAL NOTICE OF SUSPENSION.

Sincerely,

Rebecca L. Bickley

Rebecca L. Bickley, Director
Bureau of Driver Licensing

INFORMATION 7:00 a.m. to 9:00 p.m.

IN STATE	1-800-932-4600	TDD IN STATE	1-800-228-0676
OUT-OF-STATE	717-391-6190	TDD OUT-OF-STATE	717-391-6191
WEB SITE ADDRESS	www.dot.state.pa.us		

032396117078796

PRISON RELEASE REQUIREMENT (ACT151)

The Court of CLEARFIELD CTY, Court Number 325, Court Term 2003 has sentenced you to serve a prison term for this violation. Pursuant to Section 1541(a.1) of the Vehicle Code, you will not receive credit for this suspension/revocation or any additional suspension/revocation until you complete your prison term. The Court must certify your completion to PennDOT. You may wish to contact your probation officer and/or the Court after your release to make sure that PennDOT is properly notified.

COURT ORDER TREATMENT PROGRAM (ACT 122)

Pursuant to Section 1548(d) of the Vehicle Code, the Court of CLEARFIELD CTY , Court Number 325, Court Term 2003 has ordered you to attend a treatment program for alcohol or drug addiction. As a result of the court order, this suspension/revocation shall remain in effect until the Department is notified by the above Court that you have successfully completed treatment and you are otherwise eligible for restoration of your driving privilege.

PAYING THE RESTORATION FEE

You must pay a restoration fee to PennDOT to be restored from a suspension/revocation of your driving privilege. To pay your restoration fee, complete the following steps:

1. Return the enclosed Application for Restoration. The amount due is listed on the application.
2. Write your driver's license number (listed on the first page) on the check or money order to ensure proper credit.
3. Follow the payment and mailing instructions on the back of the application.

IGNITION INTERLOCK

Before your driving privilege can be restored you are required by law to have all vehicle(s) owned by you to be equipped with an Ignition Interlock System. This is a result of your conviction for Driving Under the Influence. If you fail to comply with this requirement, your driving privilege will remain suspended for an additional year. You will receive more information regarding this requirement approximately 30 days before your eligibility date.

Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CRIMINAL ACTION

COMMONWEALTH OF PENNSYLVANIA :

VS. : NO. 03-325-CRA

ARTHUR L. CODER III :

S E N T E N C E

NOW, this 8th day of July, 2003, Defendant having entered Pleas of Guilty to charges of Driving Under the Influence, a Misdemeanor of the Second Degree, and the Summary Offense of Careless Driving; he having appeared without counsel and the Court being satisfied that he has knowingly and voluntarily waived his right to same and intelligently entered said Pleas, it is the SENTENCE of this Court that, on the charge of Driving Under the Influence, he pay for the benefit of Clearfield County the sum of Three Hundred ($300.00) Dollars, together with costs of prosecution; that he be placed on Probation for a period of two (2) years under the supervision and control of the Clearfield County Department of Probation Services, Adult Division, among the terms and conditions of which shall be that he serve thirty (30) days in the Clearfield County Jail, to be initiated by Defendant reporting to said jail on or before Friday, July 11, 2003, at 8:00 p.m., there to remain until Sunday, July 13, 2003, at 8:00 p.m., and on each succeeding weekend therafter at like days and times until the whole of said Sentence has been complied with; that, upon

release, he shall complete drug and alcohol treatment at Gateway Institute and Clinic for which he shall pay costs; that, effective immediately, he absolutely refrain from the possession or use of alcoholic beverages and surrender his operator's license.

On the Summary Offense of Careless Driving, that he pay a fine of Thirty-five ($35.00) Dollars, and costs of prosecution.

BY THE COURT,

/s/JOHN K. REILLY, JR.

President Judge

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

JUL 15 2003

Attest. Prothonotary/ Clerk of Courts

No.

Arthur L. Coder,
Petitioner

vs.

Commonwealth of Pennsylvania
Department of Transportation,
Respondent

Petition for Review

Ronald L. Collins, Esquire

Sobel, Collins & Knaresboro
ATTORNEYS & COUNSELORS AT LAW
218 SOUTH SECOND STREET
CLEARFIELD, PENNSYLVANIA16830
(814) 765-5552 (814) 765-6555

Lap over margin

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

ARTHUR L. CODER, III :
Petitioner

vs. : No. 03-1427-CD

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF TRANSPORTATION,
Respondent

: **CERTIFICATE OF SERVICE**

: Filed on behalf of:
Arthur L. Coder, III, Petitioner

: Counsel for this party:
Ronald L. Collins, Esquire

: Supreme Court No. 36744

: Sobel & Collins
Attorneys at Law
218 South Second Street
Clearfield, PA 16830

: (814)765-5552
FAX (814)765-6210

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

ARTHUR L. CODER, III :
Petitioner

vs. : No. 03-1427-CD

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF TRANSPORTATION,
Respondent

CERTIFICATE OF SERVICE

I, Ronald L. Collins, Esquire do hereby state that on the **24th** day of **September, 2003**, I did forward a certified copy of the Petition for Review, filed to the above caption, was served upon the Pennsylvania Department of Transportation, by Certified Mail, senders receipt attached hereto.

Ronald L. Collins, Esquire

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dept of Transportation
Office of Chief Counsel
3rd Floor, Riverfront Office Center
Harrisburg PA 17104-2516

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)* B. Date of Delivery
SEP 24 2003

C. Signature
X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

SEP 24 2003
OFFICE OF CHIEF COUNSEL
Vehicle & Traffic Law Division

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
7099 3400 0016 7880 2477

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

No. 03-1427-CD

Arthur L. Coder, III,
Petitioner

vs.

Commonwealth of Pennsylvania,
Department of Transportation,
Respondent

Certificate of Service

Ronald L. Collins, Esquire

Sobel, Collins & Knaresboro
ATTORNEYS & COUNSELORS AT LAW
218 SOUTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-5552 (814) 765-6555

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

ARTHUR L. CODER, III, Petitioner	:	
vs.	:	No. 2003-1427-CD
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, Respondent	:	

ORDER OF COURT

AND NOW, to wit: this 13th day of January, 2004, upon consideration of the foregoing Motion to Quash Appeal due to Lack of Subject Matter Jurisdiction, a rule is issued upon the petitioner, Arthur L. Coder, III, to show cause, if any. why this appeal by him from the Department's determination that he is subject to the operating privilege restoration requirement of having each motor vehicle that he owns equipped with an ignition interlock device upon his completion of the one year operating privilege suspension imposed for his conviction for violating Section 3731 of the Vehicle Code on February 22, 2003 should not be quashed because this Court lacks subject matter jurisdiction over this appeal.

Said rule is returnable on the 23 day of February, 2004, at 1:30 P.m. in Courtroom No. 1 of the Clearfield County Courthouse.

By the Court:

Judge J. Zimmerman

J.

FILED

JAN 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED 2cc & ICC Motion
01/4:00 BK to C.A - will serve
JAN 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

CA

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

Arthur L. Coder, III, Petitioner vs. Commonwealth of Pennsylvania, Department of Transportation, Respondent	No. 2003-1427-CD Motion to Quash Appeal for Lack of Subject Matter Jurisdiction 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

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

ARTHUR L. CODER, III, Petitioner	:	
vs.	:	No. 2003-1427-CD
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, Respondent	:	

MOTION TO QUASH APPEAL FOR LACK OF SUBJECT MATTER JURISDICTION

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, (Bureau), by its attorney, William A. Kuhar, Jr., Esquire, and requests this Honorable Court to quash this appeal from the Bureau's imposition of the requirement that the petitioner have each motor vehicle that he owns equipped with an ignition interlock device upon his completion of the one year operating privilege suspension imposed for his conviction for a violation of Section 3731 of the Vehicle Code on the grounds that this Court lacks subject matter jurisdiction to adjudicate the challenge to that requirement which is made by this appeal, and, in support thereof, avers the following:

1. On September 3, 1997, the petitioner, Arthur L. Coder, III, received an Accelerative Rehabilitative Disposition (ARD) in the Jefferson County Common Pleas Court on the charge of violating Section 3731(a)(1) and (a)(4)(i) of the Vehicle Code, 75 Pa.C.S. §3731(a)(1)&(a)(4)(i), on May 24, 1997.

2. On July 8, 2003, the petitioner was convicted in this Court on the charge of violating Section 3731(a)(1) and (a)(4)(i)of the Vehicle Code on February 22, 2003.

3. By official notice dated and mailed September 3, 2003, the Bureau notified the petitioner that his operating privilege was scheduled to be suspended for a period of one year, effective July 8, 2003, due to his July 8, 2003 conviction for violating Section 3731(a)(1) and (a)(4)(i) of the Vehicle Code on February 22, 2003.

4. By the September 3, 2003 suspension notice referred to in Paragraph 3 of this Motion, the Bureau further advised the petitioner that, before his operating privilege could be restored from the one year suspension referred to in Paragraph 3, he was required by law to have all vehicles owned by him equipped with an ignition interlock system

5. On September 23, 2003, the petitioner filed this appeal from the Bureau's requirement that he have all vehicles that he owns equipped with an ignition interlock system upon his completion of the one year operating privilege suspension referred to in Paragraph 3 of this Motion in order to be eligible to have his operating privilege restored from that suspension.

6. The petitioner contends by this appeal that the Bureau's requirement that he have all vehicles that he owns equipped with an ignition interlock system upon his completion of the one year operating privilege suspension referred to in Paragraph 3 of this Motion in order to be eligible to have his operating privilege

suspension restored from that suspension is improper because the Clearfield County judge who sentenced him for the February 22, 2003 DUI offense did not impose that requirement upon him. *See Schneider v. Department of Transportation, Bureau of Driver Licensing*, 790 A.2d 363 (Pa. Cmwlth. 2002)(allocatur pending); *Turner v. Department of Transportation, Bureau of Driver Licensing*, 805 A.2d 671 (Pa. Cmwlth. 2002)(allocatur pending). He also contends that that requirement of the Bureau is improper because application of Section 7002(b) of the Judicial Code, 42 Pa.C.S. §7002(b) to his case would be *ex post facto* because he received the ARD for his first DUI offense of September 3, 1997 prior to the effective date of Section 7002(b); i.e. September 30, 2000. *See Alexander v. Department of Transportation, Bureau of Driver Licensing*, 822 A.2d 92 (Pa. Cmwlth. 2003), *reconsideration denied*, 2003 Pa. Commw. LEXIS 394 (Pa. Cmwlth., filed May 20, 2003)(allocatur pending).

7. The Bureau's requirement that the petitioner have all vehicles that he owns equipped with an ignition interlock system upon his completion of the one year operating privilege suspension referred to in Paragraph 3 of this Motion constitutes an operating privilege restoration requirement. *See Commonwealth v. Mockaitis*, ___ A.2d ___, 2003 Pa. LEXIS 1908 (Pa., filed October 16, 2003), slip op. at 10 ("Indeed, since **compliance with the ignition interlock requirement is a prerequisite to even a conditional restoration of driving privileges under Act 63**, apprising the offender of the requirement in the sentencing order provides essential notice of the condition."); *Mockaitis*, slip op. at 11 ("Rather, that initial order, which effectuated the explicit directives of the statute, **erected a condition precedent to restoration of appellee's license**."); *Mockaitis*, slip op. at 18-19 ("But in terms of **the obligation** it imposes upon the trial courts **to regulate the restoration of driving privileges** in this instance, that is exactly what Act 63 entails. ... This scheme essentially forces court employees to serve **the function of the Department of Transportation of regulating whether and when repeat DUI offenders are entitled to conditional restoration of their operating privileges**".); *Mockaitis*, slip op. at 20-21 ("For these reasons, we are constrained to hold that Act 63's delegation of **executive responsibility** to the courts **in connection with the restoration of the operating privileges of serial DUI offenders** is unconstitutional."); *Mockaitis*, slip op. at 21-22 ("Here, severing those portions of Act 63 which effectuate the delegation to the sentencing court of **the license restoration-related executive responsibilities of ordering installation of the devices** and certifying that they have been installed does not render the remainder of the statute incapable of execution in accordance with legislative intent."); *Mockaitis*, slip op. at 23 ("The factual predicate for each challenge arises from the provisions of the Act delegating to the trial court **the responsibility of regulating the restoration of operating privileges by ordering the devices installed 'on each motor vehicle owned' by the offender** and then investigating and certifying compliance to the Department."); *Mockaitis*, slip op. at 24 ("In summary, we hold that the provisions of Act 63 which delegate to the courts **the executive responsibility, more properly vested in the Department of Transportation, of regulating whether and when repeat DUI offenders are entitled to conditional restoration of their operating privileges**, are unconstitutional, but severable.)

8. Under Section 933(a)(1) of the Judicial Code, 42 Pa.C.S. §933(a)(1), a common pleas court has subject matter to hear the appeals from the following types of actions of the Department of Transportation: (1) the imposition of sanctions under Chapter 13 of the Vehicle Code, 75 Pa.C.S §§1301-1377, and the denial or suspension of a person's registration or authority to issue registration cards or plates (75 Pa.C.S. §1377); (2) denial of a driver's license to a person, the cancellation of a person's driver's license, the recall, suspension or revocation of a person's operating privilege or the disqualification of a person's privilege to operate commercial motor vehicles (75 Pa.C.S. §1550); (3) the denial of a certificate of appointment as an official inspection station to a person or the suspension of a person's certificate of appointment as an official inspection station (75 Pa.C.S. §4724(b)); (4) the denial of a certificate of authorization as a salvor to a person or the suspension of a person's certificate of authorization as a salvor (75 Pa.C.S. §7303(b)); and (5) the denial of a certificate of authorization as a messenger service to a person or for the suspension of a person's certificate of authorization as a messenger service

(75 Pa.C.S. §7503(b)). However, a common pleas court does not have subject matter jurisdiction under Section 933(a)(1) of the Judicial Code to hear an appeal by a licensee from a determination by the Bureau that he or she is subject to an operating privilege restoration requirement established by statute and/or that he or she has not satisfied that requirement. *See, e.g., Department of Transportation v. Cunningham*, 604 A.2d 1212 (Pa. Cmwlth. 1992) (*en banc*); *Department of Transportation, Bureau of Traffic Safety v. Yarbinitz*, 508 A.2d 641 (Pa. Cmwlth. 1986).

9. In holding in *Mockaitis* that the Bureau's requirement that the petitioner have all vehicles that he owns equipped with an ignition interlock system upon his completion of the one year operating privilege suspension referred to in Paragraph 3 of this Motion constitutes an operating privilege restoration requirement., the Supreme Court of Pennsylvania implicity **overruled** the decision of the Commonwealth Court of Pennsylvania in *Schneider v. Department of Transportation, Bureau of Driver Licensing*, 790 A.2d 363 (Pa. Cmwlth. 2002), that an appeal from a determination by the Bureau that a licensee whose operating privilege has been suspended or revoked due to a conviction for a violation of Section 3731 of the Vehicle Code is subject to the operating privilege restoration requirement of installation of an ignition interlock device in each of the vehicles that he or she owns and/or that he or she has not satisfied that requirement is an appeal from a Bureau action from which a statutory right of appeal lies under Section 1550(a) of the Vehicle Code, and hence one over which a common pleas court has subject matter jurisdiction pursuant to Section 933(a)(1)(ii) of the Judicial Code because failure to comply with that requirement will result in the suspension of the licensee's operating privilege for an additional one year

10. There is no statute providing a licensee whose operating privilege has been suspended or revoked due to a conviction for a violation of Section 3731 of the Vehicle Code with a right of appeal to a common pleas court from a determination by the Bureau that he or she is subject to the operating privilege restoration requirement of installation of an ignition interlock device in each of the vehicles that he or she owns and/or that he or she has not satisfied that requirement. Consequently, such a licensee has no right to appeal to a common pleas court from such a determination. *Cf. Brennan's Case*, 25 A.2d 155 (Pa. 1942).

11. When no right of appeal from a Bureau action is expressly provided for by statute, the Pennsylvania Constitution and the Administrative Agency Law, 2 Pa.C.S. §§501-508 and §§701-704, provide for a right to appeal that Bureau action, on the condition that it constitutes an adjudication by the Bureau. *Department of Transportation v. Hosek*, 524 (Pa. Cmwlth. 1971).

12. Since an appeal from a determination by the Bureau that a licensee is subject to an operating privilege restoration requirement established by statute and has failed to satisfy it is not one of the types of appeals over which a common pleas court is given subject matter jurisdiction by Section 933(a)(1) of the Judicial Code, and no other statute provides for the right to appeal such a determination by the Bureau, the recourse for a licensee who believes that the Bureau has improperly determined that he or she is subject to the operating privilege restoration requirement of installation of an ignition interlock device in each of the vehicles that he or she owns and/or that he or she has not satisfied that requirement is to apply for an administrative hearing before a Bureau hearing officer. *See Mockaitis*, slip op. at 24 ("Should appellee or any other serial DUI offender be aggrieved by an actual determination made by the Department in enforcing the remaining provisions of the Act, the administrative setting is the appropriate forum to raise such a challenge.") *Cf. Department of Transportation, Bureau of Driver Licensing v. Cardell*, 568 A.2d 999 (Pa. Cmwlth. 1990)(*en banc*). The petitioner can apply to the hearing officer for a supersedeas from the operating privilege restoration requirement while the Bureau adjudicates his or her claim that it is improper to subject him or her to that requirement or that he or she did satisfy that requirement. *Cf. Department of Transportation;, Bureau of Driver Licensing v. Iacono*, 578 A.2d 1005, 1008, n. 8 (Pa. Cmwlth. 1990), *appeal denied*, (Pa. 1991). If not satisfied with the hearing officer's proposed report, the licensee may file

exceptions to that report by the Secretary of Transportation. *Cf. Cardell*; *Niles v. Department of Transportation*, 674 A.2d 739 (Pa. Cmwlth. 1995). Finally, if the licensee is not satisfied with the decision of the Secretary of Transportation, he or she has a right under 2 Pa.C.S. §702 to obtain judicial review by filing a petition for review with the Commonwealth Court of Pennsylvania, which would have subject matter jurisdiction over that appeal pursuant to 42 Pa.C.S. §763. *Cf. Cardell.*

WHEREFORE, the Bureau respectfully requests that this Honorable Court enter a rule upon the petitioner to show cause, if any, why this appeal by him from the Bureau's determination that he is subject to the requirement of installation of an ignition interlock device in each vehicle that he owns upon his completion of the one year operating privilege suspension which was imposed for his second DUI offense should not be quashed due to its lack of subject matter jurisdiction over the appeal.

Respectfully submitted,

William A. Kuhar, Jr., Esquire
Assistant Counsel
Attorney for the Bureau

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 petitioner by regular United States first class mail, postage prepaid, addressed as follows:

Ronald L. Collins, Esquire
218 South Second Street
Clearfield, PA 16830

Date: 11/20/2003

William A. Kuhar, Jr.

OS-2 (4-01)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
www.dot.state.pa.us
OFFICE OF CHIEF COUNSEL
1209 State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: (412) 565-7555
Facsimile: (412) 565-7778

November 20, 2003

David S. Meholick, Court Administrator
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830

Re: Arthur L. Coder, III
vs.
Commonwealth of Pennsylvania,
Department of Transportation
No. 2003-1427-CD

Dear Mr. Meholick:

Enclosed herewith for presentation to the appropriate judge for his consideration is a motion to quash the above-captioned appeal from a Department order requiring installation of an ignition interlock device in each of the licensee's vehicles before his driving privilege will be restored from a one year suspension imposed for his second DUI offense because the court does not have subject matter jurisdiction over the appeal. At this time, the Department is only asking that the court enter a rule upon the petitioner to show cause, if any, why the appeal should not be quashed.

As of this date, there has been no date set for a hearing on the merits of the appeal.

Your anticipated assistance in this matter is appreciated.

Very truly yours,

William A. Kuhar, Jr.
Assistant Counsel

Enclosure (as stated)

cc: Ronald L. Collins, Esquire
File
Corres.

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

COMMONWEALTH	:	
	:	
vs.	:	No. 03-1427-CD
	:	
ARTHUR L. CODER, III	:	

ORDER

AND NOW, this 12th day of January, 2004, it is the ORDER of the Court that the License Suspension Appeal filed in the above matter has been scheduled for **Monday, February 23, 2004 at 1:30 P.M.** before the Honorable John K. Reilly, Sr. Judge, Specially Presiding, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

FREDRIC J. AMMERMAN
President Judge

FILED
JAN 13 2004

FILED
01:44:30
JAN 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

2 cc to
C/A - will serve

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

VS. : NO. 03-1427-CD

ARTHUR L. CODER, III : License Suspension Appeal

O R D E R

NOW, this 23rd day of February, 2004, this being the day and date set for hearing into the above-captioned Appeal from License Suspension, the Court being satisfied that the matter will be controlled by the Supreme Court's decision whether to grant allocatur to Schneider v. Department of Transportation, 790 A.2d 363, it is the ORDER of this Court that further proceeding shall be and is hereby continued pending the receipt of the Supreme Court's decision.

BY THE COURT,

John K. Reilly, Jr.
Senior Judge
Specially Presiding

FILED

FEB 24 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED 2cc Attys Kuhar & Collins
01 3:05 BD
FEB 24 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	No. 03-1427-CD
	:	
ARTHUR L. CODER, III	:	

ORDER

AND NOW, this 25th day of August, 2005, it is the ORDER of the Court that hearing on Defendant's License Suspension Appeal in the above matter has been scheduled for **Friday, September 23, 2005 at 9:30 A.M.** before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, in the Clearfield County Courthouse, Clearfield, PA. Please report to the Court Administrator's Office. You will be directed from there where this hearing will be heard.

BY THE COURT:

FREDRIC J. AMMERMAN
President Judge

FILED 2cc C/A
9/2:20 cm
AUG 25 2005

William A. Shaw
Prothonotary

FILED

AUG 2 5 2005

William A. Shaw
Prothonotary