

THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

DAVID J. MARKIEVICH, :
Petitioner :
vs. : No. 06-94-CD
: :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF TRANSPORTATION, :
: :
: Type of Document: Petition for Appeal
: from Order of Department of
: Transportation Suspending Driver's
: License
: :
: Filed on behalf of: David J. Markievich,
: Petitioner
: :
: Counsel of Record for this party:
: David J. Markievich, pro se
: 109 Hill Street
: DuBois, PA 15801

FILED acc AH
01254a301 JAN 20 2006 aff pd.
85.00
W.A. Shaw
Prothonotary/Clerk of Courts

THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

DAVID J. MARKIEVICH, :
Petitioner :
vs. : No.
: :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF TRANSPORTATION, :
:

PETITION FOR APPEAL FROM ORDER
OF DEPARTMENT OF TRANSPORTATION
SUSPENDING DRIVER'S LICENSE

Now, comes Petitioner, David J. Markievich, pro se, and avers as follows:

1. Petitioner is David J. Markievich, whose address is 109 Hill Street, DuBois, Pennsylvania 15801.
2. The adverse party is the Department of Transportation of the Commonwealth of Pennsylvania, having a mailing address of Department of Transportation, Bureau of Driver Licensing, P.O. Box 68693, Harrisburg, Pennsylvania 17106-8693.
3. Petitioner currently possesses a valid driver's license issued to him by the Department of Transportation that to the best of his knowledge was not suspended, cancelled or revoked.
4. By letter or notice dated December 28, 2005, a copy of which is attached hereto labeled Exhibit "A", the Department of Transportation ordered Petitioner to surrender his operators license for a period of six (6) months.

5. The said suspension of Petitioner's operating privileges is improper or unlawful for the following reasons:

- a. The suspension is not supported by the law;
- b. The suspension is not supported by the facts;
- c. Petitioner's license was previously suspended for the same circumstances; and
- d. The time in which to assess points and suspend Petitioner's drivers license has passed.
- e. Petitioner has had his license suspended several times in the past, and consequently, the Department of Transportation has always known the whereabouts of Petitioner.

6. Petitioner is entitled to a supercedas until final determination of the matter pursuant to 75 P.S. §1550(b).

WHEREFORE, Petitioner respectfully requests that the Court set this matter down forthwith for De Novo Hearing pursuant to 75 Pa. Cons. Stat. Ann. § 1550 and that the Order of the Department of Transportation be set aside.

Respectfully submitted,

By: David J. Markovich
David J. Markievich, pro se

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

David J. Markievitch
David J. Markievitch

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Mail Date: DECEMBER 28, 2005

DAVID J MARKIEVICH
109 HILL ST
DU BOIS PA 15801

WID # 053556253230660 001
PROCESSING DATE 12/21/2005
DRIVER LICENSE # 19782621
DATE OF BIRTH 08/04/1948

ADDITIONAL NOTICE

Dear MR. MARKIEVICH:

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 05/06/1998 conviction of violating Section 3743 of the Vehicle Code LEAVING SCENE OF ACCIDENT on 04/28/1998:

- Your driving privilege is **SUSPENDED** for a period of 6 MONTH(S) effective 01/24/2006 at 12:01 a.m.

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.

COMPLYING WITH THIS SUSPENSION

You must return all current Pennsylvania driver's licenses, learner's permits, temporary driver's licenses (camera cards) in your possession on or before 01/24/2006. You may surrender these items before, 01/24/2006, for earlier credit; however, you may not drive after these items are surrendered.

YOU MAY NOT RETAIN YOUR DRIVER'S LICENSE FOR IDENTIFICATION PURPOSES. However, you may apply for and obtain a photo identification card at any Driver License Center for a cost of \$10.00. You must present two (2) forms of proper identification (e.g., birth certificate, valid U.S. passport,

marriage certificate, etc.) in order to obtain your photo identification card.

You will not receive credit toward serving any suspension until we receive your license(s). Complete the following steps to acknowledge this suspension.

1. Return all current Pennsylvania driver's licenses, learner's permits and/or camera cards to PennDOT. If you do not have any of these items, send a sworn notarized letter stating you are aware of the suspension of your driving privilege. You must specify in your letter why you are unable to return your driver's license. Remember: You may not retain your driver's license for identification purposes. Please send these items to:

Pennsylvania Department of Transportation
Bureau of Driver Licensing
P.O. Box 68693

Harrisburg, PA 17106-8693

2. Upon receipt, review and acceptance of your Pennsylvania driver's license(s), learner's permit(s), and/or a sworn notarized letter, PennDOT will send you a receipt confirming the date that credit began. If you do not receive a receipt from us within 3 weeks, please contact our office. Otherwise, you will not be given credit toward serving this suspension. PennDOT phone numbers are listed at the end of this letter.
3. If you do not return all current driver license products, we must refer this matter to the Pennsylvania State Police for prosecution under SECTION 1571(a)(4) of the Pennsylvania Vehicle Code.

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.

Remember, this is an **OFFICIAL NOTICE OF SUSPENSION**. You must return all current Pennsylvania driver license products to PennDOT by 01/24/2006.

053556253230660

Sincerely,



Janet L. Dolan, Acting 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

THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

DAVID J. MARKIEVICH, :
Petitioner :
vs. : No. 06-94-CD
: :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF TRANSPORTATION, :
:

ORDER FOR HEARING

AND NOW, this ____ day of _____, 2006, upon consideration of the Petition of David J. Markievich for review of an Order of the Department of Transportation suspending Petitioner's operating privilege, a Hearing De Novo is granted to determine whether the action of the Department of Transportation in suspending Petitioner's operating privilege should be set aside.

Hearing on the above-captioned matter is set for the ____ day of _____, 2006 at _____.m. at the Clearfield County Courthouse, 230 E. Market Street, Clearfield, Pennsylvania, in Courtroom No. _____.

Petitioner's driver's license shall not be revoked until further order of this Court. The Petitioner is directed forthwith to serve a notice of the appeal and copies of the petition for review and order for hearing on the Department of Transportation at the address shown in the Department's Notice of Entry of Order, by certified mail, return receipt requested.

BY THE COURT,

JUDGE

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

DAVID J. MARKIEVICH :
:
:
:
vs. : No. 06-094-CD
:
:
COMMONWEALTH OF :
PENNSYLVANIA, DEPARTMENT OF :
TRANSPORTATION :
:

O R D E R

AND NOW, this 27th day of January, 2006, the Defendant having filed a Petition appealing the Order of the Department of Transportation suspending the Defendant's motor vehicle operating privileges, it is hereby Ordered that the Court Administrator's Office is directed to schedule the matter for hearing at the next available License Suspension Appeal hearing date.

It is further Ordered that the defendant herein shall send a certified copy of this Order and of the Petition for Appeal by certified United States mail to Pennsylvania Department of Transportation, Office of Chief Counsel, Third Floor, Riverfront Office Center, Harrisburg, PA 17104-2516. This Order shall act as a supersedeas of the action of the Pennsylvania Department of Transportation suspending Petitioner's motor vehicle operating privileges.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

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JAN 27 2006 (L)

William A. Shaw
Prothonotary/Clerk of Courts

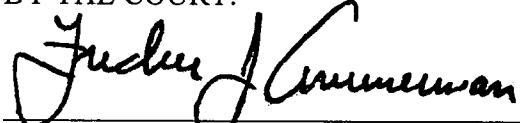
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
vs. : No. 06-094-CD
DAVID J. MARKIEVICH :
:

O R D E R

AND NOW, this 24th day of March, 2006, it is the ORDER of the Court that hearing on Defendant's License Suspension Appeal in the above matter has been scheduled for Friday, March 31, 2006 at 10:00 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

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William A. Shaw
Prothonotary/Clerk of Courts

THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

DAVID J. MARKIEVICH, :
Petitioner :
vs. : No. 06-94 C.D.
: :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF TRANSPORTATION, :
:

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance for Petitioner, David J. Markievich, in the above captioned matter.

Date: April 10, 2006


David J. Hopkins, Esquire
100 Meadow Lane, Suite 5
DuBois, PA 15801
(814) 375-0300

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APR 10 2006
Atty Hopkins
100
William A. Shaw
Prothonotary/Clerk of Courts

THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

DAVID J. MARKIEVICH, :
Petitioner :
vs. : No. 06-94 C.D.
:
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF TRANSPORTATION, :
:
: Type of Document: Petition to Take
: Additional Testimony
:
: Filed on behalf of: David J. Markievich,
: Petitioner
:
:
: Counsel of Record for this party:
:
: HOPKINS HELTZEL LLP
:
: David J. Hopkins, Esquire
: Attorney at Law
: Supreme Court No. 42519
:
: 100 Meadow Lane, Suite 5
: DuBois, PA 15801
: (814) 375-0300

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William A. Shaw
Prothonotary/Clerk of Courts

THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

DAVID J. MARKIEVICH, :
Petitioner :
vs. : No. 06-94 C.D.
:
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF TRANSPORTATION, :
:

PETITION TO TAKE ADDITIONAL TESTIMONY

AND NOW, comes Petitioner, David J. Markievich, by and through his attorneys, Hopkins Heltzel LLP, and files the within Petition to Take Additional Testimony.

1. Petitioner is David J. Markievich, whose address is 109 Hill Street, DuBois, Pennsylvania 15801.
2. The adverse party is the Department of Transportation of the Commonwealth of Pennsylvania, having a mailing address of Department of Transportation, Bureau of Driver Licensing, P.O. Box 68693, Harrisburg, Pennsylvania 17106-8693.
3. Petitioner currently possesses a valid driver's license issued to him by the Department of Transportation that to the best of his knowledge was not suspended, cancelled or revoked.
4. By letter or notice dated December 28, 2005, the Department of Transportation ordered Petitioner to surrender his operators license for a period of six (6) months.

5. On March 31, 2006, the Court held a hearing on Mr. Markievich's Petition for Appeal from Order of Department of Transportation Suspending Driver's License.

6. Therein, DOT presented various Superior Court cases that in essence state that as long as DOT suspends an individual's driving privileges within a reasonable time of learning of the individual's conviction, then and in such event, the suspension is valid even if a significant period of time has passed since the conviction.

7. Mr. Markievich's action arises out of a 1998 guilty plea for accidents involving damage to attended vehicle and reckless driving. Mr. Markievich plead guilty to both charges and he received six months driving suspension for reckless driving.

8. In December of 2005, over seven (7) years since his guilty plea, the Department of Transportation has attempted to suspend his license for accidents involving attended vehicles.

9. Mr. Markievich plead guilty to both charges in 1998 and he paid the fines contemporaneously with his guilty plea.

10. Since 1992, District Magistrates no longer sent convictions from their offices to the Department of Transportation. Rather, in 1992, the system was computerized and nightly the Department of Transportation downloads information from District Court's around the Commonwealth to its computer banks.

11. As a result of the downloading process, the Department of Transportation has had knowledge of Mr. Markievich's convictions for both the reckless driving charge and the accident involving damage to attended vehicle charge since 1998.

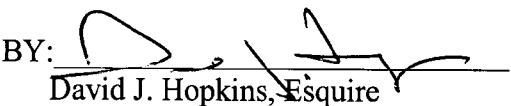
12. Mr. Markievich has significant health issues and he requires his license to travel to and from the Veterans Hospital in Altoona.

13. Mr. Markievich petitions this Court to allow additional testimony from personnel within District Justice Patrick Ford's office to testify to the facts set forth herein.

WHEREFORE, Petitioner respectfully requests this Honorable Court to schedule an additional hearing in this matter.

Respectfully submitted,

HOPKINS HELTZEL LLP

BY: 
David J. Hopkins, Esquire

COPY: TRIAL COURT ADMIN

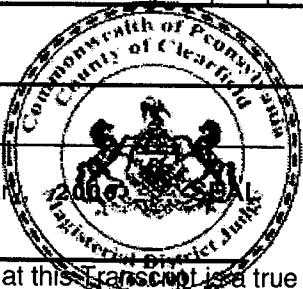


64. Date Transcript Sent
to Court
MM DD YY
12 28 05

Certified this _____ day of _____

My commission expires first Monday of January

Patrick N. Ford
I, the above named Issuing Authority certify
and correct Transcript of the Docket



1. Docket Number of Final Issuing Authority TR-0000952-98			2. Common Pleas Docket Number			3. State Identification Number			OTN													
4. Final Issuing Authority/to be completed by Final Issuing Authority PATRICK N. FORD			DISTRICT NO. 46 3 01			5. Transferred from Initial Issuing Authority			DISTRICT NO.													
D E F E N D A N T	6. Name and Address (Last Name First) MARKIEVICH, DAVID J 109 HILL ST DUBOIS, PA 15801									7. Date of Transfer		8. Docket No. of Initial Issuing Authority TR-0000952-98										
	9. Affiant Who Signed Complaint (Name and Address) WILLIAM A. BEERS SANDY TWP PD 1094 CHESTNUT AVE DUBOIS, PA 15801																					
10. Date of Birth MM DD YY 08 04 98		11. Sex M		12. Race		13. Operator License Number 19782621		14. State PA		15. ORI PA0170800		16. OCA		17. Badge Number/Officer I.D. 228-01								
18. Date of Arrest MM DD YY		19. Date Complaint Filed or Citation Issued or Filed MM DD YY 04 30 98		20. Summons MM DD YY 04 30 98		Date Issued MM DD YY 04 30 98		21. Warrant MM DD YY 05 07 98		22. Summons Returned MM DD YY 05 07 98		23. Preliminary Arraignment MM DD YY 04 28 98		24. Time		25. Date Waived to Court MM DD YY						
26. Prelim. Hear./Sum. Trial		27. Address of Preliminary Hearing/Summary Trial														32. Date Set For Preliminary Hearing MM DD YY		33. CON T.				
28. Description of Charges A ACCIDENT INVOLV DAMAGE ATTENDED VEHICLE/																Off. Ch.	Grading	29. Offense Date MM DD YY 04 28 98	30. Section and Subsection	31. Disposition	MM DD YY	MM DD YY
1	2	3	4	5	6																	
34. Advised of His Right Yes <input type="checkbox"/> No <input type="checkbox"/> to Apply for Assignment			35. Public Defender Yes <input type="checkbox"/> No <input type="checkbox"/> Requested by the Defendant?			36. Application Provided for Appointment of Public Defender? Yes <input type="checkbox"/> No <input type="checkbox"/>			37. In cases where so required, I the within named Issuing Authority, did make a reasonable effort to settle the difference between the Defendant and the Complainant on:													
38. Codefendant(s) Name a			39. OTN a			38. Codefendant(s) Name b			39. OTN c													
40. Enter 'C' for witness for Complainant- Enter 'D' for Witness for Defendant			41. Witnesses Names and Addresses and Names and Addresses of persons (not more than 2), Defendant wishes to be Notified for trial														42. Sworn	43. Testified	44. Defense Persons to be notified			
45. Commonwealth																						
46. Complainant																						
47. Defendant																						
49. Date of Decision MM DD YY 05 06 98			50. Fines \$ 300.00			Amount 51. Costs 41.50			52. Judgment of Sentence			BAL: \$.00		48. I.D. No.								
Name and Address of Corporate Surety and Agent or Individual Surety-Preliminary Arraignment																						
53. Type				54. Amount				55. Date Set MM DD YY \$								56. Date Bail Posted MM DD YY						
Name and Address of Corporate Surety and Agent or Individual Surety-Preliminary Hearing																						
57. Type				58. Amount				59. Date Set MM DD YY \$								60. Date Bail Posted MM DD YY						
61. If Committed Date		62. Code		63. Place of Commitment																		

COPY: TRIAL COURT ADMIN

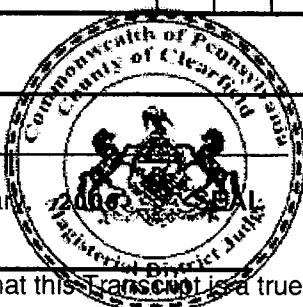


64. Date Transcript Sent
to Court
MM DD YY
12 28 05

Certified this _____ day of _____

My commission expires first Monday of January.

Patrick N. Ford
I, the above named Issuing Authority, do



THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

DAVID J. MARKIEVICH, :
Petitioner :
vs. : No. 06-94 C.D.
: :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF TRANSPORTATION, :
:

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Petition to Take Additional Testimony, filed on behalf of Petitioner, David J. Markievich, was forwarded on the 10th day of April, 2006 by U.S. Mail, postage prepaid, to all counsel of record, addressed as follows:

William A. Kuhar, Jr., Esquire
DOT
Room 1209
State Office Building
Pittsburgh, PA 15222



David J. Hopkins, Esquire
Attorney for Petitioner

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

DAVID J. MARKIEVICH,
Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Respondent

:
: No. 2006-94-CD
:
: License Suspension Appeal
:
: ORDER OF COURT
:
:
: Filed on Behalf of:
:
: COMMONWEALTH OF PENNSYLVANIA
: DEPARTMENT OF TRANSPORTATION
:
:
: Counsel of Record:
:
:
: William A. Kuhar, Jr., Esquire
: Assistant Counsel
: Pa.I.D. No. 38885
:
:
: Department of Transportation
: Office of Chief Counsel
: Firm No. 052
:
:
: 1209 State Office Building
: 300 Liberty Avenue
: Pittsburgh, PA 15222
: (412) 565-7555

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William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID J. MARKIEVICH, :
Petitioner :
vs. : No. 2006-94-CD
: :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF TRANSPORTATION, :
Respondent :
:

ORDER OF COURT

AND NOW, to wit: this 31 day of July, 2006, this appeal by the petitioner, David J. Markievich, from a six (6) month suspension of his driving privilege due to his reported conviction in District Court No. 46-3-01 for violating 75 Pa.C.S. §3743 on April 28, 1998 is, with the consent of the Department of Transportation's Bureau of Driver Licensing, sustained. As of September 4, 1995, a violation of 75 Pa.C.S. §3743 was graded as a misdemeanor. On May 6, 1998, when District Court No. 46-3-01 accepted the petitioner's guilty plea to charge of violating 75 Pa.C.S. §3743 on April 28, 1998, it did not have subject matter jurisdiction to accept the petitioner's guilty plea to that misdemeanor violation. *See 42 Pa.C.S. §1515; Pa. Rule of Criminal Procedure No. 550.* Consequently, the petitioner's conviction for violating 75 Pa.C.S. §3743 on April 28, 1998 was a legal nullity. *See Commonwealth v. Oliver, 869 A.2d 1167 (Pa. Cmwlth. 2005).*

By the Court:



J.

Consented to



William A. Kuhar, Jr., Esquire
Attorney for the Department