

07-1585-CD

Shannon Michael vs Comm of PA

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

SHANNON T. MICHAEL,
Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Respondent

NO. 07-1585-C.D

Type of Case: Appeal Nunc Pro Tunc
from Driver's License Suspension
Type of Pleading: Appeal/Petition

Filed on behalf of: Petitioner/
Appellant
Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

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Original
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William A. Shaw
Prothonotary/Clerk of Courts
Atty Adm
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William A. Shaw
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

SHANNON T. MICHAEL, :
Petitioner :
: :
vs. : NO. _____ C.D.
: :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF TRANSPORTATION, :
Respondent :
:

APPEAL NUNC PRO TUNC
PETITION FOR REVIEW OF ORDER OF DEPARTMENT OF TRANSPORTATION
SUSPENDING OPERATING PRIVILEGES

AND NOW, comes your Appellant/Petitioner, SHANNON T. MICHAEL, through his Attorney, David P. King, and in support of this Appeal Nunc Pro Tunc and Petition, represents as follows:

1. The Petitioner is SHANNON T. MICHAEL, residing at 315 West Weber Avenue, DuBois, PA 15801.
2. The Petitioner currently possesses a valid Driver's License issued to him by the Pennsylvania Department of Transportation, License Number 20838848.
3. By letter bearing mail date of August 31, 2007, Appellant/Petitioner was notified in writing by the DEPARTMENT OF TRANSPORTATION of a suspension of his Driver's License and privileges for a violation of Section 1547 of the Vehicle Code - Chemical Test Refusal, that took place on January 25, 2001. A copy of this Notice is attached hereto as Exhibit "A" consisting of Pages 1 and 2.
4. The relevant facts and background of this matter are as follows:
 - (a) In January of 2001, Appellant was charged with DUI, and also as a part of the incident, was cited for

refusing to submit to the appropriate chemical test.

(b) Pursuant to such alleged refusal, the Appellant received a notification that his driving privileges were being suspended for a period of one year effective July 6, 2001.

(c) Your Appellant filed a timely Appeal to such Notice of Suspension with your Honorable Court at No. 01-1031-C.D.

(d) While the above mentioned Appeal was pending, under the caption of the criminal case for the DUI, Appellant was sentenced by your Honorable John K. Reilly, Jr., on February 19, 2002, for that offense, and related summaries. A copy of that Order is attached hereto and marked as Exhibit "B", and consists of two pages.

(e) The above mentioned Order referred to Act 63 of 2000, and indicated that the Appellant would lose his operating privileges for an additional one year unless an approved interlock system was installed. The Order did not reference any basic license suspension for a period of one year.

(f) On the same date of the Sentencing Order of February 19, 2002, as referenced above, Appellant surrendered his Driver's License to the Adult Probation Office of Clearfield County, Pennsylvania.

(g) On or before that time, the Appellant was informed by his Counsel that certain things would be required of him before he got his License back after the initial one year period of suspension.

(h) Sometime in May of 2003, Appellant then called the Pennsylvania Department of Transportation to see what would be required of him to get his License back.

(i) He was told at such time, that he could not get his License back for another year. No further explanation was given to him.

(j) Moreover, Appellant received no explanation from the Probation Office of Clearfield County regarding the interlock device and Act 63 even though he was still under their supervision.

(k) Meanwhile, a hearing on the refusal issue was finally scheduled for December 19, 2003, before the Honorable John K. Reilly, Jr.

(l) Because the Appellant's Doctor, a Dr. Chambers in Punxsutawney, PA, waived in what he initially told the Appellant regarding the medical effects of a possible concussion, Appellant knew it would be futile to have such Doctor testify.

(m) Thus, at the refusal hearing, the Appellant was not able to meet his burden of proof that he was mentally or medically incapable of refusing to submit to a chemical test.

- (n) As a result of the same, the said Court denied the Appeal and affirmed the suspension of his Driver's License by the Pennsylvania Department of Transportation.
- (o) A review of those filings in the Prothonotary's office of Clearfield County at that term and number does not show that any Order was issued, however.
- (p) Thereafter, in May of 2004, Appellant went to State Representative Daniel Surra's office for assistance to get his Driver's License back, based on what he was told in his telephone conversation with the Pennsylvania Department of Transportation back in May of 2002.
- (q) Appellant believed that the reason why he could not get his Driver's License back after the first one year period was because of the refusal issue.
- (r) In fact, the Appellant was reissued his License by the Pennsylvania Department of Transportation in October of 2004 with the assistance of Representative Surra's office.
- (s) Because no final Order was issued, after the refusal hearing of December 19, 2003, the record showed no activity on the case.
- (t) In due course, such case was listed for termination for inactivity.
- (u) In fact, in July of 2007, your Honorable Court did in fact issue an Order dismissing the case for inactivity,

not being aware that a hearing was held on the same on December 19, 2003, with no order issued thereafter.

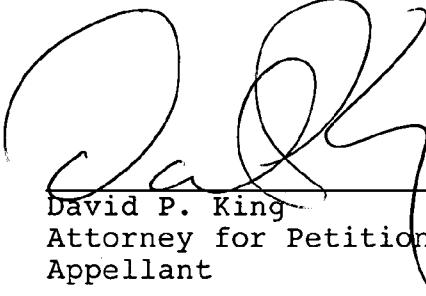
(v) As a result of receiving a copy of this Order, presumptively, the Pennsylvania Department of Transportation thereafter sent out the Notice of one year suspension on the refusal as referred to above.

5. Since having his Driver's License reinstated, Appellant obtained a CDL, and he also drives a delivery truck for his present employer.

6. Appellant believes that because of all of the facts as set forth above and herein, he has been prejudiced by all of these proceedings.

7. Appellant further believes that because of a breakdown in the legal and administrative system, it would be an injustice for him to lose his license for an additional year, all things considered.

WHEREFORE, Appellant prays your Honorable Court to hear this matter, and further to set aside, or otherwise reverse the most recent Notice of Suspension that he has received dated August 31, 2007, and he will so ever pray.



David P. King
Attorney for Petitioner/
Appellant

I verify that the statements made in this Appeal Nunc Pro Tunc and Petition for Review of Order are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: September 24, 2007



Shannon T. Michael
Petitioner/Appellant

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Mail Date: AUGUST 31, 2007

SHANNON T MICHAEL
315 W WEBER AVE
DU BOIS PA 15801

WID # 072367342024993 001
PROCESSING DATE 08/24/2007
DRIVER LICENSE # 20838848
DATE OF BIRTH 01/19/1965

Dear MR. MICHAEL:

This is an Official Notice of the Suspension of your Driving Privilege as authorized by Section 1547 of the Pennsylvania Vehicle Code. As a result of your violation of Section 1547 of the Vehicle Code, CHEMICAL TEST REFUSAL, on 01/25/2001:

- Your driving privilege is SUSPENDED for a period of 1 YEAR(S) effective 10/05/2007 at 12:01 a.m.

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 10/05/2007. You may surrender these items before, 10/05/2007, 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

072367342024993

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.

Remember, this is an OFFICIAL NOTICE OF SUSPENSION. You must return all current Pennsylvania driver license products to PennDOT by 10/05/2007.

Sincerely,



Janet L. Dolan, Director
Bureau of Driver Licensing

INFORMATION 8:00 a.m. to 6:00 p.m.

IN STATE	1-800-932-4600	TDD IN STATE	1-800-228-0676
OUT-OF-STATE	717-412-5300	TDD OUT-OF-STATE	717-412-5380
WEB SITE ADDRESS	<u>www.dmv.state.pa.us</u>		

David King

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CRIMINAL ACTION

COMMONWEALTH OF PENNSYLVANIA : :

VS. : NO. 01-153-CRA

SHANNON T. MICHAEL : :

S E N T E N C E

NOW, this 19th day of February, 2002, Defendant having entered Pleas of Guilty to charges of Driving Under the Influence, a Misdemeanor of the Second Degree, and the Summary Offenses of Careless Driving, Driving on Left Side of Roadway and Driving on Right Side of Roadway; he being fully and competently represented by counsel and the Court being satisfied that he has knowingly 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 incarcerated in the Clearfield County Jail for a term the minimum of which shall be thirty (30) days and the maximum of which shall be two (2) years less one (1) day, to be served consecutive to that period entered to No. 01-152-CRA. Effective immediately, he shall absolutely refrain from the possession or use of alcoholic beverages; and shall surrender his operator's license; upon Parole, he to undergo the Clearfield County Driving Under the Influence School at costs of One Hundred Seventy-five (\$175.00) Dollars and complete within

eight (8) weeks from this date.

As required under Act 63 of 2000, Defendant shall have his operator's license suspended for an additional one (1) year unless he installs an approved ignition interlock system on each motor vehicle that he owns at his own expense.

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

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

On the Summary Offense of Driving on Right Side of Roadway, 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.

MAR 01 2002

Attest:

William B. Reilly
Prothonotary/
Clerk of Courts

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

CF

SHANNON T. MICHAEL

vs.

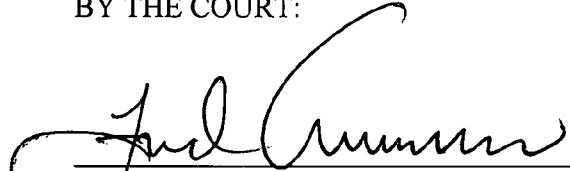
No. 07-1585-CD

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

ORDER

AND NOW, this 1st day of October, 2007, it is the ORDER of the Court that hearing on Petitioner's Appeal Nunc Pro Tunc from Driver's License Suspension in the above matter has been scheduled for Friday, October 12, 2007 at 2:00 P.M. before the Honorable Fredric J. Ammerman in Courtroom No. 1., in the Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

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018-57601 1^{cc}
OCT 02 2007 Atty's: King
Kuhar

William A. Shaw
Prothonotary/Clerk of Courts

(GP)

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OCT 02 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/02/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

UA

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

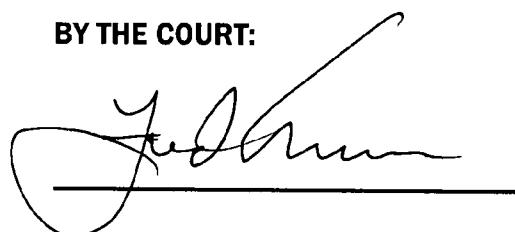
IN RE: ALAN MCBRIDE, : **Hospital Admission No. 0721101316**
An Allegedly Severely Mentally :
Disabled Person : **303 Patient-DRMC-East**
: **Behavioral Health Services**
: **Adult Unit No. 2007-1254-CD**
:

ORDER

NOW, this 2nd day of October, 2007, upon consideration of DuBois Regional Medical Center (DRMC) and Clearfield Jefferson Mental Health/Mental Retardation Program's Motion for Continuance and the Order of this Court on October 3, 2007, scheduling a hearing in the above-captioned matter, it is the ORDER of this Court that the Sheriff of Clearfield County, or his duly authorized representative, transport ALAN MCBRIDE from the Warren State Hospital to the Clearfield County Courthouse, Clearfield, PA, on Friday, October 12, 2007, at 10:45 A.M. in Courtroom #1. Said patient is to appear at the aforementioned location for the purposes of conducting a Review of Certification hearing.

Patient shall be returned immediately following said proceeding.

BY THE COURT:



President Judge

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01/23/07
OCT 04 2007

William A. Shaw
Prothonotary/Clerk of Courts

2CC PD
2CC Atty DuBois (6K)
1CC Sheriff

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

SHANNON T. MICHAEL

-vs-

COMMONWEALTH OF
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION

: No. 07-1585-CD

CC
Attn: King
0/2:40am (will serve)
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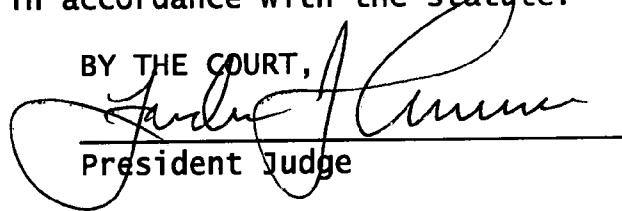
William A. Shaw
Prothonotary/Clerk of Courts

O R D E R

AND NOW, this 12th day of October, 2007, upon
agreement of the parties in the above-captioned Appeal Nunc
Pro Tunc from Driver's License Suspension, it is the ORDER
of this Court as follows:

1. The Court orders a supersedeas of the
suspension of operating privileges from the notice of
suspension dated August 31, 2007, effective September 27,
2007, the filing date of the Appeal;
2. The Appeal is hereby dismissed this date;
3. The Court recommends that the suspension of
operating privileges begin sixty (60) days from the date of
this Order. In the event Petitioner, Shannon T. Michael,
submits the proper acknowledgment/affidavit of suspension
sooner than such date, he shall receive credit for the one
(1) year suspension in accordance with the statute.

BY THE COURT,


President Judge