



## Ramirez v. Commonwealth

2004 | Cited 0 times | Supreme Court of Pennsylvania | July 22, 2004

SUBMITTED: March 26, 2004

OPINION NOT REPORTED

MEMORANDUM OPINION

Cesar Ramirez appeals from an order of the Philadelphia County Court of Common Pleas (common pleas) that denied his appeal of his driver's license suspension imposed by the Department of Transportation, Bureau of Driver Licensing (Department) following a conviction for driving under the influence (DUI) in Florida. We affirm.

On February 18, 2000, Ramirez was convicted in Florida of DUI on June 28, 1999 in violation of Florida's DUI statute, Fla. Stat. Ann. § 316.193(1) (b).<sup>1</sup> On July 9, 2002, the Department mailed a notice to Ramirez notifying him that, pursuant to Sections 1532(b)<sup>2</sup> and 1581<sup>3</sup> of the Vehicle Code (Code), 75 Pa. C.S. §§ 1532(b) and 1581, his driving privileges were suspended for one year for his Florida conviction, which is similar to a violation of Section 3731 of the Code.<sup>4</sup> Following the license suspension, Ramirez appealed to common pleas, which denied the appeal and affirmed the decision of the Department after a hearing. Ramirez then filed a notice of appeal from that decision to this court. Common pleas ordered Ramirez to file a statement of matters complained of on appeal pursuant to Pa. R.A.P. 1925(b). The record contains no evidence indicating that Ramirez followed this order. Common pleas then filed an opinion supporting its order denying Ramirez's appeal.

On appeal, Ramirez contends that common pleas erred in concluding:

(1) that Florida was a party to the Compact; (2) that the almost three year delay between his violation date and the suspension date did not preclude suspension; and (3) that the Pennsylvania and Florida DUI statutes are substantially similar<sup>5</sup> and, therefore, a conviction under the Florida statute provides the basis for a suspension in Pennsylvania.

The Department first argues that Ramirez has waived all issues for appellate review by failing to file the Pa. R.A.P. 1925(b) statement directed by common pleas. We agree. Pennsylvania Rule of Appellate Procedure 1925(b) provides:

(b) Direction to file statement of matters complained of. The lower court forthwith may enter an order directing the appellant to file of record in the lower court and serve on the trial judge a concise



## Ramirez v. Commonwealth

2004 | Cited 0 times | Supreme Court of Pennsylvania | July 22, 2004

statement of the matters complained of on the appeal no later than 14 days after entry of such order. A failure to comply with such direction may be considered by the appellate court as a waiver of all objections to the order, ruling or other matter complained of.

In *Commonwealth v. Butler*, 571 Pa. 441, 812 A.2d 631 (2002), our Supreme Court stated that:

[T]his Court eliminated any aspect of discretion and established a bright-line rule for waiver under Rule 1925: "[I]n order to preserve their claims for appellate review, [a]ppellants must comply whenever the trial court orders them to file a Statement of Matters Complained of on Appeal pursuant to Rule 1925. Any issues not raised in a 1925(b) statement will be deemed waived." Thus, waiver under Rule 1925 is automatic.

*Id.* at 445, 812 A.2d at 633 (citations omitted). Inasmuch as Ramirez failed to file the 1925(b) statement and by this failure, he waived the issues he asserts on appeal.<sup>6</sup>

Accordingly, the order of common pleas is affirmed.

### ORDER

AND NOW, this 22nd day of July, 2004, the order of Court of Common Pleas of Philadelphia County in the above captioned matter is hereby

AFFIRMED.

BONNIE BRIGANCE LEADBETTER, Judge

1. This section provides: A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if such person is driving or in actual physical control of a vehicle within this state and . . . the person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood.
2. This Section provides in relevant part that the Department shall suspend the operating privilege of any driver for 12 months upon receiving a certified record of the driver's conviction for violation of Section 3731 (relating to driving under the influence of alcohol or controlled substance).
3. 75 Pa. C.S. §§ 1581-1585 is known as the Drivers License Compact of 1961 (Compact). Article IV of Section 1581 provides in relevant part: Effect of Conviction (a) 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; ... (c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words



## Ramirez v. Commonwealth

2004 | Cited 0 times | Supreme Court of Pennsylvania | July 22, 2004

employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) of this article as being applicable to and identifying those offenses or violations of a substantially similar nature and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article. The Compact is designed to promote compliance with laws relating to the operation of a motor vehicle in the party states and to make the reciprocal recognition of drivers' licenses more just and reasonable. See *Koterba v. Dep't. of Transp., Bureau of Driver Licensing*, 736 A.2d 761 (Pa. Cmwlth. 1999) (discussing the history of the Compact).

4. This Section provides in relevant part that: (a) Offense defined. A person shall not drive, operate or be in actual physical control of the movement of a vehicle in any of the following circumstances: (1) While under the influence of alcohol to a degree which renders the person incapable of safe driving. (4) While the amount of alcohol by weight in the blood of: (i) an adult is 0.10% or greater; or . . . .

5. We note that the correct inquiry under the Compact is whether both laws prohibit conduct which is substantially similar to one of the crimes enumerated in Article IV (a) of the Compact. See *Petrovick v. Dep't of Transp., Bureau of Driver Licensing*, 559 Pa. 614, 618-20, 741 A.2d 1264, 1266-67 (1999).

6. The Department contends Ramirez's appeal is frivolous and seeks reasonable counsel fees pursuant to Pa. R.A.P. 2744. This court has defined a frivolous appeal as one in which there is no justiciable question presented and the appeal is readily recognizable as devoid of merit in that there is little prospect of success. *Hewitt v. Commonwealth*, 541 A.2d 1183, 1184-85 (Pa. Cmwlth. 1988). There is no merit in Ramirez's contention that Florida is not a party to the Compact. As common pleas correctly pointed out, Section 1581 itself references 23 Fla. Stat. Ann. § 322.43-322.48 as Florida's statutory enactment of the Compact. Ramirez's second argument regarding unreasonable delay also lacks merit. Ramirez did not provide any evidence to common pleas to establish prejudice due to the delay. See *Fisher v. Dep't. of Transp., Bureau of Driver Licensing*, 682 A.2d 1353, 1355 (Pa. Cmwlth. 1996) (licensee must prove unreasonable delay chargeable to the Department and prejudice resulting therefrom). Ramirez's final argument is also frivolous. In *Crytzer v. Dep't of Transp., Bureau of Driver Licensing*, 770 A.2d 820 (Pa. Cmwlth. 2001), this court held that the Florida DUI statute is substantially similar to Article IV (a) (2). *Id.* at 825 ("The Court is convinced by these authorities that the language in the Florida DUI statute has the effect of defining an offense that is substantially similar in nature to Article IV(a)(2).") Therefore, the comparison required under *Petrovick* is satisfied. Ramirez did not argue for reversal of these authorities, but simply ignored them, in spite of common pleas' citation of *Crytzer* in its opinion. While we do not condone such advocacy, see Rule of Professional Conduct 3.1, we recognize that *Crytzer* was decided by a sharply divided court, and the issue has not been passed upon by our Supreme Court. Accordingly, we decline to award fees in this instance.

