

IN THE SUPREME COURT OF PENNSYLVANIA

Matthew P. Dec (Pro Se)

23 WM 2022

V.

PENN DOT

**APPLICATION FOR EXTRA ORDINARY RELIEF IN THE FORM OF SUPERCEDEAS
STAY OF LICENSE SUSPENSION PENDING HEARING OF APPEAL OF
COMMONWEALTH COURT CASE 1276 CD 2021.**

Matthew P. Dec (Pro Se)

Butler, Pa. 16001

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STATEMENT OF JURISDICTION

210 Pa. Code § 3315 - Review of Stay Orders of Appellate Courts

Where the Superior Court or the Commonwealth Court in the exercise of its appellate jurisdiction has entered an order under Chapter 17 (effect of appeals; supersedeas and stays), such order may be further reviewed by any justice of the Supreme Court in the manner prescribed by Chapter 17 with respect to appellate review of supersedeas and stay determinations of lower courts.

STATEMENTS OF PRAYER FOR RELIEF

And now comes the Appellant before this Court praying its intervention in this case which the Commonwealth Court ruled per curiam denying a supercedeas stay on his license suspension while totally neglecting to rule upon his challenge to the Constitutionality of police saying (literally verbatim) “Fuck you and your Right to a warrant, I’m writing you up as a refusal...;” as pertaining to a warrantless blood draw with dozens dying weekly of Covid.

Appellant never refused to give a blood test, as may be seen from civil trial court transcripts by cops own testimony; Appellant did nothing more than request a warrant before having his flesh pierced in a hospital housing diseased people dying from an active epidemic and was told, “Fuck you then. I’s writing you up as a refusal...”

Appellant contends that to rule per curiam denying Appellant’s supercedeas stay without deciding whether it is Constitutional to civilly afflict Citizens for exercising a Constitutional Right is an oxymoron and an abuse of discretion.

Appellant also contends that he adequately provided the four prong requirement contrary to Commonwealth Court’s memorandum in which they also even made false statements pertaining the case such as claiming Appellant was taken to hospital for blood test.

Proceeding this Statement of Request Appellant presents his Brief as is before Commonwealth Court which they currently refuse to thereon; Appellant welcomes both a new ruling upon his application for Supercedeas Stay as well as a Sua Sponte decision upon his case.

Appellant requests an expedited decision as he is suffering the costs of \$75.00 a day simply to maintain work.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Matthew P. Dec (Pro Se)

Case # 1276 CD 2021

V.

PENN DOT

APPLICATION FOR SUPERCEDEAS STAY UPON LICENSE SUSPENSION DUI
RELATED FROM THE CASE OF THIS APPEAL.

And now comes the Appellant, Pro Se, requesting a supercedeas stay upon the revocation of his license that has been enacted.

Appellant's appeal meets meets all four burdens required therefore;

1- Has shown in his brief the Constitutional inequity of retaining the current; "If you ask for a warrant before consenting to the health risks involved therein you are told 'fuck you and your 4th, 5th, and 14th Amendment Rights; you are forbidden to drive under DUI penalty for 18 months without even being convicted thereof; next year we'll be at your door without a warrant, wait til you see what we do when you don't let us in..."

A- This continued practice is a felony violation of the federal crime 18 USC 241 as supported by circumstantial inferences as found in United States V Price that implicates 14th Amendment Procedures (such as obtaining a warrant) as well as Substantive Rights such as warrants.

2- Appellant is being irreparably harmed in this instance as he is suffering a lack of means to travel to work outside of paying \$90 a day. How is Appellant upon prevailing to receive recompense considering that the State is protected by the 11th Amendment? Howbeit, this second prong may be circumvented if merits so oblige...

3- There is no possible substantial harm that can come to the opposing party.

4- As for whether this is in the public's interest, I'm not sure how the rectification of a now defunct, un-Constitutional, and by all appearances felonious criminal act "under color of law" 18 USC 241 could be.

Appellant also requests an expedited review of this petition as it is costing Appellant greatly and Appellant has been accused of a child on the way.

Respectfully,

Matthew P. Dec

Butler, Pa. 16001

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Matthew P. Dec (Pro Se)

Case # 1276 CD 2021

(Appellant)

V.

PENN DOT

(Appellee)

AMENDED BRIEF OF APPELLANT

Appeal from Butler County Court of Common Pleas

Matthew P. Dec (PRO SE)

Butler, Pa. 16001

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Jurisdiction

This court possesses original jurisdiction to hear all appeals as pertaining Constitutional issues. 42 Pa.C.S. § 762(a)(4)(i).

This court also has jurisdiction via Article VI of the US Constitution which makes the Constitution the Supreme Law of the land and binds all judges thereto. *McCulloch v. Maryland* 17 U.S. 316

STATEMENT OF THE SCOPE OF REVIEW AND THE STANDARD OF REVIEW

This appeal requires this Court to engage in statutory interpretation of the Implied Consent Title 75 section 1547 and Constitutional implications raised, which, as a question of law, is subject to a de novo standard of review and a plenary scope of review.” *Banfield v. Cortés*, 110 A.3d 155, 166 (Pa. 2015)

STATEMENT OF THE QUESTIONS AND ORDER INVOLVED

1- Should Title 75 section 1547 yet retain the power it once possessed prior to Constitutional implications derived from the US Supreme Court's ruling in Birchfield vs. North Dakota (by which now a warrant is required for blood draw) to punish citizens for exercising their Constitutional Right to request a warrant prior to willful blood draw?

Appellant: No PENN DOT: Yes

2- Should a citizen who requests to see a warrant prior to consenting to a blood draw be deemed as a "refusal", and punished with an 18 month DUI suspension for a "crime" they never were convicted of for exercising his/her Right to request a warrant as granted by the US Supreme Court?

Appellant: No PENN DOT: Yes

3- If Title 18 USC 241 and Title 18 USC 242 make it a felony to threaten or punish an individual for exercising an established Right as well as violating a Right, and the 5th Amendment makes it unlawful for a citizen to lose "life, liberty, or property" without due process, how can a citizen within the jurisdictional boundaries of the US Constitution's established Right to request a warrant be punished for requesting a warrant?

Appellant: "A citizen can't, it's un-Constitutional."

PENN DOT: "That's the way we roll."

STATEMENT OF THE CASE

1- The issue of this case is the determination of the resultant fallout from the US Supreme Court's ruling in Birchfield v. North Dakota. Since the ruling in this case was made, it has been held that if a citizen is to practice his/her Constitutional protections, then they are to be civilly penalized for having done so. This current practice, Appellant argues, opens a Pandora's Box of potential mischief against duly secured Rights held by the common citizen.

2- In Birchfield, it was ruled that a warrant is required to draw blood from a motorist thereby nullifying the "Implied Consent" doctrine that was formally observed within this Commonwealth. Although the "Implied Consent" doctrine was the basis thereof the former manner in which DUI charges and blood demands were acceptably conducted, "Implied Consent" for blood draw was relegated unto an ideology like unto that moving one's residence to Pennsylvania gave "Implied Consent" for police to enter any home without a warrant as a result of becoming a citizen of this State.

3- In this case, which is unique in that it ventures into yet uncharted waters in circumstantial implications, this Court is tasked with establishing a standardization in uniform code of practice with existing rulings from jurisdictional courts of like subject matter as pertaining warrants.

4- In this case, as may be seen from civil hearing transcripts provided by Butler County Court of Common Pleas, Appellant never refused to give a blood test. However, at that period in History, an approximate dozen of people were dying

in the hospital of Covid 19 with multiple new strains being daily pronounced to be breaking out via all media outlets.

5- Appellant told police officers that he was uncomfortable with the idea of having his flesh punctured in a hospital housing people dying of various strains of an epidemic of disease; and if they truly felt they had to put his life at risk because they think he might have smoked marijuana, then get a warrant as provided by *Birchfield* and he would consent thereto.

6- Having been examined by a "Drug Recognition Expert," whose "expert" opinion as stated verbatim was, " I think you might have have smoked some pot..."; I believe it is fair to say that they in their own minds had established "probable cause" to obtain a warrant. There was no exigent circumstances preventing them from making a call to obtain one which would have taken 30 minutes at most.

7- Howbeit, officer in reply to request for warrant replied, " Fuck you then. I'm writing you up as a refusal and you can lose your license for 18 months..."

8- Appellant never refused to give his blood as once again may be seen from officer's own testimony in civil trial in Common Pleas Court; Appellant did nothing more than exercise his Constitutional Right to request a warrant.

9- In *Birchfield*, the US Supreme Court held that states may not make it illegal to refuse a warrantless blood draw. This means that states cannot make it a stand-alone crime to refuse a blood test where the police have not obtained a search warrant. States also may not impose increased penalties for DUI convictions where there was a refusal to consent to a blood draw. States may,

however, continue to punish defendants who refuse a blood test or who refuse to consent to a blood draw after the police have obtained a search warrant.

10- Although the wording in *Birchfield* would seem to imply that if a citizen requests a warrant before consenting to give a blood draw he must suffer civil forfeiture of "Life, Liberty, and Property" without a trial for his request, such a conclusion goes against common law and the 5th Amendment.

11- Several years ago during a heroin epidemic a code was established entitled the "Disorderly House" code which invested police with the ability to enter any residence deemed as such without warrant; it was repealed as un-Constitutional, yet there was no civil punishments attached were someone to refuse them entry.

12- In *Missouri v. McNeely*, the United States Supreme Court rejected the government's argument that the natural dissipation of alcohol in a DUI suspect's blood always constitutes a per se exigency that obviates the requirement that police obtain a warrant prior to conducting a blood test. The US Supreme Court recognized that technological advances such as cell phones, fax machines, and scanners make it possible for cities and states to set up procedures by which police can quickly obtain a search warrant when necessary.

13- In Appellant's instance, there was no exigent circumstances as marijuana would have been in his blood even the next day...

14- In *Trahey v. Commonwealth* in which the defendant was charged with vehicular homicide as well as DUI the Pa. Supreme Court held that there was

no justifiable cause for police not to have obtained a warrant and **reversed the Superior Court's holding and ruled that the police must obtain a search warrant where a suspect refuses to consent to a blood draw.**

15- In Commonwealth v. Alexander, the Pa. Supreme Court held that warrantless vehicle searches require BOTH probable cause and exigent Circumstances, and that law enforcement may no longer rely on the inherent mobility of a vehicle (recognized under federal law) as an exigent circumstance to permit warrantless searches based on probable cause. Now, where law enforcement only has probable cause to search a roadside vehicle, and no exigent circumstances are present, a warrant must be secured.

16- If a warrant is required to search under a car seat, how much more so to pierce someone's flesh and veins with a syringe? And, why not suspend a motorist's license leaving him without ability to feed his family for years as a result of him/her requesting a warrant to search their car? The fallacy of continuing in such a practice in light of previously determined cases should be becoming quite apparent.

17- Appellant also asked officer during hearing in Common Pleas Court what he would do had the officer obtained a warrant and Appellant yet refused to comply. Would he beat him down and forcefully puncture his veins to obtain the blood or charge him with a refusal? He replied that he would charge him with a refusal. If the results are the same, what substantive Right is retained? And what is the difference between a blatant refusal and a citizen that requests a warrant as afforded by the Supreme Court?

18- In Commonwealth v. Palchanes the defendant after being presented with a warrant and refusing was also charged with Obstruction of Justice, a weightier charge than the DUI. Appellant in this case was not charged therewith as he never refused, he simply requested a warrant as provided by law and was told "Fuck You." Literally verbatim.

18- In conclusion to my brief, I submit unto you that if civil punishments affecting Life, Liberty, and Property are to be inflicted upon citizens for exercising a Right established by the US Supreme Court; and the police have said (literally) "Fuck you and your Right to a warrant, you will never drive again for we shall harass you every time we see you for requesting a warrant.." , then by the 5th Amendment PENN DOT should by established substantive and procedural protections take a citizen before a Jury of their peers to civilly afflict them for exercising their Right to request a warrant.

19- Wherefore, in that warrants are quickly and easily attained these days, Appellant submits to this Court that a warrant be required to sustain a civil punitive punishment for "refusal", lest citizens be punished for nothing more than exercising their Constitutional Right to request a warrant.

20- Also, were police to simply inform the accused that they have a choice to simply volunteer for blood draw or they would get a warrant, and if they refused when the warrant was presented that they would be charged with Obstruction of Justice and placed in jail rather than released ROR as well as a "refusal"; this would also rectify the confusion, lack of uniformity, and provide incentive if the party was consciously guilty.

21- Finally, Title 18 USC 241 and Title 18 USC 242 make it a Federal Crime to threaten someone for exercising their Constitutional Rights and a crime to violate their Rights. Which means this: Via punishing someone for exercising their Constitutional Right to request a warrant, the police and the courts are now enemies of the Constitution they falsely swore to protect, and engaging a cop in combat is like unto engaging an enemy of the Constitution as did our Forefathers.

Summary of Argument

To continue the current course of labeling citizens who request a warrant prior to consenting to blood draw as has been granted by the US Supreme Court constitutes punishing citizens for doing nothing more than exercising a now established Right; this is in violation of Title 18 USC 241 and Title 18 USC 242.

To civilly punish a citizen for the “infraction” of exercising their Right to request a warrant prior to consenting to blood draw is a violation of the 5th Amendment and falls under Title 42 USC 1983 violations.

To label a request to see a warrant as a “refusal” is as unjust as it is a lie, and a Fraud upon the Court.

RELIEF AND REMEDY SOUGHT

The relief sought by Appellant is an injunction be placed upon PENN DOT prohibiting them from their continued now un-Constitutional practice of punishing citizens with 18 month DUI suspensions for nothing more than the exercising of their Constitutional Right to request to see a warrant as afforded by the US Supreme Court's ruling in Birchfield v. North Dakota; and the same protections of procedural due process as pertaining warrants be afforded motorists as pertaining blood draw as in PA Supreme Court's ruling in Alexander v. Commonwealth as pertaining vehicular searches; IE..., that upon probable cause a warrant be attained.

CONCLUSION

Appellant concludes this Prayer for Relief with one last plea for for an expedited favorable response towards his plea for a Supercedeas Stay upon his license suspension. Appellant is currently suffering great hardship at a time when he is supposedly expecting a child within 5 months, and at least a Supercedeas Stay at this moment will procure for him a reasonable amount of time to ensure adequate funding for child as well as a plan for continued financial resourcing Appellant currently suffers lack thereof.

Appellant cannot see how he cannot prevail in challenging a practice that punishes law abiding Citizens of this State for nothing more than exercising their Right to see a warrant before permitting their bodies to be punctured enduring both the pain as well as health risks that accompany such procedures in health care centers housing multitudes dying from an epidemic that was occurring at that time.

Appellant also welcomes a Sua Sponte decision from this Court to rule upon this case upon its own accord thereby prevailing in timeliness as well as Judicial Economics.

Matthew P. Dec (Pro Se.)

Butler, Pa. 16001