

COMMONWEALTH COURT OF PENNSYLVANIA

The County of Luzerne v. Thomas Perrone

Nos. 1018-1024 C.D. 2021 (Pa. Commw. Ct. Sept. 21 2023) (mem.) · No. Nos. 1018-1024 C.D. 2021 · Decided
September 21, 2023

SUMMARY

The Pennsylvania Commonwealth Court affirmed seven summary convictions against Thomas Perrone for violating Section 302.8 of the 2015 International Property Maintenance Code, as adopted by the Municipality of Kingston. The court held that evidence concerning inoperative and disassembled vehicles on Perrone’s property was sufficient to establish the violations beyond a reasonable doubt. It further rejected Perrone’s res judicata, zoning, preexisting-use, equitable-estoppel, and laches arguments.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Christine Fizzano Cannon; Renée Cohn Jubelirer, President Judge; Christine Fizzano Cannon, Judge; Lori A. Dumas, Judge
JURISDICTION	Pennsylvania
DECIDED	September 21, 2023
DOCKET	Nos. 1018-1024 C.D. 2021
DISPOSITION	affirmed
PROCEDURAL POSTURE	Thomas Perrone appealed seven summary convictions entered by the Court of Common Pleas of Luzerne County for violations of Section 302.8 of the 2015 International Property Maintenance Code. The Commonwealth Court affirmed.
STANDARD OF REVIEW	When the trial court has taken additional evidence in de novo review of a summary conviction, appellate review is limited to whether the trial court abused its discretion or committed an error of law. The evidence is viewed in the light most favorable to the Commonwealth, and the sufficiency question is whether the factfinder could have found each element beyond a reasonable doubt.
PRECEDENTIAL VALUE	Nonprecedential; opinion not reported and issued as a memorandum opinion.

PARTIES

Thomas Perrone v. The County of Luzerne, Commonwealth of Pennsylvania

TOPICS

ordinances

municipal law

appellate procedure

criminal procedure

standard of review

PRACTICE AREAS

municipal law

administrative and regulatory law

criminal procedure

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to establish seven violations of Section 302.8 of the 2015 International Property Maintenance Code beyond a reasonable doubt.
2. Whether res judicata or collateral estoppel barred prosecution of the cited violations based on prior proceedings involving the property and alleged vehicle-storage violations.
3. Whether Perrone's zoning-based defenses, including preexisting nonconforming use, continued use, variance by estoppel, and laches, defeated the summary convictions.

HOLDINGS

1. The evidence was sufficient to prove beyond a reasonable doubt that each of the seven vehicles was inoperative and was parked, kept, or stored on the property in a state of major disassembly or disrepair, in violation of PMC Section 302.8.
2. Res judicata and collateral estoppel did not bar the seven prosecutions because the citations represented new or continuing violations of PMC Section 302.8, and the prior proceedings did not decide whether Perrone was violating the provision at the time of the current citations.
3. Arguments based on preexisting or continued use, variance by estoppel, and laches were inapposite to prosecution of PMC Section 302.8 violations and did not defeat the convictions.

KEY QUOTATIONS

“Therefore, to prove a violation of PMC Section 302.8, the evidence must illustrate that (1) an inoperative or unlicensed motor vehicle (2) is parked, kept, or stored (3) on a premises in a state of major disassembly, disrepair, or in the process of being stripped or dismantled.” (at 3-4)

“These equitable zoning arguments, while appropriately raised in actions or claims before zoning hearing boards, are inapposite to the prosecution of a violation of PMC Section 302.8, which considers only the condition of a property and the zoning applicable to that property at the time of the violation.” (at 10)

FACTUAL BACKGROUND

Thomas Perrone owned residential property in Kingston at which he kept seven automobiles outside in various stages of disrepair and disassembly. After a code enforcement officer documented the vehicles and sent Perrone a notice giving him 30 days to remedy the violations, the vehicles remained on the property. The officer later

issued seven citations, and photographs and testimony established that the vehicles were inoperative and remained unmoved and in disrepair.

PROCEDURAL HISTORY

The Municipality of Kingston issued seven citations after Perrone failed to remove seven inoperative or substantially disassembled and disrepaired vehicles from his property. Following a de novo summary trial on May 4, 2021, the Court of Common Pleas found Perrone guilty on all seven citations and imposed costs and fines. Perrone initially appealed to the Superior Court, which transferred the appeals to the Commonwealth Court; the matters were consolidated, and the Commonwealth Court affirmed.

DISPOSITION

affirmed

CASES CITED

- City of Williamsport Bureau of Codes v. DeRaffele, 170 A.3d 1270, 1273 (Pa. Commw. Ct. 2017)
- Commonwealth v. Nicely, 988 A.2d 799, 805 (Pa. Commw. Ct. 2010)
- Bd. of Supervisors of Willistown Twp. v. Main Line Gardens, Inc., 184 A.3d 615, 625 (Pa. Commw. Ct. 2018)
- Weney v. Workers' Comp. Appeal Bd. (Mac Sprinkler Sys., Inc.), 960 A.2d 949, 954 (Pa. Commw. Ct. 2008)
- Henion v. W.C.A.B. (Firpo & Sons, Inc.), 776 A.2d 362, 365-66 (Pa. Commw. Ct. 2001)
- Wilkes ex rel. Mason v. Phoenix Home Life Mut. Ins. Co., 902 A.2d 366, 376 (Pa. 2006)
- Borough of Walnutport v. Dennis, 114 A.3d 11, 19-20 (Pa. Commw. Ct. 2015)
- Commonwealth v. Anderson (Pa. Commw. Ct., No. 301 C.D. 2016, filed Dec. 20, 2016), slip op. at 6-8
- Commonwealth v. Comensky (Pa. Commw. Ct., No. 28 C.D. 2016, filed Oct. 31, 2016), slip op. at 5-6
- Lamar Advantage GP Co. v. Zoning Hearing Bd. of Adjustment of City of Pittsburgh, 997 A.2d 423, 441 (Pa. Commw. Ct. 2010)
- Vaughn v. Zoning Hearing Bd. of Twp. of Shaler, 947 A.2d 218, 224-25 (Pa. Commw. Ct. 2008)
- Pietropaolo v. Zoning Hearing Bd. of Lower Merion Twp., 979 A.2d 969, 980 (Pa. Commw. Ct. 2009)
- In re Wilkinsburg Taxpayers & Residents Interest in Green St. Park Sale to a Private Developer & Other Park-Sys. Conditions, 200 A.3d 634, 642 (Pa. Commw. Ct. 2018)
- White v. Township of Upper St. Clair, 968 A.2d 806, 811 (Pa. Commw. Ct. 2009)
- Commonwealth v. Brandon (Pa. Commw. Ct., No. 1674 C.D. 2017, filed Nov. 26, 2018)