

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Todd Kirk Graham,	:	
Appellant	:	
	:	No. 806 C.D. 2025
v.	:	
	:	Submitted: September 14, 2026
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing	:	

BEFORE: HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE DUMAS**

FILED: October 15, 2026

Todd Kirk Graham (Appellant) appeals from the order entered by the Court of Common Pleas of Westmoreland County (Common Pleas), dated May 29, 2025. Through that order, Common Pleas denied Appellant’s appeal regarding the 60-day suspension of his driver’s license by the Commonwealth of Pennsylvania, Department of Transportation (DOT). DOT had imposed the suspension pursuant to Section 3807(d)(3)(ii) of the Vehicle Code, 75 Pa.C.S. § 3807(d)(3)(ii).¹ After review, we affirm.

¹ Section 3807 of the Vehicle Code sets forth the ramifications associated with participating in an Accelerated Rehabilitative Disposition (ARD) program for driving under the influence (DUI) offenses, providing in relevant part:
(Footnote continued on next page...)

I. BACKGROUND²

Appellant's license suspension arises from a traffic stop that resulted in charges that he was driving under the influence (DUI). During the traffic stop, the two responding troopers (Troopers) attempted to administer a series of field sobriety tests and requested that Appellant submit to a preliminary breath test. However, Appellant remained generally uncooperative and complained about either physical discomfort or overall confusion. Eventually, the Troopers placed Appellant under arrest for DUI and asked Appellant several times to submit to chemical testing. After Appellant failed to provide a clear response to the Troopers' requests, the Troopers indicated that they were interpreting Appellant's conduct as a refusal.

Thereafter, on June 20, 2024, Appellant was admitted into an ARD program in Westmoreland County. *See* DOT's Proposed Findings of Fact & Conclusions of Law, 3/13/25, Attach. (DL-21A Form, 6/20/24). Following Appellant's entry into ARD, DOT mailed Appellant notice that his operating

(d) Mandatory suspension of operating privileges.-- As a condition of participation in an [ARD] program, *the court shall order the defendant's license suspended as follows:*

...

(3) *For 60 days if:*

- (i) the defendant's blood alcohol concentration at the time of testing was 0.16% or higher;
- (ii) *the defendant's blood alcohol concentration is not known;*
- (iii) an accident which resulted in bodily injury or in damage to a vehicle or other property occurred in connection with the events surrounding the current offense; or
- (iv) the defendant was charged pursuant to section 3802(d).

75 Pa.C.S. § 3807 (emphasis added).

² Unless otherwise stated, we derive the factual background from Common Pleas' Pa.R.A.P. 1925(a) opinion and the attachment on which that opinion relies, which is Common Pleas' Pa.R.A.P. 1925(a) opinion issued in a separate proceeding before this Court involving Appellant's appeal from the court order upholding a one-year suspension of his operating privileges. *See* Trial Ct. 1925(a) Op., 8/5/25; *id.*, Attach. (1925(a) Op. in the Statutory Appeal No. 3920 of 2021).

privileges would be suspended for 60 days, effective on August 7, 2024. *See id.*, Attach. (Notice of Suspension, 7/3/24). Appellant then filed a statutory appeal in Common Pleas. *See* Pet. to Appeal, 8/1/24.

Common Pleas held a hearing, during which the parties agreed to submit the dash-camera video footage of the traffic stop into evidence. The parties also agreed to each submit proposed findings of fact and conclusions of law for the court's consideration. *See* Trial Ct. Order, 5/29/25. After reviewing the video footage, the record, and each of the parties' submissions, Common Pleas denied Appellant's statutory appeal. *See id.* Appellant then timely appealed to this Court. *See* Notice of Appeal, 6/23/25.

Notably, the circumstances involving Appellant's traffic stop, including his interactions with the arresting Troopers and the events related to his chemical testing, were the subject of a separate proceeding before this Court. *See Graham v. Dep't of Transp., Bureau of Driver Licensing* (Pa. Cmwlth., No. 631 C.D. 2025, filed Sept. 1, 2026), 2026 WL 2581825 (*Graham I*). In *Graham I*, Appellant appealed a trial court order which upheld the suspension of his operating privileges for one year. *See id.* at *3. There, Common Pleas reviewed the same traffic-stop video footage and concluded that Appellant had refused chemical testing. *See id.* This Court affirmed Common Pleas and upheld Appellant's one-year license suspension. *See id.* at *5-6.

II. DISCUSSION³

Appellant challenges his 60-day license suspension, asserting that Section 3807(d)(3)(ii) should not apply when the absence of a blood alcohol concentration (BAC) reading stems from confusion created by law enforcement rather than from any refusal attributable to himself.⁴ *See* Appellant’s Br. at 3.

DOT responds that Section 3807(d)(3) mandates a 60-day suspension whenever an individual is accepted into an ARD program and the individual’s BAC is not known, irrespective of the reason for which an individual’s test results are unavailable. *See* Appellee’s Br. at 8-9.

It is well established that participation in an ARD program compels mandatory license suspensions under Section 3807(d) of the Vehicle Code. *See Dep’t of Transp., Bureau of Driver Licensing v. Foltz*, 280 A.3d 1133, 1139-40 (Pa. Cmwlth. 2022); *see also Dep’t of Transp., Bureau of Traffic Safety v. McDevitt*, 427 A.2d 280, 282 (Pa. Cmwlth. 1981), *aff’d per curiam*, 458 A.2d 939 (Pa. 1983) (“[Defendant’s] acceptance of the ARD program constitutes a conscious choice of an alternative to prosecution and a knowing waiver of appellee’s right [to defend

³ Our standard of review in a license suspension case is limited to determining whether the factual findings of the trial court are supported by substantial evidence and whether the trial court committed an error of law or an abuse of discretion. *See Negovan v. Dep’t of Transp., Bureau of Driver Licensing*, 172 A.3d 733, 735 n.4 (Pa. Cmwlth. 2017).

⁴ Appellant also asserts that this Court must first resolve the appeal in *Graham I* before resolving the present appeal. *See* Appellant’s Br. at 3. In his view, if the *Graham I* Court were to rule in his favor, this would establish that he did not refuse the chemical testing, thereby making it “unfair” to impose a license suspension where his BAC level of “not known” resulted solely from the Troopers’ conduct. *See id.*

This assertion is moot because *Graham I* has already been resolved, thus removing any hypothetical need to await its outcome. *See Bottomer v. Progressive Cas. Ins. Co.*, 859 A.2d 1282 (Pa. 2004) (explaining that once a separate, related proceeding resolves the underlying claim, the remaining claim is moot because no live controversy remains for appellate review). Nevertheless, Appellant identifies no legal authority that requires this Court to resolve *Graham I* before this appeal. *See generally* Appellant’s Br.

himself].”). As a condition for an individual’s admittance into an ARD program, the court must suspend the individual’s driver license for 60 days when the defendant’s BAC is not known. *See* 75 Pa.C.S. § 3807(d)(3)(ii). The Vehicle Code does not afford the trial court or DOT any discretion to modify the length of a suspension once the individual accepts admittance into an ARD program. *See Foltz*, 280 A.3d at 1139 (“The General Assembly clearly communicated to the trial court in Section 3807 of the Vehicle Code the length of the license suspension as a condition to participate in the ARD program.”).

Here, Appellant accepted placement into an ARD program after being charged with a DUI. *See* DOT’s Proposed Findings of Fact & Conclusions of Law, 3/13/25, Attach. (DL-21A Form, 6/20/24). He does not dispute that he voluntarily entered into the program. *See generally* Appellant’s Br. Accordingly, upon Appellant’s acceptance into the ARD program, Section 3807(d)(3)(ii) required DOT to impose a 60-day suspension of his driver’s license. *See McDevitt*, 427 A.2d at 282; *Foltz*, 280 A.3d at 1139-40.

Appellant’s contention, that the Troopers’ conduct ultimately caused the absence of any BAC results, does not alter this statutory requirement. *See* 75 Pa.C.S. § 3807(d)(3)(ii). Section 3807(d)(3)(ii) applies to an individual when their BAC is “not known,” and the statute does not contemplate possible reasons for an unknown BAC. *See id.* Therefore, Appellant’s acceptance into an ARD program mandates the 60-day license suspension and resolves this inquiry. *See Foltz*, 280 A.3d at 1139-40.

III. CONCLUSION

Given that Appellant’s BAC was “not known,” Appellant’s voluntary acceptance into an ARD program mandates a 60-day suspension of his driver’s

license. *See Foltz*, 280 A.3d at 1139-40. This statutory mandate applies regardless of Appellant's alleged confusion during the arrest. Accordingly, we affirm.

LORI A. DUMAS, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Todd Kirk Graham,	:	
Appellant	:	
	:	No. 806 C.D. 2025
v.	:	
	:	
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing	:	

ORDER

AND NOW, this 15th day of October, 2026, the order entered by the Court of Common Pleas of Westmoreland County on May 29, 2025, is AFFIRMED.

LORI A. DUMAS, Judge