

[Cite as *State v. Bullington*, 2019-Ohio-351.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 107266 and 107267

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LAURA BULLINGTON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-14-584108-A and CR-14-587807-A

BEFORE: Laster Mays, J., S. Gallagher, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: January 31, 2019

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ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Laura Bullington (“Bullington”) appeals the trial court’s decision to deny her motion to terminate Bullington’s driver’s license suspension without reason or explanation. Bullington asks this court to remand to the trial court with an order for the trial court to grant Bullington’s request for limited driving privileges. We affirm the trial court’s decision.

{¶2} Bullington’s convictions and sentences are from two cases; Cuyahoga C.P. Nos. CR-14-584108 and CR-14-587807. In CR-14-584108, Bullington pleaded guilty to possessing chemicals for manufacture of drugs, a third-degree felony, in violation of R.C. 2925.041; and to possession of criminal tools, a fifth-degree felony, in violation of R.C. 2941.1417. In CR-14-587807, Bullington pleaded guilty to possession of drugs, a fifth-degree felony, in violation of R.C. 2925.11. Bullington was sentenced for both cases on September 2, 2014.

The trial court imposed a sentence of 24 months in prison. The trial court also imposed a five-year driver's license suspension upon her release from prison.

{¶3} On June 2, 2015, the trial court granted Bullington judicial release. Bullington violated her judicial release conditions and was remanded to prison to complete her sentence. Bullington was released from prison on November 21, 2016, and was not placed on postrelease control. On April 4, 2018, Bullington filed a motion to terminate her five-year driver's license suspension. Although the state did not object to Bullington's motion, the trial court denied the motion without explanation.

{¶4} Bullington filed this timely appeal assigning two errors for our review:

- I. The trial court's denial of appellant's April 4, 2018 motion to terminate her maximum five-year driver's license suspension is contrary to law, warranting reversal; and
- II. The trial court's denial of appellant's motions to terminate her maximum five-year driver's license suspensions, without reason or explanation, is an abuse of discretion, warranting reversal.

I. Denying a Motion to Terminate

{¶5} In Bullington's first assignment of error, she argues that the trial court's denial of her motion is contrary to law. The statutory law states,

Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under this section prior to September 13, 2016, may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of a violation of section 4511.19 of the Revised Code or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under this section shall not file such a motion.

Upon the filing of a motion under division (G)(2) of this section, the sentencing court, in its discretion, may terminate the suspension.

R.C. 2925.03(G)(2).

{¶6} The statute states that the sentencing court, in its discretion, may terminate the suspension. “The jurisdiction of the trial court in a criminal matter is that jurisdiction conferred by statute that power conferred upon it by law, by which it is authorized to hear, determine, and render final judgment in an action, and enforce its judgment by legal process.” *Lynn v. Limbert*, 117 Ohio App.3d 236, 239, 690 N.E.2d 102 (7th Dist.1997). We find that the trial court’s decision was not contrary to law because the power or discretion to modify the suspension was conferred to the trial court by the statute.

{¶7} Therefore, Bullington’s first assignment of error is overruled.

{¶8} In Bullington’s second assignment of error, she contends that the trial court’s denial without a reason is an abuse of its discretion and warrants reversal. “Because the decision of whether to grant or deny a motion to amend is within the trial court’s discretion, an appellate court reviews such a ruling under an abuse of discretion standard. *Turner v. Cent. Local School Dist.*, 85 Ohio St.3d 95, 99, 706 N.E.2d 1261 (1999).” *Lemons v. State*, 2017-Ohio-8584, 100 N.E.3d 871, ¶ 125 (8th Dist.). “An abuse of discretion implies that the trial court’s ruling was ‘unreasonable, arbitrary, or unconscionable.’” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶9} Bullington argues that “the trial court does not weigh and balance any defendant specific or crime specific factors and imposes a maximum five-year driver’s license suspension on every drug offender defendant in her courtroom, regardless of quantity of drugs, type of drugs, criminal history or lack thereof, or family or employment hardships.” (Appellant’s brief, pg. 8).

However, the statute does not require the trial court to engage in that analysis on the record. Bullington’s counsel, at oral argument, also argued that the trial court has stated on the record that it has a blanket policy of suspending all defendant’s licenses for five years. However, the

transcript of the proceedings was not in the record. “[A]bsent a transcript or alternative record, we must presume regularity in the proceedings below. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980).” *State v. Ali*, 8th Dist. Cuyahoga No. 97612, 2012-Ohio-2510, ¶ 6. Therefore, the trial court did not abuse its discretion.

{¶10} Bullington’s second assignment of error is overruled.

{¶11} Judgment affirmed.

It is ordered that the appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANITA LASTER MAYS, JUDGE

FRANK D. CELEBREZZE, JR., J., CONCURS;
SEAN C. GALLAGHER, P.J., CONCURS WITH SEPARATE OPINION

SEAN C. GALLAGHER, P.J., CONCURRING:

{¶12} I concur with the result reached by the majority, but write separately to address concerns regarding the appellate review of matters such as the denial of driving privileges. I acknowledge that R.C. 2925.03(G)(1) grants the trial court considerable discretion, and in this case we have a seasoned and respected jurist who undoubtedly gave full consideration to the request. Therefore, I concur with the judgment of the majority.

{¶13} Nevertheless, while I would defer to the trial court’s determination, the discretion

afforded in these instances should not be unfettered, nor should it be arbitrarily applied.

{¶14} In this case, the state did not object to the request to terminate the discretionary driver's license suspension, or at the least to grant driving privileges for work-related matters — the state simply deferred to the trial court's determination. Without providing any reasons in support of the blanket denial of Bullington's motion and in light of the fact that the state offered no objection or reasoning of its own in support of the trial court's decision, arguably the trial court's decision is insulated from appellate review when we affirm by deferring to the trial court's discretion.

{¶15} In some arguably similar circumstances, we have reversed such matters and remanded with instructions for the trial court to provide an explanation supporting the exercise of its discretion. *State v. M.D.*, 8th Dist. Cuyahoga No. 92534, 2009-Ohio-5694, ¶ 19-20; *see also Howland v. Purdue Pharma L.P.*, 104 Ohio St.3d 584, 2004-Ohio-6552, 821 N.E.2d 141, ¶ 21 (trial court erred by failing to provide reasons in support of summary conclusion certifying the class action lawsuit); *Smith v. Smith*, 10th Dist. Franklin No. 17AP-486, 2018-Ohio-3387, ¶ 11 (trial court abuses its discretion when it fails to provide any reasoning to support its decision); *State v. Chase*, 2d Dist. Montgomery No. 26238, 2015-Ohio-545, ¶ 15-18 (same conclusion as reached in *Smith*). “The lynchpin of abuse-of-discretion review is the determination whether the trial court's decision is reasonable.” *Chase*, citing *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990).

{¶16} Unless the appellate court can discern the reason for the trial court's decision from the record or from the arguments presented for review, it is arguably impossible for an appellate panel to determine if the exercise of discretion is reasonable. *Id.*