

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

VINCENT LUCAS

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.
Hon. Sheila G. Farmer, J.
Hon. Patricia A. Delaney, J.

Case No. 14-CA-75

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Licking County
Municipal Court, Case No. 14TRD07065

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

June 5, 2015

APPEARANCES:

For Plaintiff-Appellee:

TRICIA M. MOORE
Newark City Law Department
40 West Main St.
Newark, OH 43055

For Defendant-Appellant:

VINCENT LUCAS, PRO SE
7 Arrowhead Dr.
Amelia, OH 45102

Delaney, J.

{¶1} Appellant Vincent Lucas appeals from the August 1, 2014 judgment entry of the Licking County Municipal Court. Appellee is the state of Ohio and has not filed a brief in this matter.

FACTS AND PROCEDURAL HISTORY

{¶2} The following facts are adduced from the appellate record consisting of the trial court file.

{¶3} On July 4, 2014, appellant was cited by Uniform Traffic Ticket (U.T.T.) with one count of failure to stop at a stop sign pursuant to R.C. 4511.43. Appellant entered a written plea of not guilty and the case was scheduled for bench trial on August 1, 2014.

{¶4} On July 23, 2014, appellant filed a motion to dismiss accompanied by a DVD of the intersection where the violation occurred and an affidavit of a passenger in his vehicle. Appellant's motion to dismiss asserts he stopped at the stop sign and the officer could not have observed him fail to stop from the officer's stationary position. Appellant further argued he "substantially complied" with the statute because he did not turn until he had an unobstructed view of oncoming traffic.

{¶5} The trial court overruled the motion to dismiss on July 24, 2014.

{¶6} The matter proceeded to bench trial on August 1, 2014 and appellant was found guilty as charged. The trial court imposed a fine of fifteen dollars plus court costs.

{¶7} Appellant now appeals from the judgment entry of his conviction and sentence.

{¶8} Appellant raises two assignments of error:

ASSIGNMENTS OF ERROR

{¶9} "I. THE TRIAL COURT ERRED IN FINDING THAT AN UNMARKED WHITE LINE QUALIFIES AS A 'CLEARLY MARKED STOP LINE' UNDER THE OHIO REV. CODE § 4511.43(A)."

{¶10} "II. THE TRIAL COURT ERRED IN FINDING THAT A DRIVER WHO WAS STOPPED AT A STOP SIGN AND WHO HAD A CLEAR VIEW OF ALL TRAFFIC IN THE LANE INTO WHICH HE INTENDED TO TURN, AND ANY LANES THAT HE WOULD HAVE TO CROSS, WAS NOT IN COMPLIANCE WITH OHIO REV. CODE § 4511.43(A)."

ANALYSIS

I., II.

{¶11} Appellant argues he should not have been convicted of failing to stop at the stop sign because the white stop line at the intersection in question is not clearly delineated as such and because he "substantially complied" with the statute. Because appellant has failed to file a transcript of the bench trial below, however, we must affirm the judgment of the trial court.

{¶12} In reviewing assigned error on appeal we are confined to the record that was before the trial court as defined in App.R. 9(A). This rule provides that the record on appeal consists of "[t]he original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court."

{¶13} App.R. 9(B) also provides in part " * * *[w]hen portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing

court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." In *Knapp v. Edwards Laboratories* the Ohio Supreme Court stated: "The duty to provide a transcript for appellate review falls upon the appellant. This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record." 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980).

{¶14} Appellant has not provided a transcript of the bench trial which took place on August 1, 2014. Without a transcript, we must presume the regularity of the trial court's proceeding. *State v. Ellis*, 5th Dist. No. 11-COA-015, 2011-Ohio-5646, *2.

{¶15} Appellant argues this appeal presents pure questions of law which do not require a transcript. We disagree and note appellants' arguments under both assignments of error rely heavily on trial testimony and exhibits. We are without the benefit of this testimony and we have no means of knowing which exhibits were before the trial court. We also note the ultimate question in the case is one of fact: did appellant comply with the statute? Without the record of the trial below, appellant has not demonstrated error.

{¶16} We further note our Judgment Entry of February 12, 2015 advised appellant of the requirement of providing a thorough record:

This matter comes before the Court upon Appellant's Motion to Correct the Record. Appellant seeks to have the DVD/CD of trial included in the record. These are already part of the record, therefore, the motion is denied as moot.

Appellant should note App.R. 9(B)(1) requires a transcript to be prepared for the Court's consideration should appellant consider the information on the CD necessary.

(Emphasis added).

* * * *.

{¶17} Appellant did not comply with App.R. 9(B) and we therefore must overrule his two assignments of error.

CONCLUSION

{¶18} Appellant's two assignments of error are overruled and the judgment of the Licking County Municipal Court is affirmed.

By: Delaney, J. and

Hoffman, P.J.

Farmer, J., concur.