

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-12-1237

Appellee

Trial Court No. CR0201002376

v.

Randy Keil

DECISION AND JUDGMENT

Appellant

Decided: August 9, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Ian B. English, Assistant Prosecuting Attorney, for appellee.

Laurel A. Kendall, for appellant.

* * * * *

JENSEN, J.

{¶ 1} Defendant-appellant, Randy Keil, was convicted by the Lucas County Court of Common Pleas of failure to comply with the order or signal of a police officer, in violation of R.C. 2921.331. On July 30, 2012, defendant was sentenced to a 30-month prison term and a 25-year driver's license suspension. He now appeals the July 30, 2012

judgment. Appellant asserts that the trial court committed plain error by: (1) failing to specify a start date and the terms and conditions of the license suspension; and (2) considering convictions that occurred after the offense but before the sentencing hearing in determining his sentence. For the reasons that follow we affirm the judgment of the trial court.

I. Facts and Procedural History

{¶ 2} On July 5, 2010, at approximately 2:40 a.m., a highway patrol officer observed defendant-appellant, Randy Keil, operating a motor vehicle on State Route 20A. The officer determined that Keil was traveling at 96 miles per hour in a 55-m.p.h. speed zone. The state trooper activated his lights and sirens in an attempt to initiate a traffic stop. Keil did not comply. A pursuit ensued that involved several state patrol officers. During the chase, Keil ran several stop signs, driving at speeds approaching 100 m.p.h. After three to four minutes, Keil lost control of the vehicle and crashed into a utility pole and a parked car.

{¶ 3} Before police arrived, Keil exited the vehicle and fled the scene. He was arrested approximately two hours later, after the police found him walking alongside the road. Keil had been operating the vehicle with a suspended driver's license while under the influence of alcohol.

{¶ 4} On July 21, 2010, Keil was indicted on one count of failure to comply with the order or signal of a police officer, in violation of R.C. 2921.331, a third-degree felony. Keil was scheduled to be arraigned on August 12, 2010, but he failed to appear.

The court ordered that a capias be issued. Keil was arrested on the capias on April 2, 2012. He was arraigned on April 9, 2012, and entered a plea of not guilty.

{¶ 5} On July 12, 2012, Keil entered a guilty plea to the indicted charge. The court accepted appellant's plea and ordered a presentence investigation report. The trial court held a sentencing hearing on July 30, 2012. It sentenced Keil to a prison term of 30 months and suspended his driver's license for 25 years. Keil filed this appeal on August 28, 2012, assigning the following two errors for our review.

I. The trial court committed plain error when it did not address the administrative aspects of appellant's driver's license suspension, including the starting date and the terms and conditions, if any, for a lifting of the suspension after the first three years.

II. The trial court committed plain error by considering convictions which occurred after the subject offense as part of the recidivism factor analysis for sentencing purposes in this matter.

II. Analysis

{¶ 6} We review felony sentences under the two-step analysis established in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124. We must first “examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law.” *Id.* at ¶ 4. If the first step is satisfied, we then review the trial court's decision for an abuse of discretion. *Id.* An abuse of discretion is “more than an error of law or

judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, 1142 (1983).

A. The trial court committed plain error when it did not address the administrative aspects of appellant's driver's license suspension, including the starting date and the terms and conditions, if any, for a lifting of the suspension after the first three years.

{¶ 7} Keil was convicted under R.C. 2921.331(B). Under Section (E) of that statute, the court must impose a class two suspension from the range specified in R.C. 4510.02(A)(2): anywhere from three years to a lifetime suspension. The court's order suspending Keil's license for 25 years was within the permissible statutory range.

{¶ 8} Although he laments the hardship caused by the driver's license suspension, Keil does not assign as error the length of the license suspension, nor does he argue that the trial court's sentence was an abuse of discretion. Instead he claims that the suspension start date was unclear and that the trial court's order lacked necessary administrative details requiring clarification. We disagree.

{¶ 9} As an initial matter, it would seem that these concerns could have been raised in the trial court. In any event, we see nothing unclear about the order. It is dated July 30, 2012, and states that, "Defendant's driver's license is ordered suspended for a period of 25 years." In the absence of language to the contrary, it follows that the suspension began on the date it was ordered. The report of convictions form provided by

the trial court to the Ohio Bureau of Motor Vehicles (“BMV”), which specifies that Keil’s license was being suspended from July 30, 2012 through July 30, 2037, further confirms this.

{¶ 10} Keil has not specified what administrative aspects of the suspension are not clear to him, but again, this could have been raised in the trial court. Presumably, certain administrative questions about license suspensions could also be directed to the BMV.

{¶ 11} Keil’s first assignment of error is not well-taken.

B. The trial court committed plain error by considering convictions which occurred after the subject offense as part of the recidivism factor analysis for sentencing purposes in this matter.

{¶ 12} In imposing a sentence, R.C. 2929.12 requires a sentencing court to consider a defendant’s likelihood of recidivism. In determining Keil’s sentence, the trial court considered his April 2012 conviction for driving under the influence and failure to control. This conviction took place after the July 5, 2010 offense at issue in this case, but before Keil’s July 30, 2012 sentencing. The trial court concluded that this conviction, a number of other alcohol-related convictions, and additional information contained within the presentence investigation report, suggested that Keil was likely to reoffend.

{¶ 13} Keil argues that when weighing the likelihood of recidivism, the court was prohibited from considering convictions that occurred after his July 5, 2010 offense. We know of no authority limiting the trial court’s consideration to convictions occurring before the original offense, and Keil has cited none. Keil’s only authority for his position

is a citation to Black’s Dictionary which defines “recidivism” as “a tendency to relapse into a habit of criminal activity or behavior.” Neither this definition nor R.C. 2921.12 requires a trial court to ignore convictions that occur in the months leading up to sentencing. This is especially true in this case where Keil’s post-offense conviction took place during the 19-month period between his failure to appear at his August 2010 arraignment and his arrest in April 2012. In fact, R.C. 2929.12(D)(4) specifically requires the sentencing court to consider whether the defendant has demonstrated a pattern of drug or alcohol abuse that is related to the offense. Keil’s April 2012 conviction was for an alcohol-related offense; it occurred while Keil was evading prosecution on the July 2010 alcohol-related charge, and this information was available to the trial court at the time of sentencing. It was permissible, and even incumbent on the court, to consider it in imposing Keil’s sentence. We find no abuse of discretion.

{¶ 14} Keil’s second assignment of error is not well-taken.

III. Conclusion

{¶ 15} For the foregoing reasons, we find appellant’s assignments of error not well-taken, and the July 30, 2012 judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal under App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
