

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

State of Ohio

Court of Appeals No. L-11-1289

Appellee

Trial Court No. 11TRD03554-A

v.

Harry H. Gant

DECISION AND JUDGMENT

Appellant

Decided: February 15, 2013

* * * * *

John B. Arnsby, City of Maumee Prosecuting Attorney,
for appellee.

V. Robert Candiello, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Maumee Municipal Court, which found appellant guilty of reckless operation. Appellant was clocked on radar by the Ohio State Highway Patrol traveling at 94 m.p.h. in a 70 m.p.h. zone on the Ohio Turnpike in Lucas County, Ohio. At sentencing, the trial court suspended appellant's driver's license

for a period of sixty days, and imposed a fine and court costs. For the reasons set forth below, this court affirms the judgment of conviction and remands the case to the trial court for resentencing.

{¶ 2} Appellant, Harry H. Gant, sets forth the following two assignments of error:

1. The Trial Court erred and abused its discretion when it suspended the Appellant's Ohio driver's license for a speed violation without any other attendant circumstances found, other than speed and location."

2. The Trial Court erred and abused its discretion when it suspended the Appellant's Ohio driver's license after being convicted of a speed violation under Administrative Code Section 5537-2-03A, when there is no provision for a license suspension under Administrative Code.

{¶ 3} The following undisputed facts are relevant to this appeal. On the afternoon of July 24, 2011, appellant was operating his 2008 Ford F-150 pickup truck on the turnpike. Appellant was traveling eastbound in Springfield Township, Lucas County, Ohio, when a trooper with the Ohio Highway Patrol recorded appellant traveling at 94 m.p.h., 24 m.p.h. in excess of the 70 m.p.h. speed limit on the turnpike.

{¶ 4} On October 3, 2011, appellant, through counsel, entered a plea of no contest to one count of speeding. The trial court then considered the affidavit, and facts and circumstances of the case. It found appellant guilty. The trial court made a further finding of recklessness based upon the extreme overage of the speeding violation. The

trial court sentenced appellant to a driver's license suspension of 60 days and imposed a fine and court costs.

{¶ 5} In appellant's first assignment of error, he asserts that the trial court abused its discretion when it suspended appellant's driver's license with no attendant circumstances other than speed and location. A trial court cannot be found to have abused its discretion by a mere error in law or judgment. Rather, the evidence must demonstrate actions of the trial court reflecting a "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621, 614 N.E.2d 748 (1993). In addition, "[a]bsent an abuse of discretion on the part of the trial court, a court of appeals may not substitute its judgment for that of the * * * trial court." *Id.*

{¶ 6} To determine whether the imposition of a license suspension itself was proper, we are guided by the standard set forth in *State v. Hartman*, 41 Ohio App.3d 142, 534 N.E.2d 933 (12th Dist.1987) fn. 3 "[A determination that a] driver's operation of a motor vehicle was reckless is a conclusion reached by examining both the driving in issue and *all* the circumstances under which it took place." (Emphasis in original.)

{¶ 7} Appellant was driving on the heavily traveled Ohio turnpike within the Toledo metropolitan area, at an exorbitant rate of speed, nearly 25 m.p.h. in excess of the speed determined to be the limit of a safe rate of speed on that roadway in that location.

{¶ 8} Given the facts and circumstances of this case, we find appellant's first assignment of error not well-taken.

{¶ 9} Appellant’s second assignment of error contends that the Ohio Administrative Code does not encompass a specific provision allowing a license to be suspended. Therefore, appellant claims that the trial court lacked any legal basis or authority to suspend his license for recklessness.

{¶ 10} We do not concur. Ohio Adm.Code 5537-6-01 states: “[e]xcept for those sections which are inconsistent with or modified by the rules and regulations herein, the current vehicle and traffic laws of the state of Ohio shall apply to vehicle operation on the turnpike.” Thus, the trial court was statutorily permitted to impose a license suspension utilizing state and local traffic laws so long as doing so is not in direct contradiction to the Ohio Administrative Code.

{¶ 11} The trial court suspended appellant’s license pursuant to R.C. 4510.15, which allows the court to impose a class five suspension for violations of the motor vehicle law “relating to reckless operation.” This has been interpreted to indicate that it was the intent of the general assembly to give the trial court leeway when invoking their authority under R.C. 4510.15. *See City of Columbus v. Tyson*, 19 Ohio App.3d 224, 226, 484 N.E.2d 155 (10th Dist.1983).

{¶ 12} Accordingly, the trial court acted within its discretion in imposing a license suspension upon finding appellant guilty of reckless driving. Appellant’s second assignment of error is not well-taken.

{¶ 13} Lastly, we note that appellee concedes that the trial court erred in the length of the license suspension imposed. Appellee correctly noted that “[a] trial court is

granted the authority to impose a discretionary license suspension under R.C. 4510.15 if a person is found guilty of an offense relating to reckless operation.” The code further provides that the trial court “may impose a class five suspension of the offender’s driver’s or commercial driver’s license * * * from the range specified in division (A)(5) of section 4510.02 of the Revised Code.” R.C. 4510.15. R.C. 4510.02(A)(5) directs the trial court to “impose a definite period of suspension” of a driver’s license for a period of six months to three years.

{¶ 14} However, in this case, the trial court imposed a license suspension of 60 days, contrary to the parameters of the relevant sentencing statute. As such, this case must be remanded for resentencing in conformity with the applicable license suspension duration provisions enumerated in R.C. 4510.02(A)(5).

{¶ 15} Finally, with respect to the notice to appellant of the license suspension, we find that the record reflects that personal notice was specifically directed to the appellant, Harry H. Gant. Given this finding, in conjunction with the record and facts and circumstances of the case, we cannot conclude the trial court abused its discretion in its findings.

{¶ 16} On consideration whereof, the judgment of conviction of the Maumee Municipal Court is hereby affirmed. The case is remanded solely for resentencing. Appellee is ordered to pay the costs of this appeal pursuant App.R.24.

Judgment affirmed and
case remanded.

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

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, 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>
