

[Cite as *State v. Dzurilla*, 2015-Ohio-1954.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 101960

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JOHN DZURILLA**

DEFENDANT-APPELLANT

---

**JUDGMENT:  
AFFIRMED**

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-05-470589-A

**BEFORE:** Kilbane, P.J., Boyle, J., and S. Gallagher, J.

**RELEASED AND JOURNALIZED:** May 21, 2015

**ATTORNEY FOR APPELLANT**

Edward M. Heindel  
450 Standard Building  
1370 Ontario Street  
Cleveland, Ohio 44113

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
Anthony T. Miranda  
Assistant County Prosecutor  
The Justice Center - 8th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

MARY EILEEN KILBANE, P.J.:

{¶1} Defendant-appellant, John Dzurilla (“Dzurilla”), appeals from the trial court’s denial of his motion for limited driving privileges, which was filed in Cuyahoga C.P. No. CR-05-470589-A. We find no abuse of discretion, so we affirm the decision of the trial court.

{¶2} On July 13, 2005, Dzurilla was charged with driving under the influence of alcohol in Cuyahoga C.P. No. CR-05-466293-A, in violation of R.C. 4511.19, with the specification that Dzurilla “was convicted of or pled guilty to five or more equivalent offenses” within the past 20 years, and possession of drug paraphernalia, in violation of R.C. 2925.14.

{¶3} On August 21, 2005, Dzurilla was charged in CR-05-470589-A with attempted grand theft of a motor vehicle, in violation of R.C. 2913.02, and possession of criminal tools, in violation of R.C. 2923.24.

{¶4} On October 14, 2005, Dzurilla pled guilty in CR-05-466293-A to a fourth-degree felony charge of driving under the influence, and the remaining charge was dismissed. On October 18, 2005, Dzurilla pled guilty to attempted grand theft of a motor vehicle in CR-05-470589-A, and the remaining charge was dismissed.

{¶5} Both matters proceeded to sentencing together on November 14, 2005. According to the Presentence Investigation Report (“PSI”) prepared in the matters, Dzurilla had been convicted of driving under the influence of alcohol on nine separate

occasions from 1982 until 2001, which included eight DUI convictions in the previous 20 years.

{¶6} At sentencing, the prosecuting attorney noted that there is a mandatory three-year driver's license suspension in CR-05-466293-A. Dzurilla's counsel stated:

Mr. Dzurilla indicated to me he's an out-of-control drinker, certainly had a little insight, had been through treatment. Sort of down on his luck, he ended up homeless because of his drinking and lack of a job, for whatever reason.

Your Honor, Mr. Dzurilla says he needs treatment. I would certainly agree with him. He knows that's not in the cards.

{¶7} The trial court sentenced Dzurilla to 9 months of incarceration in CR-05-470589-A, and ordered that sentence to be served concurrently with a 24-month term of imprisonment ordered in CR-05-466293-A. The sentences in both matters also stated that Dzurilla's driver's license was suspended until November 14, 2025.

{¶8} On August 20, 2008, Dzurilla filed motions in both CR-05-466293-A and CR-05-470589-A, for occupational driving privileges and to reinstate his driver's license.

The motions were not granted, and on August 1, 2014, Dzurilla again filed motions for occupational driving privileges in both cases, related to interviews for "potential employment responsibilities and medical treatment." In opposition, the state explained that Dzurilla had many alcohol-related driving convictions, and that Dzurilla could have received a lifetime suspension under R.C. 4510.02 for the fourth-degree felony DUI conviction in CR-05-466293-A. On August 27, 2014, the trial court denied Dzurilla's motions for driving privileges without a hearing.

{¶9} Dzurilla now appeals and assigns the following error for our review:

#### Assignment of Error

The trial court erred when it denied Dzurilla's Motion for Driving Privileges without a hearing.

{¶10} Within this assignment of error, Dzurilla argues that the trial court abused its discretion in denying his motion for driving privileges because he has maintained his sobriety and needs a driver's license in order to attend various medical appointments and to find employment.

{¶11} Pursuant to R.C. 4510.13, an individual whose license has been suspended pursuant to R.C. 4511.19 may file a petition for limited driving privileges during the suspension. The granting of limited driving privileges is governed by R.C. 4510.021 and 4510.13. *See* R.C. 4511.19(G)(1)(d)(iv):

In all cases, a class two license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(2) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 and 4510.13 of the Revised Code.

{¶12} R.C. 4510.021(A) provides:

Unless expressly prohibited by section 2919.22, section 4510.13, or any other section of the Revised Code, a court may grant limited driving privileges for any purpose described in division (A)(1), (2), or (3) of this section during any suspension imposed by the court. In granting the privileges, the court shall specify the purposes, times, and places of the privileges and may impose any other reasonable conditions on the person's driving of a motor vehicle. The privileges shall be for any of the following limited purposes:

(1) Occupational, educational, vocational, or medical purposes;

\* \* \*

(3) Attending court-ordered treatment.

{¶13} R.C. 4510.13(B) states, in relevant part:

(2) No judge or mayor shall suspend the following portions of the suspension of an offender's driver's or commercial driver's license or permit or nonresident operating privilege imposed under division (G) or (H) of section 4511.19 of the Revised Code or under section 4510.07 of the Revised Code for a conviction of a violation of a municipal OVI ordinance, provided that division (A)(2) of this section does not limit a court or mayor in crediting any period of suspension imposed pursuant to division (B) or (C) of section 4511.191 of the Revised Code against any time of judicial suspension imposed pursuant to section 4511.19 or 4510.07 of the Revised Code, as described in divisions (B)(2) and (C)(2) of section 4511.191 of the Revised Code:

\* \* \*

(c) The first three years of a suspension imposed under division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or of a comparable length suspension imposed under section 4510.07 of the Revised Code[.]

{¶14} Absent an abuse of discretion, the trial court's decision denying a motion for occupational privileges will not be reversed on appeal. *See State v. Neace*, 3d Dist. Mercer No. 10-06-04, 2006-Ohio-3072, ¶ 6; *State v. Gambill*, 3d Dist. Auglaize No. 2-11-28, 2012-Ohio-5437, ¶ 9; *State v. Rumley*, 4th Dist. Gallia No. 90-CA-21, 1991 Ohio App. LEXIS 2891 (June 21, 1991) ("The decision of a trial court to grant or deny driving privileges will not be disturbed absent an abuse of discretion."). An abuse of discretion constitutes more than an error of law or judgment and implies that the trial court acted unreasonably, arbitrarily, or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶15} In this case, upon our review of the record, we agree with the statement in the 2005 PSI that Dzurilla has had “nine previous DUI’s, eight in the last twenty years.” In addition, Dzurilla is not presently employed, and seeks the privileges in order to explore potential employment, and to attend various appointments. From the record, we are unable to conclude that the trial court acted arbitrarily, capriciously, or unconscionably in denying Dzurilla’s motion. We find no abuse of discretion.

{¶16} Dzurilla insists, however, that this matter is analogous to *State v. Semenchuk*, 8th Dist. Cuyahoga No. 100323, 2014-Ohio-1521, and *State v. Manocchio*, 138 Ohio St.3d 292, 2014-Ohio-785, 6 N.E.3d 47, in which the reviewing court reversed the trial court’s denial of motions for driving privileges and remanded for further proceedings. We find these cases inapposite, however. The salient issue in *Manocchio* was “whether the Revised Code permits a court to grant limited driving privileges to a person subject to a lifetime driver’s license suspension within the first 15 years of that suspension.” *Id.* at ¶ 2. The court concluded that the grant of limited driving privileges, issued before 15 years have elapsed since the suspension began, is not a “modification or termination of a license suspension in violation of R.C. 4510.54.” *Id.* at ¶ 21. Similarly, in *Semenchuk*, the issue was whether the grant of “limited driving privileges violated the mandate of former R.C. 4510.54(A), which prohibited the modification of a lifetime suspension until 15 years had lapsed.” Accordingly, these cases are not applicable because the trial court did not deny the motion by application of former R.C. 4510.54(A) or because of any particular time provisions.

{¶17} Therefore, the assignment of error is without merit.

{¶18} Judgment is affirmed.

It is ordered that appellee recover of 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.

---

MARY EILEEN KILBANE, PRESIDING JUDGE

MARY J. BOYLE, J., and  
SEAN C. GALLAGHER, J., CONCUR