

STATE OF OHIO                    )  
  )ss:  
COUNTY OF WAYNE            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.       09CA0026

Appellee

v.

CHRISTINE SCHNEIDER

APPEAL FROM JUDGMENT  
ENTERED IN THE  
WAYNE COUNT MUNICIPAL COURT  
COUNTY OF WAYNE, OHIO  
CASE No.     TRC-09-01-00605

Appellant

DECISION AND JOURNAL ENTRY

Dated: November 16, 2009

---

WHITMORE, Judge.

{¶1} Defendant-Appellant, Christine M. Schneider, appeals from her sentence in the Wayne County Municipal Court. This Court affirms.

I

{¶2} Around midnight on January 25, 2009, Schneider was involved in a car accident on Interstate 71. Schneider’s vehicle crossed all three lanes of traffic, struck a metal light pole and light assembly, and finally collided with a concrete wall before coming to a stop. Ohio State Highway Patrol Trooper Beaty responded to the scene, took Schneider’s statement, and administered field sobriety tests. As a result of the incident, Trooper Beaty arrested Schneider for the following offenses: (1) operating a vehicle under the influence of alcohol (“OVI”) in violation of R.C. 4511.19(A)(1)(a); (2) OVI in violation of R.C. 4511.19(A)(1)(d); (3) operation without reasonable control in violation of R.C. 4511.202; and (4) failure to wear a properly adjusted occupant restraining device in violation of R.C. 4513.263(B)(1). Schneider pleaded

guilty to an OVI in violation of R.C. 4511.19(A)(1)(a), and the remaining charges were dismissed. The trial court sentenced Schneider to three days in jail and suspended her driver's license for three years.

{¶3} Schneider now appeals from the trial court's sentence and raises a single assignment of error for our review.

## II

### Assignment of Error

“APPELLANT’S SENTENCE TO THE MAXIMUM THREE YEAR DRIVER’S LICENSE SUSPENSION FOR OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE WAS AN ABUSE OF DISCRETION.”

{¶4} In her sole assignment of error, Schneider argues that the trial court abused its discretion in sentencing her to a three year license suspension. Schneider argues that given her mitigation evidence the trial court should have imposed the minimum license suspension of six months. We disagree.

{¶5} In the recent past, this Court has applied the two-step standard of review set forth in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, to appeals challenging sentencing in misdemeanor cases. See *Akron v. Lewis*, 179 Ohio App.3d 649, 2008-Ohio-6256, at ¶43; *State v. Coryell*, 9th Dist. No. 24338, 2009-Ohio-1984, at ¶10. Upon further consideration of this matter, however, we have decided to limit the use of the two-step standard of review as set forth in *Kalish* to appeals challenging sentencing in felony cases only, as that was the basis for the Supreme Court's plurality opinion in that case.

{¶6} Generally, a trial court has discretion in sentencing. *State v. Endress*, 9th Dist. No. 08CA0011-M, 2008-Ohio-4498, at ¶3. Unless the sentence is contrary to law, we review challenges to misdemeanor sentencing for an abuse of discretion. *Id.* An abuse of discretion is

more than an error in judgment or law; it implies an attitude on the part of the trial court that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Furthermore, when applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

{¶7} Schneider does not argue that her three year license suspension is contrary to law. She admits that a three year license suspension falls within the statutory sentencing range for a conviction under R.C. 4511.19(A)(1)(a). See R.C. 4511.19(G)(1)(a)(iv) (mandating the imposition of a class five license suspension upon one convicted under R.C. 4511.19(A)(1)(a)); R.C. 4510.02(A)(5) (listing a suspension range of six months to three years for a class five license suspension). She only argues that the trial court abused its discretion by imposing a three year suspension upon her because a three year suspension constitutes the maximum available suspension. She argues that in light of her mitigation evidence, the trial court abused its discretion by not issuing her the minimum six month suspension.

{¶8} The prosecutor offered the following statement of facts at Schneider's plea hearing. Trooper Beaty responded to the scene of Schneider's crash on Interstate 71 shortly after midnight. When he arrived, Trooper Beaty observed that one of the large metal light poles on the highway was broken and had fallen down across the roadway. He further observed Schneider's vehicle past the fallen light pole with its right front end resting against a concrete wall. Initially, Schneider told Trooper Beaty that another motorist had cut her off, causing her to panic and lose control of her vehicle. Trooper Beaty noted that Schneider smelled of alcohol and had glassy and bloodshot eyes. Schneider admitted that she had consumed four beers since about 6:00 p.m. Trooper Beaty then interviewed a witness to the crash. The witness indicated that he

had seen Schneider weaving all over the road shortly before the crash. He further indicated that Schneider did not have any other motorists around her vehicle when she suddenly cut across all three lanes of traffic, hit the light pole, and collided with the concrete wall. Trooper Beaty relayed this witness' statement to Schneider, at which point she admitted that she had crashed as a result of "messaging with the radio and trying to change the CD." After Schneider's arrest, police administered a blood alcohol test. Schneider's blood alcohol level was .129.

{¶9} Schneider admitted to having a prior OVI conviction from February 1997. Although she did not say anything on her own behalf, her attorney offered the following in mitigation: (1) that Schneider was employed at "four jobs in three different cities all of which are associated with universities"; (2) Schneider was embarrassed by the incident and had accepted responsibility for it; and (3) Schneider's prior OVI conviction occurred when she was "just getting out of the military or in the military and was going through a divorce and something happened."

{¶10} Based on our review of the record, we cannot conclude that the trial court abused its discretion in imposing a three year license suspension upon Schneider. Schneider caused a serious accident, which could have been all the more serious had any other vehicles been next to her or struck the metal light pole that fell across the highway as a result of her colliding with it. Further, she initially gave Trooper Beaty a false statement and attempted to blame her accident on a nonexistent motorist. The fact that this incident embarrassed Schneider or that she has multiple jobs has no bearing on the severity of the accident she caused. Because the trial court did not abuse its discretion in sentencing Schneider, Schneider's sole assignment of error lacks merit.

## III

{¶11} Schneider's sole assignment of error is overruled. The judgment of the Wayne County Municipal Court is affirmed.

Judgment affirmed.

---

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Wayne County Municipal Court, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

---

BETH WHITMORE  
FOR THE COURT

CARR, P. J.  
BELFANCE, J.  
CONCUR

APPEARANCES:

MICHAEL A. PARTLOW, Attorney at Law, for Appellant.

MARTIN FRANTZ, Prosecuting Attorney, and LATECIA E. WILES, Assistant Prosecuting Attorney, for Appellee.