

[Cite as *State v. Robar*, 2010-Ohio-5319.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

KENNETH ROBAR

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P. J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 10 CAC 03 0022

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Municipal Court,
Case No. 09 TRC 00557

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

November 1, 2010

APPEARANCES:

For Plaintiff-Appellee

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PROSECUTOR
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For Defendant-Appellant

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Wise, J.

{¶1} Appellant Kenneth Robar appeals his conviction and sentence, in the Delaware Municipal Court, on one count of OVI. The relevant procedural facts leading to this appeal are as follows.

{¶2} In January 2009, appellant was charged with operating a vehicle while under the influence (R.C. 4511.19(A)(1)(a)), driving under suspension (R.C. 4510.11(A)), driving without a license (R.C. 4510.12(A)(1)), a lane violation (R.C. 4511.25) and following too closely (R.C. 4511.34). These offenses were all charged together in Delaware Municipal Court case number 09TRC00557. At the same time, appellant was separately charged with falsification (R.C. 2921.13(A)(3)) in Delaware Municipal Court case number 09CRB00129.

{¶3} In January 2010, appellant pled guilty to the OVI in exchange for the prosecution dropping the other charges, including the falsification charge in case number 09CRB00129.

{¶4} The trial court accepted appellant's plea of guilty to OVI and proceeded to a sentencing hearing. On January 21, 2010, the trial court issued a sentencing entry including a jail term of ninety days, a \$1,000.00 fine, plus the addition of a class four license suspension for five years.

{¶5} Appellant filed a notice of appeal on March 3, 2010, with leave of court under App.R. 5.

{¶6} He herein raises the following sole Assignment of Error:

{¶7} "I. THE TRIAL COURT VIOLATED APPELLANT'S RIGHTS UNDER THE FIFTH AMENDMENT, SECTION 10, ARTICLE I OF THE OHIO CONSTITUTION, AND

CRIMINAL RULE 43, WHEN IT FAILED TO IMPOSE A LICENSE SUSPENSION DURING THE SENTENCING HEARING, BUT INCLUDED A LICENSE SUSPENSION IN THE SUBSEQUENT WRITTEN SENTENCING ENTRY.”

I.

{¶8} In his sole Assignment of Error, appellant contends the trial court violated Crim.R. 43, his Fifth Amendment rights under the United States Constitution, and his rights under Section 10, Article I of the Ohio Constitution by suspending his driver’s license via a sentencing entry without imposing said license suspension during the sentencing hearing. We agree in part.

{¶9} Crim.R. 43(A)(1) states as follows:

{¶10} “Except as provided in Rule 10 of these rules and division (A)(2) of this rule, the defendant must be physically present at every stage of the criminal proceeding and trial, including the impaneling of the jury, the return of the verdict, *and the imposition of sentence*, except as otherwise provided by these rules. In all prosecutions, the defendant's voluntary absence after the trial has been commenced in the defendant's presence shall not prevent continuing the trial to and including the verdict. A corporation may appear by counsel for all purposes.” (Emphasis added).

{¶11} In the case sub judice, the State concedes the matter should be reversed and remanded for resentencing, although the State is not inclined to concede that a constitutional error occurred as argued by appellant. See Appellee’s Brief at 3. Under these circumstances, we find it unnecessary to analyze appellant’s constitutional claims, as we are not required to issue advisory or merely academic rulings. See, e.g., *In re*

Merryman/Wilson Children, Stark App.Nos. 2004 CA 00056 and 2004 CA 00071, 2004-Ohio-3174, ¶ 59, citing *State v. Bistricky* (1990), 66 Ohio App.3d 395, 584 N.E.2d 75.

{¶12} Appellant's sole Assignment of Error is sustained to the extent that the trial court committed reversible error under the circumstances of this case by failing to comply with Crim.R. 43.

{¶13} For the foregoing reasons, the judgment of the Municipal Court of Delaware County, Ohio, is hereby reversed and remanded for a new sentencing hearing.

By: Wise, J.

Gwin, P. J., and

Hoffman, J., concur.

JUDGES

