

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 11-CA-39
DENNIS M. MCFARLAND	:	
	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Massillon Municipal Court
Case Nos. 10-TRC-2537; 10-TRC-4852

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: July 18, 2011

APPEARANCES:

For Plaintiff-Appellee:

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Massillon Law Department
Two James Duncan Plaza
Massillon, Ohio 44646

For Defendant-Appellant:

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Delaney, J.

{¶1} Defendant-Appellant, Mark McFarland, appeals from the judgment of the Massillon Municipal Court, which denied his motion to modify his sentence. The State of Ohio is Plaintiff-Appellee.

{¶2} On June 5, 2010, Appellant was charged with one count of Operating a Vehicle Under the Influence, a violation of R.C. 4511.19(A)(1), a misdemeanor of the first degree. He was also charged with a marked lanes violation, a minor misdemeanor, in violation of R.C. 4511.33.

{¶3} On July 7, 2010, he entered a plea of no contest to the charges and was found guilty and sentenced by the trial court. Appellant did not appeal his conviction or sentence.

{¶4} On September 23, 2010, Appellant filed a Motion to Modify Sentence to permit Appellant to serve his jail sentence under house arrest on an electronic monitor device because he has a serious medical condition that requires extensive care. On January 21, 2011, the trial court overruled his motion. It is from that decision that Appellant now appeals.

{¶5} Appellant raises one Assignment of Error:

{¶6} “I. THE TRIAL COURT’S DENIAL OF APPELLANT’S MOTION TO MODIFY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

I.

{¶7} In his sole assignment of error, Appellant argues that the trial court erred in denying his motion to modify his sentence. We disagree.

{¶8} Appellant was convicted of OVI, in violation of R.C. 4511.19(A)(1). This was Appellant's second OVI conviction in a short period of time, therefore, under R.C. 4511.19(G)(1)(b)(ii), Appellant was subject to a mandatory minimum jail sentence of twenty days. An exception is available to this mandatory minimum sentence only if the trial court finds that the jail sentence cannot be served within sixty days due to jail overcrowding. At that time, the court has discretion to modify the defendant's sentence to a period of house arrest.

{¶9} In the present case, no such argument was made in the trial court and the trial court did not find that the jail was overcrowded and that jail space is unavailable, and therefore that Appellant could not serve his sentence in the Stark County Jail.

{¶10} Appellant failed to produce any evidence to establish that jail space was not available in the Stark County Jail due to overcrowding.

{¶11} Appellant's assignment of error is overruled.

{¶12} The judgment of the Massillon Municipal Court is affirmed.

By: Delaney, J.

Hoffman, P.J. and

Farmer, J. concur.

HON. PATRICIA A. DELANEY

HON. WILLIAM B. HOFFMAN

HON. SHEILA G. FARMER

[Cite as *State v. McFarland*, 2011-Ohio-3679.]

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
DENNIS M. MCFARLAND	:	
	:	
Defendant-Appellant	:	Case No. 11-CA-39
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Massillon Municipal Court is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. WILLIAM B. HOFFMAN

HON. SHEILA G. FARMER