

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

TAJESHWAR SINGH,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY

Case No. 21 BE 0045

Criminal Appeal from the
Belmont County Court, Eastern Division, of Belmont County, Ohio
Case No. 21TRD01743

BEFORE:

Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:

Affirmed.

Atty. J. Kevin Flanagan, Belmont County Prosecutor and *Atty. Joseph Rine*, Assistant Prosecuting Attorney, 52160 National Road, St. Clairsville, Ohio 43950, for Plaintiff-Appellee

Atty. Sean T. Logue, Sean Logue & Associates, 27 West Main Street, Carnegie, Pennsylvania 15106, for Defendant-Appellant

Dated: July 13, 2023

WAITE, J.

{¶1} Appellant contests the decision of the Belmont County Court, Eastern Division denying his motion to continue trial filed with the court following the issuance of a speeding ticket. He also contests imposition of an administrative license suspension when Appellant and counsel subsequently failed to appear for trial. As Appellant has paid the fine in this matter levied by the court for his traffic citation, he has left nothing for us to review in this appeal. Even if the record contained some question ripe for appellate review, the trial court did not commit an abuse of discretion in overruling Appellant's last minute motion seeking to continue the trial. Appellant's assignment of error is overruled and the judgment of the trial court is affirmed.

Facts

{¶2} On September 12, 2021 Appellant was operating a Dodge pickup truck on I-470 westbound in Belmont County. He was stopped by Trooper C. Nolan and cited for driving 90 miles per hour in a 65 mph zone. This was a violation of R.C. 4511.21(D)(3). Appellant was ordered to appear in county court on September 28, 2021. He obtained counsel and requested a trial. The court issued a journal entry setting trial for October 7, 2021 at 11:00 a.m., granted a recognizance bond, and ordered Appellant to attend all future court appearances.

{¶3} On the day of trial, at 10:47 a.m., Appellant's counsel filed a motion seeking to continue. The motion stated in full: "The basis of this Motion is: Defense Counsel has a scheduling conflict. Defense counsel [sic] previous hearings ran over and he is unable to be at the court at the time scheduled for the hearing. If this is a criminal/traffic case time is waived." Neither counsel nor Appellant appeared fifteen minutes later for the 11:00

a.m. trial. The trial court filed a journal entry the same day denying Appellant's motion to continue and issuing a statutory license forfeiture. On October 8, 2021 Appellant filed a motion seeking to lift the license forfeiture and to reschedule "pretrial" in this matter. It was denied on October 12, 2021. On October 20, 2021 Appellant paid the fine issued for the speeding ticket. A notice of appeal was filed on November 4, 2021 of the trial court's October 7, 2021 journal entry.

{¶4} Appellant filed a non-conforming brief on February 22, 2022, which was stricken from the appellate record on March 2, 2022. Appellant refiled a brief that conformed with appellate rules on March 18, 2022, and Appellee responded on May 12, 2022. Appellant has filed a single assignment of error.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN DENYING DEFENDANT-APPELLANT A HEARING ON THE MERITS OF THIS CASE DUE TO DEFENDANT APPELLANT'S ATTORNEY ENCOUNTERING AN UNEXPECTED DELAY AND INABILITY TO ARRIVE AT THE COURT FOR THE SCHEDULED HEARING TIME.

{¶5} Appellant contends that the trial court abused its discretion in denying his motion to continue the October 7, 2021 trial in this case. Neither counsel nor Appellant appeared at trial. Appellant alleges that counsel earlier contacted the court to notify it of their delay, but the record does not support Appellant's contention. Counsel did file a motion to continue approximately fifteen minutes before the 11:00 a.m. trial was to begin. The motion to continue does not explain why Appellant, himself, was not able to appear

at trial and reflects merely that his counsel had overextended himself on the morning of trial. Nevertheless, Appellant concludes that a continuance should have been granted.

{¶6} Appellant has an additional problem in this matter, however. When a defendant voluntarily pays the fine ordered in a matter in satisfaction of the criminal charge, any appeal of the conviction is moot unless some collateral disability or loss of civil rights is shown. *State v. Wilson*, 41 Ohio St.2d 236, 237, 325 N.E.2d 236 (1975). The fine and court costs in this case have been paid. The only collateral consequence implicated in this matter is the license forfeiture levied against Appellant, and it is not clear that this forfeiture has been executed. The “Failure to Respond to Citation” notice in this record states that the license forfeiture would be imposed only if Appellant did not pay his fine by October 27, 2021. The fine was paid on October 20, 2021. Therefore, this record contains no evidence that there was any collateral consequence of Appellant’s conviction in this matter. Thus, his appeal is moot.

{¶7} Even assuming Appellant properly implicated some collateral consequence suffered by way of conviction and that the issue of the trial court’s decision to deny a continuance is reviewable, Appellant’s argument is not persuasive. A ruling on a motion to continue is reviewed for abuse of discretion. *State v. Rosine*, 7th Dist. Mahoning No. 03 MA 00094, 2005-Ohio-568, ¶ 16. An abuse of discretion signifies that the trial court’s attitude was arbitrary, unreasonable or unconscionable. *Id.* The evaluation of a motion to continue employs a balancing test where a court is to weigh such factors as: the length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether

it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstances which give rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case. *State v. Unger*, 67 Ohio St.2d 65, 67-68, 423 N.E.2d 1078 (1981).

{¶8} As to the length of the delay, Appellant made only a broad, open-ended request for continuance, which weighs against him.

{¶9} The only prior continuance of trial was to allow Appellant to obtain counsel. This delay does not weigh against Appellant.

{¶10} The record does not indicate whether witnesses or the state were inconvenienced by the requested delay. We recognize, though, that this continuance was sought to delay the actual trial. It was filed a mere fifteen minutes before trial was to commence. There is nothing in the record indicating that the state was not prepared to go forward with the trial. Based on this record, the court was set to go forward with a trial in this matter. At a minimum, the court's time was wasted and this factor weighs against Appellant.

{¶11} Appellee concedes that the reason given for the delay may be legitimate, in that Appellant's counsel likely did have a court appearance that ran overtime prior to trial in this case. However, it is abundantly clear that counsel had a trial scheduled for 11:00 a.m. in the Eastern Division Court of Belmont County on this matter, but apparently did not make this trial a priority for the day and reschedule whatever unspecified "hearings" he was to attend in some other court earlier in the day. The motion for continuance filed in this matter is singularly devoid of any details that explain Appellant's last-minute request. Hence, this factor weighs against Appellant.

{¶12} The delay in trial was completely due to Appellant and weighs against granting the motion.

{¶13} As for the other factors, the motion for continuance was clearly filed only a few minutes before trial. The time stamp on the motion is 10:47 a.m., and trial was set to start at 11:00 a.m. Appellant's counsel apparently had time to draft and file a motion for continuance, but did not have time to appear in court, if only to make such a request in person. Again, Appellant also failed to appear, without explanation. Had he appeared, Appellant could simply have asked for the trial to be continued until counsel was available. We reiterate that the motion was haphazardly prepared with absolutely no details regarding why the continuance was sought or for how long. It oddly states that “[i]f this is a criminal/traffic case time is waived.” One would expect counsel to know that this was indeed a traffic case since he was scheduled to try the matter. It is apparent from this record the trial court was well within its discretion in denying this tardy, deficient request for continuance.

{¶14} Appellant also appears confused about why a license forfeiture was issued in this case. He states in his brief that the guilty verdict resulted in the suspension of his license. Actually, his license was forfeited for failure to appear at the hearing, pursuant to R.C. 4510.22, which states:

(A) If a person who has a current valid Ohio driver's, commercial driver's license, or temporary instruction permit is charged with a violation of any provision in sections * * * 4511.01 to 4511.76 * * * of the Revised Code or with a violation of any substantially equivalent municipal ordinance and if the person either fails to appear in court at the required time and place to

answer the charge or pleads guilty to or is found guilty of the violation and fails within the time allowed by the court to pay the fine imposed by the court, the court may declare the forfeiture of the person's license. Thirty days after such a declaration of forfeiture, the court shall inform the registrar of motor vehicles of the forfeiture by entering information relative to the forfeiture on a form approved and furnished by the registrar and sending the form to the registrar. The court also shall forward the person's license, if it is in the possession of the court, to the registrar.

{¶15} Appellant was charged with a speeding violation under R.C. 4511.21, one of the statutes covered by R.C. 4510.22. Appellant failed to appear for his October 7, 2021 trial. The court noted in its journal entry of October 7, 2021 that "[l]icense forfeiture issued." This was a discretionary decision on the part of the trial judge based on Appellant's failure to appear at trial. However, we again note that Appellant paid his fine in this matter and it appears no actual statutory forfeiture ensued.

{¶16} Because Appellant paid his fine in his matter, Appellant's appeal is rendered moot. Even if it were not, this record supports the trial court's decision to deny the request for continuance in this matter. Therefore, Appellant's assignment of error is without merit and the trial court's decision is affirmed.

Conclusion

{¶17} Appellant is appealing the denial of his motion to continue trial in a traffic case, as well as the imposition of a license forfeiture for failure to appear at trial. The appeal is moot due to the fact that Appellant paid his fine before the notice of appeal was filed. Even if it were not moot, the trial court committed no abuse of discretion in denying

the motion due to the extremely late filing of the motion to continue, several deficiencies in the motion, and Appellant's own failure to appear in court. Appellant's sole assignment of error is overruled and the judgment of the trial court is affirmed.

Robb, J., concurs.

D'Apolito, P.J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Belmont County Court, Eastern Division, of Belmont County, Ohio, is affirmed. Costs taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.