

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellant, : CASE NO. CA2011-01-004
 :
 - vs - : OPINION
 : 9/12/2011
 :
 KEVIN LEE BUTLER, :
 :
 Defendant-Appellee. :

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 07CR24394

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellant

Kevin Lee Butler, 604 Sheffield Road, Middletown, Ohio 45042, defendant-appellee, pro se

POWELL, P.J.

{¶1} Plaintiff-appellant, the state of Ohio, appeals a decision of the Warren County Court of Common Pleas granting limited driving privileges to defendant-appellee, Kevin Lee Butler.

{¶2} In October 2007, appellee entered a guilty plea for failure to comply with order or signal of police officer in violation of R.C. 2921.331(B), a felony of the third degree, and receiving stolen property in violation of R.C. 2913.51(A), a felony of the fifth degree. In

addition to a prison sentence, the Warren County Court of Common Pleas subsequently suspended appellee's driver's license for five years under a class two suspension.

{¶3} On November 18, 2010, appellee filed a motion requesting driving privileges in order to enable him to pursue, obtain, and maintain employment. At the hearing on the motion, appellee asked the trial court to grant him driving privileges so that he may seek employment and help his children with some of their extracurricular activities.

{¶4} On December 14, 2010, the trial court issued an entry modifying appellee's license suspension. The entry states that appellee is permitted to drive between 6:00 a.m. and 7:00 p.m., Monday through Saturday. The entry further prohibits appellee from consuming alcohol while driving or in the 12 hours preceding his driving, and from operating a vehicle while under the influence of any drug of abuse.

{¶5} Appellant now appeals the decision of the trial court, raising the following assignment of error:

{¶6} "THE WARREN COUNTY COURT OF COMMON PLEAS COMMITTED REVERSIBLE ERROR WHEN IT GRANTED LIMITED DRIVING PRIVILEGES TO THE APPELLEE SINCE THE TRIAL COURT DID NOT HAVE THE AUTHORITY TO GRANT SAID PRIVILEGES."

{¶7} Within this assignment of error, appellant raises two issues for our review. First, appellant argues that, "Ohio Revised Code 2921.331(E) prohibits a trial court from granting limited driving privileges to a criminal defendant who has been convicted of Failure to Comply; thus, the Warren County Court of Common Pleas did not have authority to grant limited driving privileges to the [a]ppellee." Second, appellant argues in the alternative that, "[i]f the Warren County Court of Common Pleas had authority to grant limited driving privileges to the [a]ppellee, then the trial court still committed reversible error since it failed to comply with R.C. §4510.021(A)."

R.C. 2921.331(E)

{¶8} Normally, the decision whether to grant or deny limited driving privileges lies within the sound discretion of the trial court. However, because the correct application of R.C. 2921.331(E) is a matter of statutory interpretation, and therefore a matter of law, we will review this issue de novo. *State v. Niesen-Pennycuff*, Warren App. No. CA2010-11-112, 2011-Ohio-2704, ¶6.

{¶9} R.C. 2921.331(E) provides:

{¶10} "In addition to any other sanction imposed for a violation of this section, the court shall impose a class two suspension from the range specified in division (A)(2) of section 4510.02 of the Revised Code. If the offender previously has been found guilty of an offense under this section, the court shall impose a class one suspension as described in division (A)(1) of that section. The court shall not grant limited driving privileges to the offender. *No judge shall suspend the first three years of suspension under a class two suspension* of an offender's license, permit, or privilege required by this division * * *." (Emphasis added.) While the statute does state that a court shall not grant limited driving privileges, it immediately follows this by clarifying when in fact it may. Logic dictates from the emphasized section above that a judge does have the authority to suspend the suspension of driving privileges after the first three years of a class two suspension have been served.

{¶11} In the present case, appellee's license was suspended on November 27, 2007. The trial court granted appellee limited driving privileges on December 14, 2010. Therefore, the trial court was not acting outside the scope of its authority when it granted limited driving privileges to appellee more than three years after the commencement of the suspension.

{¶12} Accordingly, appellee's assignment of error as it pertains to R.C. 2921.331(E) is overruled.

R.C. 4510.021(A)

{¶13} R.C. 4510.021(A) requires a court, when granting limited driving privileges, to "specify the purposes, times, and places of the privileges * * *."

{¶14} At the hearing regarding appellee's driving privileges, the trial court initially indicated that appellee was permitted drive between the hours of 6:00 a.m. and 7:00 p.m. for any purpose. The court subsequently attempted to narrow the privilege, stating that the purpose was for appellee to seek employment and to drive to and from band practice and related events for his children. However, it is well-settled law that a court speaks through its journal entries. *State v. Workman*, Clermont App. No. CA2009-07-039, 2010-Ohio-1011.

{¶15} The entry in the present case states only that appellee "shall be permitted to drive from 6:00 a.m. to 7:00 p.m., Monday through Saturday." There are no further specifications as to the purposes or places for which these privileges may apply. The trial court is required to specifically provide within the entry the purposes, times, and places of the privileges.

{¶16} Accordingly, appellee's assignment of error as it pertains to R.C. 4510.021(A) is sustained.

{¶17} The assignment of error properly before this court having been ruled upon, judgment is affirmed in part, reversed in part, and remanded for further proceedings according to law and consistent with this opinion.

RINGLAND and PIPER, JJ., concur.