

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2002-A-0053
GINO J. RONDINI,	:	
Defendant-Appellee.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2001 CR 182.

Judgment: Reversed.

Thomas L. Sartini, Ashtabula County Prosecutor and *Angela M. Scott*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellant).

Joseph A. Humpolick, Ashtabula County Public Defender, Inc., 4817 State Road, #202, Ashtabula, OH 44004 (For Defendant-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} The State of Ohio appeals from the trial court's judgment entry granting appellee occupational driving privileges. We hold that the trial court was without authority to grant such privileges and, therefore, reverse the judgment of the trial court.

{¶2} Appellee, Gino J. Rondini, was indicted on one count of trafficking in cocaine in violation of R.C. 2925.03, and one count of trafficking in cocaine with

specification in violation of R.C. 2925.03. On December 28, 2001, appellee pled guilty to one count of possession in violation of R.C. 2925.11. The trafficking counts were dismissed and the matter proceeded to sentencing.

{¶3} On March 11, 2002, the trial court sentenced appellee to two years community control and a six-month driver's license suspension. Appellee filed a motion for occupation driving privileges on April 30, 2002. The trial court conducted a hearing and, on May 13, 2002, granted appellee's motion.

{¶4} The state moved for leave to appeal pursuant to App.R. 5(B). We held that the driver's license suspension was part of the sentence and, therefore, the state could appeal as a matter of right under R.C. 2953.08(B)(2). Subsequently, appellee's suspension expired and he filed an application for reconsideration asking us to dismiss the state's appeal as moot. We denied appellee's motion stating:

{¶5} “*** we would emphasize that, since most driving suspensions are relatively short in duration, it is likely that the suspension will be completed in most instances before we could consider the merits of the appeal; thus, unless this appeal is allowed to proceed despite the fact that this case is now moot, the consideration of the ‘occupational driving privilege issue’ could be delayed indefinitely.”

{¶6} Thus, we consider the state's assignment of error: “The trial court erred in granting appellant's [sic] request for occupational driving privileges.” In support of its argument, the state contends that the trial court was without authority to grant occupational driving privileges to a person whose driver's license was suspended pursuant to R.C. 4507.16(D)(2).

{¶7} This issue presents a question of law, thus we review the trial court's decision de novo. *Ohio Bell Tel. Co. v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 145, 147.

{¶8} Former R.C. 4507.16(D)(2) provided:

{¶9} "In addition to any prison term authorized or required by the section that establishes the offense and sections 2929.13 and 2929.14 of the Revised Code, and in addition to any other sanction imposed for the offense under the section that establishes the offense or sections 2929.11 to 2929.182 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of section *** 2925.11, *** of the Revised Code either shall revoke or, if it does not revoke, shall suspend for not less than six months or more than five years, as specified in the section that establishes the offense, the person's driver's or commercial driver's license or permit."

{¶10} Former R.C. 4507.16(F)(2) provided that any person not described in former R.C. 4507.16(F)(1), and whose driver's license had been suspended pursuant to R.C. 4507.16(B) or (C) could apply for occupational driving privileges. Former R.C. 4507.16(F)(1) provided:

{¶11} "(F)(1) A person is not entitled to request, and a judge *** shall not grant to the person, occupational driving privileges under division (F) of this section if a person's driver's or commercial driver's license or permit or nonresident operating privilege has been suspended pursuant to division (B) or (C) of this section or pursuant to division (F) of section 4511.191 of the Revised Code, and the person, within the preceding seven

years, has been convicted of or pleaded guilty to three or more violations of one or more of the following:

{¶12} “(a) Division (A) or (B) of section 4511.19 of the Revised Code;

{¶13} “(b) A municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

{¶14} “(c) A municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine;

{¶15} “(d) Section 2903.04 of the Revised Code in a case in which the person was subject to the sanctions described in division (D) of that section;

{¶16} (e) Division (A)(1) of section 2903.06 or division (A)(1) of section 2903.08 of the Revised Code or a municipal ordinance that is substantially similar to either of those divisions;

{¶17} (f) Division (A)(2), (3), or (4) of section 2903.06, division (A)(2) of section 2903.08, or former section 2903.07 of the Revised Code, or a municipal ordinance that is substantially similar to any of those divisions or that former section, in a case in which the jury or judge found that the person was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

{¶18} (g) A statute of the United States or of any other state or a municipal ordinance of a municipal corporation located in any other state that is substantially similar to division (A) or (B) of section 4511.19 of the Revised Code.”

{¶19} Appellee’s driver’s license was suspended pursuant to former R.C. 4507.16(D)(2) thus, former R.C. 4507.16(F)(2) did not give the trial court authority to grant appellee occupational driving privileges. See *State v. Sanner* (Nov. 22, 1996),

2nd Dist. Nos. 15142, 15143, 15206, 15216, and 15275, 1996 Ohio App. LEXIS 5151; *State v. Lovely*, 12th Dist. No. CA2003-06-063, 2004-Ohio-701, 2004 Ohio App. LEXIS 667. Thus, the state's assignment of error has merit.

{¶20} Appellee makes a compelling argument that public policy would support the granting of occupational driving privileges for drug offenders to allow for rehabilitation efforts including treatment and employment. However, the legislature has not provided courts with the authority to grant driving privileges to offenders who have had their licenses suspended pursuant to R.C. 4507.16(D).

{¶21} For the foregoing reasons the judgment of the Ashtabula County Court of Common Pleas is reversed.

Judgment reversed.

DONALD R. FORD, P.J., and DIANE V. GRENDELL, J., concur.