

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2015-G-0010
SUNY L. VICTOR,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Chardon Municipal Court, Case No. 2014 TRC 00144.

Judgment: Appeal dismissed.

James M. Gillette, Chardon Village Law Director, PNC Bank Building, 117 South Street, #208, Chardon, OH 44024 (For Plaintiff-Appellee).

Suny L. Victor, pro se, 10718 Johnnycake Ridge Road, Concord Township, OH 44077 (Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellant, Suny L. Victor, appeals from the February 3, 2015 judgment of the Chardon Municipal Court, denying her pro se motion for “Petition To Grant Full/Limited Driver’s License Pending Appeal.” For the reasons that follow, we dismiss this appeal as moot.

{¶2} Appellant has filed three appeals with this court. The first appeal, Case No. 2014-G-3220, was filed on July 8, 2014. The second appeal, Case No. 2014-G-3241, was filed on December 1, 2014. This court sua sponte consolidated her first two

appeals on December 15, 2014. The third appeal (the instant appeal), Case No. 2015-G-0010, was filed on February 10, 2015. All three appeals stem from Chardon Municipal Court Case No. 2014 TRC 00144, which involved operating a motor vehicle while under the influence of alcohol and failure to control. Appellant was found guilty on both charges following a jury trial in which she represented herself pro se.

{¶3} In her appeal on Case Nos. 2014-G-3220 and 2014-G-3241, appellant argued she was denied her constitutional right to counsel. This court has found her sole assignment of error to be well-taken and we have reversed and remanded the judgment of the trial court. On remand, we have specified that appellant must be afforded a new trial wherein she is to be represented by counsel, unless she makes a knowing, intelligent, and voluntary waiver thereof.

{¶4} In her appeal on Case No. 2015-G-0010 (the instant appeal), appellant raises the following assignments of error:

{¶5} “(1) Did the trial court act without subject matter jurisdiction, abuse her discretion, create manifest injustice, structurally erred, substantially erred, prejudice this defendant-appellant, and was it’s decision contrary to, or involve a unreasonable application of clearly established federal law as determined by the U.S. Supreme Court on fundamental state/federal constitutional right to equal protection procedural due process of law and access to the courts.

{¶6} “(2) Did the trial court abuse her discretion, create manifest injustice, act without subject matter jurisdiction, structurally erred, substantially erred; prejudice this defendant-appellant, and was it’s decision contrary to, or involve a unreasonable application of clearly established federal law on the federal constitutional right to life,

liberty, travel, freedom of movement, and to engage/exercise her right to interstate travel and commerce protected under the privileges, immunities and Comity Clause of Article 1, Section 2, Clause 2; Federal Supremacy Clause; and the 1st and 14th Amendments of the US Constitution as determined by the U.S. Supreme Court.

{¶17} “[3.] Can this indigent pro se defendant-appellant be legally extorted by the state of Ohio, DMV, and trial/appellate court judges[,] due to judicial ignorance of the rule of law, and prosecution misconduct for unlawfully obtaining to OVI convict this indigent pro se defendant-appellant without any mandatory BAC test results to unlawfully deprive her of her constitutional right to life, liberty, travel, freedom of movement, and commerce as protected under the US Constitution.”

{¶18} “It is well settled that an action should be dismissed as moot unless it appears that a live controversy exists.” *Tadross v. Ikladious*, 8th Dist. Cuyahoga No. 102531, 2015-Ohio-3147, ¶8, citing *Lorain Cty. Bd. of Commrs. v. U.S. Fire Ins. Co.*, 81 Ohio App.3d 263, 266-267 (9th Dist.1992). Stated differently, an appeal should be dismissed as moot if a cause no longer presents a “justiciable case or controversy.” *Chojnacki v. Cordray*, 126 Ohio St.3d 321, 2010-Ohio-3212, ¶6.

{¶19} Because appellant’s consolidated appeal (Case Nos. 2014-G-3220 and 2014-G-3241) has been reversed and remanded, the instant appeal (Case No. 2015-G-0010) is moot. See *Pridemore v. Dula*, 12th Dist. Butler Nos. CA94-02-043, CA94-06-139, 1995 Ohio App. LEXIS 1478, *10 (Apr. 10, 1995). Accordingly, appellant’s three assignments of error are dismissed as all of her issues, stemming from Chardon Municipal Court Case No. 2014 TRC 00144, are now properly back in front of the trial

court. See *Heath v. Heath*, 2d Dist. Greene No. 94-CA-70, 1995 Ohio App. LEXIS 2785, *12 (June 30, 1995).

{¶10} Appeal dismissed as moot.

THOMAS R. WRIGHT, J., concurs,

DIANE V. GRENDELL, J., concurs in judgment only with a Concurring Opinion.

DIANE V. GRENDELL, J., concurs in judgment only with a Concurring Opinion.

{¶11} I concur in the decision to dismiss the present appeal, but do so for reasons other than those stated by the majority.

{¶12} The majority considers the present appeal moot “[b]ecause appellant’s consolidated appeal (Case Nos. 2014-G-3220 and 2014-G-3241) has been reversed and remanded” and “all of her issues * * * are now properly back in front of the trial court.” *Supra* at ¶ 9. For the reasons stated in my dissent to the consolidated appeal, appellant’s convictions should have been affirmed and her issues, therefore, are not properly back in front of the trial court.

{¶13} I nonetheless agree that the present appeal should be dismissed, but on the grounds that there is no final order rather than the supposed mootness of the issues raised.

{¶14} The present appeal arises from the municipal court’s denial of Victor’s Pro Se Proffered [sic] Petition to Grant Full/Limited Driver’s License [Privileges] Pending

Appeal and Peremptory Reversal, filed on February 2, 2015. The municipal court denied the Petition on February 3, 2015.

{¶15} Victor's Petition was filed about seven months after the entry of a final judgment in this matter, i.e., the imposition of sentence on July 8, 2014, which included a 180-day license suspension. Victor appealed this judgment on the same day it was issued. At that point, the municipal court lost jurisdiction of the case except to take action in aid of the appeal. *State v. Washington*, 137 Ohio St.3d 427, 2013-Ohio-4982, 999 N.E.2d 661, ¶ 8. "Stated differently, once an appeal has been taken, a trial court's jurisdiction over a case is limited to taking any action which would not affect the ability of the appellate court to review, affirm, modify, or reverse the judgment upon which the appeal is based." *Perfection Graphics, Inc. v. Sheehan*, 11th Dist. Geauga No. 95-G-1915, 1996 Ohio App. LEXIS 2458, 8-9 (June 14, 1996).

{¶16} Accordingly, the municipal court's denial of Victor's Petition for driving privileges is a nullity and the appeal therefrom should be dismissed without regard for the merits of *State v. Victor*, 11th Dist. Geauga Nos. 2014-G-3220 and 2014-G-3241. *Fifth Third Mtge. Co. v. Orebaugh*, 12th Dist. Butler No. CA2011-03-039, 2011-Ohio-4472, ¶ 12 ("[c]ourts have held that an action taken by a trial court after it loses jurisdiction as a result of the filing of an appeal is null and void") (cases cited).