

[Cite as *State v. Hassinger*, 2010-Ohio-4236.]

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RYAN HASSINGER

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 09-COA-035

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Ashland Municipal Court,
Case No. 09TRD05162

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 7, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, J.

{¶1} Defendant-appellant Ryan Hassinger appeals his conviction for driving under suspension in violation of R.C. 4510.16 in the Ashland Municipal Court. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE¹

{¶2} On August 8, 2009, Appellant was charged with driving under suspension, in violation of R.C. 4510.16. At arraignment, the trial court denied Appellant's request for court appointed counsel stating the court would not be imposing a jail sentence. The matter proceeded to a bench trial, and Appellant was found guilty of the charge.

{¶3} Appellant now appeals his conviction, assigning as error:

{¶4} "I. THE TRIAL COURT ERRED WHEN IT DENIED DEFENDANTS REQUEST FOR A COURT APPOINTED ATTORNEY WHEN IT FOUND THAT THE DEFENDANT WAS NOT INDIGENT WITHOUT EVIDENCE; PRESENTED AT THE FIRST ARRAIGNMENT.

{¶5} "II. THE TRAIL [SIC] ERRED WHEN IT DENIED THE DEFENDANT A COURT APPOINTED ATTORNEY BECAUSE THE JUDGE REDUCED THE POSSIBLE SENTENCING TO EXCLUDE THE POSSIBLE JAIL TIME; PRESENTED AT THE SECOND ARRAIGNMENT.

{¶6} "III. THE TRAIL [SIC] COURT ERRED WHEN IT REFUSED TO CONSIDER GOOD CASE LAW IN ITS DECISION; PRESENTED AT THE PRESENTENCING PHASE OF THE TRAIL [SIC]."

¹ Because Appellant has failed to provide a written transcript of either the arraignment or bench trial pursuant to App.R. 9, a Statement of the Facts shall not be included in this Opinion.

I, II

{¶7} Appellant's first and second assignments of error raise common and interrelated issues; therefore, we will address the arguments together.

{¶8} Appellant asserts the trial court erred in denying his request for court appointed counsel in this matter.

{¶9} Appellant has not provided this Court with a transcript of these proceedings in accordance with App.R. 9. However, we note the trial court's October 23, 2009 Judgment Order states Appellant was sentenced to pay a fine of \$150.00, plus court costs.

{¶10} The right to counsel applies in misdemeanor cases, including cases involving petty offenses that result in imprisonment. *State v. Owens* 2010-Ohio-564; citing *Argersinger v. Hamlin* (1972), 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530; *Scott v. Illinois* (1979), 440 U.S. 367, 99 S.Ct. 1158, 59 L.Ed.2d 383; *State v. Downie*, 183 Ohio App.3d 665, 918 N.E.2d 218, 2009-Ohio-4643, ¶ 17, citing *State v. Caynor* (2001), 142 Ohio App.3d 424, 755 N.E.2d 984. The rule extends to cases involving a suspended sentence, capable of subsequent revocation, resulting in incarceration. *Alabama v. Shelton* (2002), 535 U.S. 654, 122 S.Ct. 1764, 152 L.Ed.2d 888; *State v. Davis*, Montgomery App. No. 23248, 2009-Ohio-4786, ¶ 32.

{¶11} Here, the trial court did not impose a prison sentence for Appellant's conviction and as suggested by both parties in their briefs, informed Appellant at arraignment it would not be considering a prison sentence in this matter. Therefore, Appellant was not entitled to court appointed counsel in this matter.

{¶12} The first and second assignments of error are overruled.

III.

{¶13} Appellant's third assignment of error asserts the trial court erred in finding Appellant was afforded actual notice of the BMV suspension.

{¶14} As previously stated, Appellant has failed to provide this Court with a transcript of the bench trial in this matter. Appellant's third assignment of error necessarily depends upon establishing certain facts which, in turn, call for application of this Court's prior case law. Absent a transcript, Appellant cannot demonstrate he established the factual predicate upon which his argument is based. We must presume regularity in the proceedings in the trial court. *Knapp v. Edwards Laboratory* (1980), 61 Ohio St.2d 197, 400 N.E.2d 384.

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

{¶16} Appellant's conviction in the Ashland Municipal Court is affirmed.

By: Hoffman, J.

Edwards, P.J. and

Wise, J. concur

s/ William B. Hoffman _____
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards _____
HON. JULIE A. EDWARDS

s/ John W. Wise _____
HON. JOHN W. WISE

