

[Cite as *State v. Klingensmith*, 2015-Ohio-807.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 13CA010514

Appellee

v.

DIANA KLINGENSMITH

APPEAL FROM JUDGMENT
ENTERED IN THE
OBERLIN MUNICIPAL COURT
COUNTY OF LORAIN, OHIO
CASE No. 13CRB00566

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 9, 2015

MOORE, Judge.

{¶1} Defendant, Diana Klingensmith, appeals from the judgment of the Oberlin Municipal Court. We affirm.

I.

{¶2} Following a traffic stop in July of 2013, Ms. Klingensmith was cited for possession of marijuana in violation of R.C. 2925.11(A)/(C)(3), a minor misdemeanor. She pleaded not guilty, and the case proceeded to a bench trial. Thereafter, the trial court granted the parties time to file briefs on issues raised at trial. Ms. Klingensmith sent a letter to the trial court requesting that a CD transcript of the trial be sent to her address.

{¶3} After Ms. Klingensmith submitted her brief to the trial court, the court entered an order finding her guilty and imposing sentence. Ms. Klingensmith appealed, and she filed a motion with the trial court requesting that the transcript for appeal be prepared at the State’s expense. The trial court took the motion under advisement, and it granted leave to the parties to

submit briefs on the issues of (1) whether Ms. Klingensmith's anticipated assignment of error would require a transcript of the entire proceedings, and, if so, (2) whether an indigent defendant is entitled to a complete transcript at the State's expense for an appeal of a minor misdemeanor. It does not appear from the record that either party filed briefs in the trial court addressing these issues, and no ruling on the motion appears in the record. Further, the record before us on appeal contains no transcript of the trial proceedings.

{¶4} Ms. Klingensmith raises one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

[MS. KLINGENSMITH]'S CONVICTION OF POSSESS[ION] OF MARIJUANA WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF [THE] FOURTH AMENDMENT OF THE US CONSTITUTION.

{¶5} In her sole assignment of error, Ms. Klingensmith argues that her conviction is against the manifest weight of the evidence.

{¶6} As set forth in our recitation of the facts and procedural history above, the record contains no transcript of the proceedings. We recognize that Ms. Klingensmith represented herself at trial and on appeal. In regard to pro se litigants, this Court has recognized:

[P]ro se litigants should be granted reasonable leeway such that their motions and pleadings should be liberally construed so as to decide the issues on the merits, as opposed to technicalities. However, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound. He is not given greater rights than represented parties, and must bear the consequences of his mistakes. This Court, therefore, must hold [pro se appellants] to the same standard as any represented party.

State v. Taylor, 9th Dist. Lorain No. 14CA010549, 2014-Ohio-5738, ¶ 5, quoting *Sherlock v. Myers*, 9th Dist. Summit No. 22071, 2014-Ohio-5178, ¶ 3.

{¶7} It is an appellant’s duty to transmit the transcript of proceedings from the trial court, if any, to the court of appeals. *State v. Hicks*, 9th Dist. Summit No. 24708, 2011-Ohio-2769, ¶ 33, citing App.R. 10(A), and Loc.R. 5(A); *see also* App.R. 9(A). “This duty falls to the appellant because the appellant has the burden of establishing error in the trial court.” *Hicks* at ¶ 33, citing *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980), and *State v. Mundy*, 9th Dist. Medina No. 08CA0047-M, 2009-Ohio-1136.

{¶8} Here, Ms. Klingensmith assigns as error that her conviction is against the weight of the evidence. With respect to challenges to the weight of the evidence, this Court “review[s] the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983); *State v. Otten*, 33 Ohio App.3d 339, 340 (9th Dist.1986). Therefore, review of the stated assignment of error cannot be accomplished without a transcript of the trial. “When the transcript of a hearing is necessary to resolve assignments of error, but such transcript is missing from the record, the reviewing court has ‘no choice but to presume the validity of the lower court’s proceedings, and affirm.’” *Hicks* at ¶ 33, quoting *Knapp* at 199. *See also State v. Campbell*, 9th Dist. Medina No. 13CA0013-M, 2014-Ohio-1329, ¶ 12.

{¶9} Accordingly, as we have no transcript of the trial, we must presume the validity of the lower court’s conclusion that the conviction was supported by the weight of the evidence. Consequently, Ms. Klingensmith’s sole assignment of error is overruled.

III.

{¶10} Ms. Klingensmith's assignment of error is overruled. The judgment of the Oberlin Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Oberlin Municipal Court, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

CARR, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

DIANA KLINGENSMITH, pro se, Appellant.

FRANK S. CARLSON, Prosecuting Attorney, for Appellee.