

[Cite as *Rocky River v. Collins*, 2015-Ohio-4390.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103111

CITY OF ROCKY RIVER

PLAINTIFF-APPELLEE

vs.

CARL A. COLLINS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Rocky River Municipal Court
Case No. 2015TRD2279

BEFORE: Keough, J., Celebrezze, A.J., and Jones, J.

RELEASED AND JOURNALIZED: October 22, 2015

FOR APPELLANT

Carl Collins, pro se
12621 Walnut Hill Drive
North Royalton, Ohio 44133

ATTORNEY FOR APPELLEE

Michael J. O'Shea
Prosecutor
City of Rocky River
21012 Hilliard Blvd.
Rocky River, Ohio 44116

KATHLEEN ANN KEOUGH, J.:

{¶1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc. App.R. 11.1. The purpose of an accelerated appeal is to allow this court to render a brief and conclusory opinion. *State v. Priest*, 8th Dist. Cuyahoga No. 100614, 2014-Ohio-1735, ¶ 1; App.R. 11.1(E).

{¶2} Defendant-appellant, Carl A. Collins (“Collins”), pro se, appeals from the trial court’s judgment finding him guilty, after he entered a no contest plea, of violating R.C. 4510.11 (driving while under a suspension) and sentencing him to community control and a \$100 fine. Finding no merit to the appeal, we affirm.

{¶3} The record reflects that on April 4, 2015, Collins was cited for violating Rocky River Codified Ordinances 335.09(A), proper display of license plates, and R.C. 4510.14(A), driving while under OVI suspension. On April 22, 2015, Collins entered a not guilty plea and a waiver of counsel. On May 1, 2015, he filed a motion for discovery and a motion to suppress, in which he alleged there was no probable cause to stop him. The court granted the motion for discovery, and ordered that dates for an oral hearing on Collins’s motion to suppress and a jury trial would be set at the upcoming May 7, 2015 pretrial.

{¶4} At the pretrial on May 7, after discussions with Collins, the prosecutor filed a proposed plea agreement. The proposed agreement permitted Collins to plead guilty to a violation of R.C. 4510.11, driving under suspension, but without any mandatory jail

time, fine, and vehicle immobilization as required for a violation of R.C. 4511.14. The remaining count would be nolle.

{¶5} The trial court’s journal entry regarding the May 7, 2015 plea hearing reflects that Collins accepted the plea offer, waived presentation of the facts regarding his offense, and entered a no contest plea to violating R.C. 4510.11. The court found him guilty of the violation and sentenced him to one year of community control and a \$100 fine plus court costs. Per the plea agreement, the court dismissed the remaining count.

{¶6} Collins now appeals from the trial court’s judgment. In his single assignment of error, he asserts that the trial court erred because it “did not recognize the stop as being without probable cause, and did not summarily dismiss [the charges] and all further prosecutions arising from it.” Although not artfully stated, it appears that Collins is arguing that the trial court should have granted his motion to suppress.

{¶7} Collins contends there was no probable cause to stop him because although he was stopped for having a tinted license plate cover, Rocky River Codified Ordinances 335.09 “makes no mention of ‘tint’ or even of discoloration of a license plate protector.”¹

He further contends that there was no probable cause to stop him in any event because the license plate cover on the vehicle was the same cover that had been on his car for the 17 years of its operation, and he had driven the car “all over Cleveland” and “countless times” in Rocky River without getting a ticket.

¹Although we do not reach the merits of Collins’s argument, we note that Rocky River Codified Ordinances 335.09 states that “All license plates shall be securely fastened * * * *and shall not be covered by any material that obstructs their visibility.*” (Emphasis added.)

{¶8} Unlike a plea of guilty, a no contest plea does not preclude a defendant from asserting on appeal that the trial court erred in ruling on pre-trial motions, including motions to suppress evidence. *State v. O’Neill*, 175 Ohio App.3d 402, 407-408, 2008-Ohio-818 (6th Dist.); Crim.R. 12(I). In this case, however, there is no alleged error to appeal because the trial court never ruled on Collins’s motion to suppress. And there was no need for the court to rule: by accepting the city’s plea offer and pleading no contest to driving under suspension, Collins waived his right to a disposition on his motion to suppress and rendered any issues raised in his motion moot. *State v. Fuller*, 6th Dist. Lucas Nos. L-05-1142 & L-05-1143, 2005-Ohio-6247, ¶ 10.

{¶9} Moreover, even if Collins’s no contest plea had not rendered his motion to suppress moot, we would not reach the merits of his argument because he did not provide a transcript. The duty to provide an appropriate transcript or, where a transcript is not available, a statement of the evidence, falls upon the appellant, who has the burden of showing error by reference to matters in the record. App.R. 9(B) and (C); *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980). ““When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court’s proceedings, and affirm.”” *Skoda Minotti Co. v. Novak, Pavlik & Deliberato, L.L.P.*, 8th Dist. Cuyahoga No. 101964, 2015-Ohio-2043, ¶ 24, quoting *Knapp* at *id.*

{¶10} In Ohio, pro se litigants are presumed to have knowledge of the law and of correct legal procedure, and are held to the same standard as all other litigants. *Loreta v. Allstate Ins. Co.*, 8th Dist. Cuyahoga No. 97921, 2012-Ohio-3375, ¶ 8. Here, although there was obviously no transcript related to a hearing on the motion to suppress, Collins did not provide a transcript or App.R. 9(C) statement of the no contest plea proceedings. Accordingly, even if the issues raised in the motion to suppress were not moot, we would presume regularity in the trial court's proceedings and affirm its judgment. *Mansfield v. Zahn*, 5th Dist. Richland No. 92-CA-74, 1993 Ohio App. LEXIS 4832 (Sept. 27, 1993); *State v. Siegle*, 5th Dist. Licking No. 93CA93, 1994 Ohio App. LEXIS 2432 (May 23, 1994).

{¶11} The assignment of error is therefore overruled.

{¶12} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Rocky River Municipal Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
LARRY A. JONES, SR., J., CONCUR