

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-170327
	:	TRIAL NO. B-1701131
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
KASEY CARUSO,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Kasey Caruso appeals from the community-control sanction imposed by the Hamilton County Common Pleas Court following Caruso’s plea of guilty to burglary, a second-degree felony. In a single assignment of error, Caruso argues only that the trial court erred when it “included” a one-year driver’s license suspension “as a condition of community control.” He maintains that the license suspension “did not relate [to] or accomplish the purposes of Ohio Felony Sentencing.”

Caruso admitted to burglarizing his neighbor’s home seeking items that he could pawn to buy heroin. At the plea colloquy, Caruso stated that he was a heroin addict and had been for “[a]round ten years.” Caruso sought a period of drug treatment at the River City Correctional Center in Cincinnati in lieu of prison. The trial court accepted

Caruso's plea and ordered a presentence investigation and an evaluation of whether Caruso was amenable to treatment at River City.

At sentencing, and over the state's objection, the trial court granted Caruso's request and imposed a three-year community-control sanction. The court warned Caruso that failure to abide by the conditions of community control would result in the imposition of an eight-year prison term. The court then engaged in a lengthy colloquy with Caruso describing the conditions of community control, including successful completion of a residential program at River City, continued participation in drug screening, the destruction of Caruso's cellular telephone, which Caruso admitted using to arrange drug buys, and restitution to the burglary victim in the amount of \$2,488.95.

Immediately after describing restitution as a condition of community control, the court further inquired whether Caruso had a driver's license. When Caruso responded in the affirmative, the court said:

Not any more. One year driver's license suspension.

Mr. Caruso, you have asked for River City. I have given you River City. I have also told you [that] you are looking at eight years in the penitentiary if you screw this up.

You will remember that, right?

After Caruso answered "Yes," the trial court informed him of his right to appeal.

Caruso's trial counsel then asked if the court would be amenable to restoring Caruso's driving privileges after his completion of the River City program. The court noted, "We will deal with that when he does," and concluded the hearing.

Without citation to any authority, Caruso now argues that because he had not committed a drug or driving offense, the license suspension was inappropriate and was not calculated to achieve the overriding purposes of felony sentencing enunciated in R.C.

2929.11. Because Caruso did not object to the imposition of the driver's license suspension at sentencing and draw the trial court's attention to the alleged error at a time when the error could have been corrected or avoided, he has forfeited all but plain error on appeal. *See* Crim.R. 52(B); *see also State v. Brice*, 2017-Ohio-974, 86 N.E.3d 896, ¶ 22 (1st Dist.).

The version of R.C. 2929.15 in effect at the time of sentencing authorized a court imposing community control to "impose any other conditions of release under a community control sanction that the court considers appropriate \* \* \* ." Former R.C. 2929.15(A)(1). Moreover, R.C. 4507.08(D)(1) authorizes a trial court to suspend a driver's license issued to a person who is "addicted to the use of controlled substances to the extent that the use constitutes an impairment to the person's ability to operate a motor vehicle with the required degree of safety." *See State v. Rowe*, 118 Ohio App.3d 121, 126, 691 N.E.2d 1140 (9th Dist.1997).

While the sentencing scheme grants broad discretion to a court in fashioning appropriate conditions of community control, that discretion is not unlimited. *See State v. Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888, 814 N.E.2d 1201, ¶ 10. The community-control conditions must reasonably relate to the goals of "doing justice, rehabilitating the offender, and insuring good behavior." *Id.* at ¶ 12.

In determining whether a condition of community control reasonably relates to these goals, the court must consider whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct that is criminal or reasonably related to future criminality and serves the statutory ends of community control. *See id.*; *see also Brice* at ¶ 24. The statutory ends of community control, are doing justice, rehabilitating the offender, and insuring good behavior. *See Talty* at ¶ 16.

When an appellant challenges the reasonableness of community-control conditions, we must determine whether the trial court abused its discretion with reference to these considerations. *See id.* at ¶ 10. In applying this standard, “[i]t is not sufficient for an appellate court to determine that a trial court abused its discretion simply because the appellate court might not have reached the same conclusion or is, itself, less persuaded by the trial court’s reasoning process than by the countervailing arguments.” *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, ¶ 14. Rather, if the trial court’s exercise of its discretion exhibited a “sound reasoning process” that would support its decision, a reviewing court will not disturb that determination. *Id.*, quoting *AAAA Ents., Inc. v. River Place Community Urban Redev. Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990).

Here, Caruso had committed this offense to obtain heroin. He admitted that he had been a heroin addict for ten years. As the presentence investigation made clear, Caruso had been convicted of aggravated heroin possession and of an OVI offense within that period. Thus under the first and third prongs of *Talty*, the condition of denying Caruso the opportunity to operate a motor vehicle was reasonably related to the goal of aiding his rehabilitation. While driving is not criminal behavior, restrictions on Caruso’s ability to drive were reasonably related to guarding against future criminality, including the possibility that Caruso would once again operate a motor vehicle while impaired, and ensuring his good behavior during the period of community control. *See Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888, 814 N.E.2d 1201, at ¶ 12.

Since the trial court’s decision imposing a driver’s license suspension as a condition of Caruso’s community-control sanction was supported by a sound reasoning process, the trial court did not err, let alone commit plain error. The assignment of error is overruled.

**OHIO FIRST DISTRICT COURT OF APPEALS**

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Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**CUNNINGHAM, P.J., MYERS and MILLER, JJ.**

To the clerk:

Enter upon the journal of the court on September 28, 2018  
per order of the court \_\_\_\_\_.  
Presiding Judge