

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 13AP-142 (C.P.C. No. 11CR04-2226)
David Tabb, Jr.,	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 19, 2013

Ron O'Brien, Prosecuting Attorney, and *Valerie Swanson*, for appellee.

Yeura R. Venters, Public Defender, and *John W. Keeling*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} Defendant-appellant, David Tabb, Jr., appeals from a judgment entry entered by the Franklin County Court of Common Pleas revoking his community control and imposing a ten-month prison term after he violated the terms and conditions of his community control. For the following reasons, we reverse that judgment and remand the matter for further proceedings.

I. Factual and Procedural Background

{¶ 2} In 2011, appellant was charged with a single count of possession of cocaine in violation of R.C. 2925.11. Appellant eventually entered a guilty plea to a stipulated lesser-included offense of possession of cocaine. Plaintiff-appellee, State of Ohio, and appellant jointly recommended to the trial court that appellant receive a term of community control. On November 10, 2011, the trial court accepted appellant's guilty plea, found him guilty, and placed appellant on community control for one year.

{¶ 3} On October 31, 2012, days before his year of community control was set to expire, appellant's probation officer filed a "Request for Revocation of Probation and Statement of Violations" against appellant. Specifically, the document claimed that appellant violated the terms and conditions of his community control by failing to: (1) twice report to the probation office in January and March 2012, (2) pay \$349 in supervision fees and court costs, and (3) verify his employment. At a subsequent hearing, appellant admitted to the violations but requested that the trial court either terminate the community control because he had already served more than one year, or extend it so that he could remedy the violations. Appellant explained that he was having a difficult time finding a job, which made it hard for him to pay his supervision fees and court costs. The trial court expressed concern that appellant had not paid the court costs but had tested positive for marijuana,¹ to which the trial court apparently meant that appellant decided to spend money on drugs and not on his obligations. The trial court continued the matter for two months to allow appellant more time to pay the court costs. The trial court told appellant that his community control would end if he paid the court costs, but if he did not, the trial court told him that he would go to jail for smoking marijuana. (Tr. 8.)

{¶ 4} Appellant came before the trial court two months later. He made a \$100 payment towards his court costs the morning of the hearing, but told the trial court about his continued inability to get a job and again asked the trial court to either terminate his community control unsuccessfully or extend it so that he could remedy the violations. This time, however, the trial court revoked appellant's community control, "[b]ased on the

¹ Although the trial court noted positive tests for marijuana, those tests were not alleged as community control violations, no evidence was presented to support the trial court's statement, and appellant did not admit to such conduct. Accordingly, we will not consider such tests as grounds to support the trial court's decision.

statement of violations, the admission of probable cause and admission of violations" and sentenced him to a ten-month prison term. (Tr. 14.)

II. The Appeal

{¶ 5} Appellant appeals and assigns the following errors:

[1.] The trial court erred when it imposed a prison sentence of ten months upon the defendant due to his failure to pay court costs because the court lacked lawful authority to imprison a person for the non-payment of court costs.

[2.] If there are any legal provisions that allow for the imprisonment for the failure to pay court costs, the provisions could not be enforced unless it was first determined that the debtor was not indigent and had the ability to pay the costs. The trial court failed herein to find that the defendant had the ability to pay the court costs and thereof erred in sending him to prison for not paying the costs.

A. Did the Trial Court Send Appellant to Prison Because He Could Not Pay Court Costs?

{¶ 6} Appellant argues in his first assignment of error that a trial court may not send a defendant to prison for the failure to pay court costs and that the trial court did exactly that in this case. We agree.

{¶ 7} As the state concedes, a trial court may not imprison a person for non-payment of court costs. *State v. Estep*, 4th Dist. No. 03CA22, 2004-Ohio-1747, ¶ 11. Court costs are a civil obligation and may be collected only by the methods provided for the collection of such judgments. *See State v. White*, 103 Ohio St.3d 580, 2004-Ohio-5989, ¶ 15 (noting numerous possible methods to collect court costs from criminal defendants).

{¶ 8} The state argues that the trial court did not revoke appellant's community control because he failed to pay his court costs but, instead, properly considered this failure as a factor in deciding whether it was proper to revoke community control based on his other admitted violations. *Estep* at ¶ 11. In essence, the state argues that the failure to pay court costs can be considered when deciding to revoke community control for other violations but cannot be the only reason a trial court revokes community control. Here, the state argues that because appellant stipulated to other violations of community control not involving the failure to pay court costs, the trial court had grounds to revoke

his community control and could therefore consider the court costs violation only as a factor in deciding whether to revoke for the other violations. While we agree with the state's legal analysis, our review of the record indicates that the trial court based its decision to revoke community control solely on appellant's failure to pay court costs.

{¶ 9} Appellant stipulated to violating the terms and conditions of his community control. Those violations were his failure to pay court costs and supervision fees, his failure to report to the probation office, and his failure to verify his employment. However, the trial court only discussed appellant's failure to pay court costs at appellant's hearings. In fact, the trial court specifically told appellant that he would end his community control if he paid off his court costs in the two months between hearings. It is clear from the transcripts of those hearings that the trial court's sole focus in this matter was appellant's failure to pay court costs. Therefore, the trial court erred when it revoked appellant's community control solely because appellant failed to pay court costs. *Estep*.

III. Conclusion

{¶ 10} Because the trial court erred by imposing a prison sentence on appellant due to his failure to pay court costs, we sustain appellant's first assignment of error. This disposition renders appellant's second assignment of error moot. We reverse the judgment of the Franklin County Court of Common Pleas and remand the matter for further proceedings.

Judgment reversed; cause remanded.

BROWN and T. BRYANT, JJ., concur.

T. BRYANT, J., retired, of the Third Appellate District,
assigned to active duty under authority of Ohio Constitution,
Article IV, Section 6(C).
