[Cite as *In re A.N.*, 2012-Ohio-1789.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

IN THE MATTER OF:	:	**O P I N I O N**
A.N., DELINQUENT CHILD	:	**CASE NOS. 2011-A-0057**
	:	**and 2011-A-0058**

Civil Appeals from the Ashtabula County Court of Common Pleas, Juvenile Division, Case Nos. 10 JA 495 and 11 JA 291.

Judgment: Affirmed.

Thomas L. Sartini, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Appellee, State of Ohio).

Timothy Young, Ohio Public Defender, and *Brooke M. Burns*, Assistant State Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215-9308 (For Appellant, A.N., Minor).

MARY JANE TRAPP, J.

{¶1} A.N., a minor, appeals from the decision of the Ashtabula County Court of Common Pleas, Juvenile Division, which revoked his parole for a period of 90 days and recommitted him to the custody of the Ohio Department of Youth Services ("ODYS"). A.N. argues that the trial court erroneously ordered him to serve a definite sentence of 90 days, when it was only permitted to issue an indefinite sentence of a minimum of 30 days. While we find this appeal to be moot, because no remedy is available to A.N., as

he has already served the 90-day term and has been released from the custody of ODYS, we will consider the merits of the errors alleged, inasmuch as the issues raised are "capable of repetition, yet evading review."

{¶2} Our review of the statute in question, R.C. 5139.52(F), reveals that a juvenile court is not prohibited from imposing a definite sentence of more than 30 days for a parole violation. Therefore, we affirm the decision of the Ashtabula County Court of Common Pleas, Juvenile Division.

Substantive Facts and Procedural History

{¶3} A delinquency complaint was filed in the Ashtabula County Court of Common Pleas, Juvenile Division, against A.N., on September 29, 2010. The complaint alleged A.N. had committed acts that, if committed by an adult, would have constituted two counts of Assault, in violation of R.C. 2903.13, felonies of the fourth and fifth degree. The charges were found true, and the trial court committed A.N. to the custody of ODYS for an indefinite term ranging from a minimum of six months to a maximum of his 21st birthday. After approximately 180 days, A.N. was released on parole from ODYS.

{¶4} On July 7, 2011, a new complaint was filed against A.N., alleging that he had violated the terms of his parole. The trial court held a hearing before a magistrate on August 8, 2011, at which A.N. pled true to the charges. On August 9, 2011, as a result of the magistrate's findings and recommendations, the trial court revoked A.N.'s parole and recommitted him to the custody of ODYS for a definite period of 90 days. No objections were filed to the magistrate's findings; but, after retaining new counsel, A.N. did file a Motion to Vacate or in the Alternative for Relief from Judgment on August 24,

2011.[1] Shortly thereafter, A.N. timely appealed the trial court's original judgment entry and now brings the following assignments of error:

{¶5} "[1.] The juvenile court committed plain error when it ordered [A.N.] to serve a ninety-day minimum commitment for a parole revocation, because a thirty-day minimum commitment is the only commitment authorized by statute."

{¶6} "[2.] Trial counsel rendered ineffective assistance by failing to object to [A.N.]'s illegal parole revocation commitment."

Preliminary Matter

{¶7} We note that A.N. was recommitted to the custody of ODYS on August 9, 2011, for a period of 90 days. Therefore, he should have been released from ODYS on or about November 9, 2011. Because A.N. is no longer in custody, this appeal is rendered moot. No remedy is available to A.N. now, should he prevail substantively in this appeal. "'Where a defendant, convicted of a criminal offense, has voluntarily paid the fine or completed the sentence for that offense, an appeal is moot when no evidence is offered from which an inference can be drawn that the defendant will suffer some collateral disability or loss of civil rights from such judgment or conviction.' Once a sentence is served, any appeal is moot because there is no subject matter for the court to decide." *In re S.J.K.*, 114 Ohio St.3d 23, 2007-Ohio-2621, ¶9, quoting *State v. Wilson*, 41 Ohio St.2d 236 (1975), syllabus, and citing *St. Pierre v. United States*, 319 U.S. 41, 42, 63 S.Ct. 910, 87 L.Ed. 1199 (1943).

{¶8} The only remedy A.N. has requested is that we "vacate his disposition as it relates to the imposition of a ninety-day commitment to DYS and remand his case to the juvenile court with instructions that it only has the authority to impose a thirty-day

1. The trial court did not rule on this motion, and A.N. filed a motion to withdraw it on October 3, 2011.

commitment for a parole violation pursuant to R.C. 5139.52(F)." He has served the 90 days at this time and demonstrated no collateral disability as a result of the trial court's judgment entry. *See, e.g., In re S.J.K*, at ¶18. Therefore, we may dismiss this appeal as moot.

{¶9} However, a court may hear and determine on the merits an appeal "that is otherwise moot when the issues raised are 'capable of repetition, yet evading review.'" *Nextel West Corp. v. Franklin Cty. Bd. of Zoning Appeals*, 10th Dist. No. 03AP-625, 2004-Ohio-2943, ¶14, citing *State ex rel. Plain Dealer Pub. Co. v. Barnes*, 38 Ohio St.3d 165 (1988), paragraph one of syllabus. *Accord In re AG Subpoena*, 11th Dist. No. 2009-G-2916, 2010-Ohio-476. Thus, we will review the case substantively in order to resolve A.N.'s question of whether a 90-day revocation of parole is permissible and to address his allegations of ineffective assistance of counsel.

Propriety of the 90 Day Sentence

{¶10} In his first assignment of error, A.N. challenges the trial court's ability to revoke his parole for a definite period of 90 days. He argues that "[i]f the court orders the child returned to DYS, the child shall be held in DYS for no more than a '* * * minimum period of thirty days." This is an incorrect interpretation of R.C. 5139.52(F), and we therefore find the first assignment of error to lack merit.

{¶11} R.C. 5139.52(F) states, in pertinent part: "If the court of the county in which the child is placed on supervised release conducts a hearing and determines at the hearing that the child violated one or more of the terms and conditions of the child's supervised release, the court, if it determines that the violation was a serious violation, may revoke the child's supervised release and order the child to be returned to the

department of youth services for institutionalization or, in any case, may make any other disposition of the child authorized by law that the court considers proper. If the court orders the child to be returned to a department of youth services institution, *the child shall remain institutionalized for a minimum period of thirty days*, the department shall not reduce the minimum thirty-day period of institutionalization for any time that the child was held in secure custody subsequent to the child's arrest and pending the revocation hearing and the child's return to the department, the release authority, in its discretion, may require the child to remain in institutionalization for longer than the minimum thirty-day period, and the child is not eligible for judicial release or early release during the minimum thirty-day period of institutionalization or any period of institutionalization in excess of the minimum thirty-day period." (Emphasis added.)

{¶12} R.C. 5139.52(F) unambiguously states that if a trial court decides to return a juvenile to the custody of ODYS as a result of a parole violation, the court *shall* return him for no less than 30 days. The statute does not speak to maximum allowable time, nor does it require the court to impose an indefinite term of recommitment to ODYS's custody, as A.N. suggests. The statute merely establishes an absolute minimum amount of time for which the trial court must recommit the juvenile. While a trial court or ODYS Release Authority may require the child to spend more than the minimum 30 days in ODYS's custody subsequent to a parole revocation, they are prohibited from requiring less than a 30-day commitment, or releasing the juvenile prior to completion of a minimum of 30 days.

{¶13} The trial court was well within its power to revoke A.N.'s parole for a period of 90 days. The court satisfied the 30 day minimum sentence requirement of

R.C. 5139.52(F), and therefore we find no error. Assignment of error one is without merit.

Ineffective Assistance of Counsel

{¶14} In his second assignment of error, A.N. argues that his trial counsel provided ineffective assistance when he failed to object to the court's imposition of a 90-day parole revocation. Because we find no error by the court in revoking A.N.'s parole for a definite period of 90 days, we find that A.N.'s trial counsel was not deficient in failing to object.

{¶15} To establish a claim of ineffective assistance of counsel, an appellant must demonstrate that (1) his counsel was deficient in some aspect of his representation, and (2) there is a reasonable probability that, were it not for counsel's errors, the result of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

{¶16} A threshold issue in a claim of ineffective assistance of counsel is whether there was actual error on the part of appellant's trial counsel. *State v. McCaleb*, 11th Dist. No. 2002-L-157, 2004-Ohio-5940, ¶92. In Ohio, every properly licensed attorney is presumed to be competent, and therefore a defendant bears the burden of proof. *State v. Smith*, 17 Ohio St.3d 98, 100 (1985). Counsel's performance will not be deemed ineffective unless and until the performance is proven to have fallen below an objective standard of reasonable representation and, in addition, prejudice arises from counsel's performance. *State v. Iacona*, 93 Ohio St.3d 83, 105 (2001). Furthermore, decisions on strategy and trial tactics are generally granted wide latitude of professional judgment, and it is not the duty of a reviewing court to analyze the trial counsel's legal

tactics and maneuvers. *State v. Gau*, 11th Dist. No. 2005-A-0082, 2006-Ohio-6531, ¶35, citing *Strickland* at 689. Debatable trial tactics and strategies generally do not constitute ineffective assistance of counsel. *State v. Phillips*, 74 Ohio St.3d 72 (1995).

{¶17} Because we find that the trial court did not err in revoking A.N.'s parole for a definite period of 90 days, A.N. is unable to demonstrate that his trial counsel's performance fell below an objective standard of reasonable representation when he did not object to the trial court's judgment. A.N. is unable to meet the first prong of the *Strickland* test, and thus our analysis stops here. Assignment of error two is without merit.

{¶18} For the reasons stated above, we affirm the decision of the Ashtabula County Court of Common Pleas, Juvenile Division.

TIMOTHY P. CANNON, P.J,

CYNTHIA WESTCOTT RICE, J.,

concur.