

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STATE OF OHIO,	:	
	:	CASE NOS. CA2015-01-005
Plaintiff-Appellee,	:	CA2015-01-006
	:	CA2015-01-007
- vs -	:	<u>OPINION</u>
	:	7/20/2015
BRENT BEGLEY,	:	
Defendant-Appellant.	:	

APPEAL FROM CLERMONT COUNTY MUNICIPAL COURT
Case No. 2014 CRB 02557

D. Vincent Faris, Clermont County Prosecuting Attorney, Nicholas Horton, 76 South Riverside Drive, 2nd Floor, Batavia, Ohio 45103, for plaintiff-appellee

R. Daniel Hannon, Clermont County Public Defender, Robert F. Benintendi, 302 East Main Street, Batavia, Ohio 45103, for defendant-appellant

PIPER, P.J.

{¶ 1} Defendant-appellant, Brent M. Begley, appeals his convictions in three separate cases in the Clermont County Municipal Court on one count of underage consumption and two counts of violating the terms of his community control sanctions, for which he was sentenced to a total of 540 days in jail. For the reasons that follow, we affirm the judgment of the municipal court.

{¶ 2} On July 30, 2013, in Case No. 2013 CRB 02722, Begley was sentenced to 180

days in jail for his conviction on one count of arson, a misdemeanor of the first degree. The municipal court suspended the jail sentence and placed Begley on two years of community control. At the same time, in Case No. 2013 CRB 03269, Begley was sentenced to 180 days in jail for his conviction on one count of underage consumption. Once again, the municipal court suspended the jail sentence and placed Begley on two years of community control.

{¶ 3} On June 4, 2014, in Case No. 2014 CRB 02557, Begley again was charged with one count of underage consumption. On July 16, 2014, Municipal Probation Officer Melissa Niemeyer filed an affidavit in the 2013 cases, alleging that Begley had violated the terms of his community control.

{¶ 4} On July 22, 2014, Begley appeared before the municipal court on the charge of underage consumption in Case No. 2014 CRB 02557 and the charges of violating his community control in Case Nos. 2013 CRB 02722 and 2013 CRB 03269. Begley pled guilty to the charge of underage consumption and entered admissions to the charges of violating his community control. The municipal court found Begley guilty on all three charges. The municipal court continued the sentencing hearing for 60 days to allow Begley to demonstrate his willingness to comply with the community control sanctions. However, when the sentencing hearing was to go forward, Begley failed to appear, and the municipal court issued a bench warrant for his arrest. Begley subsequently turned himself in to the probation department.

{¶ 5} On January 8, 2015, the municipal court sentenced Begley to 180 days in jail on each of his convictions for violating the terms of his community control and ordered that those two jail terms were to run consecutively, for a total term of 360 days on those two charges. The municipal court sentenced Begley to 180 days in jail on his conviction on the underage consumption charge and ordered him to serve that jail term consecutively to his

360-day jail term for violating his community control, for a total jail term of 540 days.

{¶ 6} Begley now appeals and assigns the following as error:

{¶ 7} THE TRIAL COURT ERRED IN SENTENCING APPELLANT TO JAIL.

{¶ 8} Begley contends that since the municipal court failed to advise him at his original sentencing hearing in Case Nos. 2013 CRB 02722 and 2013 CRB 03269 that he could be sentenced to a jail term if he violated the terms of his community control, the municipal court was precluded from imposing a jail term for violating the terms of his community control. In support of his argument, Begley cites *State v. Shugart*, 7th Dist. Mahoning No. 08 MA 197, 2009-Ohio-2635. However, *Shugart* is readily distinguishable from the case now before us.

{¶ 9} As explained in *State v. Russell*, 7th Dist. Mahoning No. 09 MA 156, 2011-Ohio-1181, ¶ 27-28:

R.C. 2929.25(A)(1) describes two ways that a trial court may impose community control sanctions in a misdemeanor case. R.C. 2929.25(A)(1)(a) gives the court the option of directly imposing community control sanctions. R.C. 2929.25(A)(1)(b), on the other hand, allows the trial court to impose a jail term, suspend the jail term, and then place the offender on community control.

The requirement in R.C. 2929.25(A)(3) to notify the defendant of the consequences of violating community control applies only if the court directly imposes community control. If the court imposes a jail term and then suspends it, there is no need to notify the defendant that a jail term may result from violating the terms of community control because the jail term has already been imposed and the defendant has been notified of that term. *State v. Drake*, 2d Dist. No. 21939, 2007-Ohio-6586, ¶ 22; see also, *State v. Robenolt*, 7th Dist. No. 04 MA 104, 2005-Ohio-6450, ¶ 23-28.

{¶ 10} In Case Nos. 2013 CRB 02722 and 2013 CRB 03269, Begley was sentenced under R.C. 2929.25(A)(1)(b) as the municipal court imposed jail sentences in both cases and then suspended Begley's jail sentences and placed him under community control. Because

the municipal court sentenced Begley under R.C. 2929.25(A)(1)(b), the municipal court had no duty under R.C. 2929.25(A)(3) to inform Begley that a violation of his community control sanctions could lead to the imposition of his remaining suspended jail terms.

{¶ 11} In light of the foregoing, Begley's assignment of error is overruled.

{¶ 12} Judgment affirmed.

S. POWELL and M. POWELL, JJ., concur.