

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

V.

LAWRENCE E. STAMPS

Defendant-Appellant

Appellate Case No. 23541

Trial Court Case Nos. 08-CR-810
08-CR-4089
08-CR-4397

(Criminal Appeal from
Common Pleas Court)

OPINION

Rendered on the 2nd day of April, 2010.

MATHIAS H. HECK, JR., by JOHNNA M. SHIA, Atty. Reg. #0067685, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422
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Attorney for Defendant-Appellant

BROGAN, J.

{¶ 1} Lawrence Stamps appeals from the judgment of the trial court revoking his community control sanction and imposing sentence upon him.

{¶ 2} In July 2008, Stamps was convicted of the unauthorized use of an automobile in Case No. 08-CR-0810. In August, Stamps was sentenced to a term of community control not to exceed five years.

{¶ 3} On December 11, 2008, Stamps was charged by indictment with three counts of receiving stolen property in case number 08-CR-4089. On December 22, 2008, Stamps was charged by indictment with breaking and entering (unoccupied structure) in case number 08-CR-4397. On January 16, 2009, Stamps entered a plea to two counts of receiving stolen property in case number 08-CR-4089 and breaking and entering in case number 08-CR-4397. On February 3, 2009, the trial court sentenced Stamps to a term of community control sanctions not to exceed five years in each case. At that time, the trial court also reinstated Stamps' probation in case number 08-CR-0810.

{¶ 4} On April 29, 2009, a notice of a revocation was filed in all three cases. On June 25, 2009, a revocation hearing was held. On July 2, 2009, the trial court found that Stamps violated his community control sanctions in all three cases and sentenced him to a 12-month prison term in case number 08-CR-0810 and reinstated his community controls sanctions in the other two cases. This appeal followed.

{¶ 5} At the hearing, Stamps was asked to admit or deny that he violated the following rules of his community control sanction:

{¶ 6} Rule #1: "I shall refrain from violation of any law (Federal, State, and City). I shall get in touch immediately with my probation office if arrested or questioned by a law enforcement officer" when he was arrested for domestic violence and aggravated menacing. (Tr. 25.)

{¶ 7} Rule #4: "I shall work regularly at a lawful occupation and support my legal dependants, if any, to the best of my ability" because he was unemployed. (Tr. 25-26.)

{¶ 8} Rule #6: "I shall not use or possess any controlled substance or drugs of abuse" because he was intoxicated when he was arrested for domestic violence and aggravated menacing. (Tr. 26-28.)

{¶ 9} Rule #7: "I shall accomplish all case plan objectives which are now and will be set for me throughout my supervision" because he was not complying with any follow up treatment to the STOP program, which he completed. (Tr. 26.)

{¶ 10} Appellant's probation officer, Kelly Wills, testified she believed that Stamps violated Rule #1 by being arrested for domestic violence and aggravated menacing. She testified Stamps violated rule #4 because he was unemployed, and rule #6 because he admitted to being intoxicated from alcohol at the time of his arrest for the domestic violence charge. Finally, she testified Stamps violated Rule #7 by not following up on aftercare treatment after completing the STOP program. On cross-examination, she admitted that the domestic violence charge was dismissed. In reference to the rule #4 violation, Ms. Wills admitted that Stamps told her he had been working.

{¶ 11} Stamps testified he worked for Ron Waker Enterprises doing fix-up work on vacated apartments. He testified he was arrested only two weeks after being released from the STOP program and had not yet been paid so he was unable to make payments on outstanding court fines and costs. He testified that the domestic violence charge was dismissed.

{¶ 12} Stamps argues that the trial court abused its discretion in revoking his community control sanction because there was no evidence presented that he violated any law and there is no evidence that he failed to inform his probation officer of his arrest or that he was questioned by a law officer. We agree. The trial court found that Stamps violated Rule #1 because he was arrested on a new charge. While the State is not required to prove that Stamps was convicted of a crime, it must show substantial evidence that Stamps violated the law, not just that he was arrested. See *State v. Wagner*, 179 Ohio App.3d 165, 2008-Ohio-5765.

{¶ 13} Stamps argues that the State failed to prove that he violated Rule #6 that he not use or possess “any controlled substance or drugs of abuse.” Stamps argues that his admission to using alcohol does not amount to a violation of Rule #6. We agree that alcohol is not a controlled substance or a drug of abuse as defined by the Ohio Revised Code; see R.C. 3719.011(A) and R.C. 4729.01(E).

{¶ 14} Stamps argues that the trial court erred in finding that he violated Rule #4 by not providing any verification that he was working. Stamps notes that Ms. Wills testified that Stamps showed up at the STOP program aftercare and told her that he had a construction job. Wills, however, testified she instructed Stamps to provide verification of his employment but he failed to do so before he was arrested a few weeks later.

{¶ 15} The evidence supports the trial court’s finding that Stamps violated Rule #4 by not working at a lawful occupation. The trial court was not required to believe Stamps’ testimony when he failed to provide verification of his employment to his probation officer.

{¶ 16} Stamps' first assignment of error is Sustained in part. Since the record will support only one violation of the community control sanctions by Stamps, we will reverse the trial court judgment and remand this matter to the trial court to reconsider the appropriate sentence to impose upon Stamps, if any. The second assignment of error challenging the sentence imposed by the court is rendered moot by our resolution of the first assignment.

{¶ 17} The judgment of the trial court is Reversed and Remanded for further proceedings.

FAIN and FROELICH, JJ., concur.

Copies mailed to:

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Antony A. Abboud
Hon. A. J. Wagner

Case Name:	State of Ohio v. Lawrence E. Stamps
Case No:	Montgomery App. No. 23541
Panel:	Brogan, Fain, Froelich
Author:	James A. Brogan