

[Cite as *State v. White*, 2011-Ohio-497.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

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| STATE OF OHIO | : | |
| Plaintiff-Appellee | : | C.A. CASE NO. 23906 |
| v. | : | T.C. NO. 07CR787/1 |
| ADRIAN WHITE | : | (Criminal appeal from Common Pleas Court) |
| Defendant-Appellant | : | |
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OPINION

Rendered on the 4th day of February, 2011.

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DONOVAN, J.

{¶ 1} Defendant-appellant Adrian White appeals a decision of the Montgomery Court of Common Pleas, General Division, imposing an additional sanction under his existing community control sentence from Case No. 2007-CR-787/1, after he plead no

contest to possession of heroin and possession of criminal tools in Case No. 2009-CR-2613 on February 11, 2010.

I

{¶ 2} On May 14, 2007, White pled guilty to one count of possession of cocaine, in violation of R.C. 2925.11(A), a felony of the fourth degree, and one count of possession of crack, in violation of R.C. 2922.11(A), also a felony of the fourth degree in Case No. 2007-CR-787/1. The trial court subsequently sentenced White to five years of community control (Basic Supervision) and revoked his driver's license for six months on June 25, 2007. A specific condition of White's community control was the requirement that he attend and complete a 180-day term in the MonDay Community Correctional Institution. The trial court modified White's community control sanctions and ordered a term of monitored time on March 10, 2009. "Monitored time" is a nonresidential sanction which refers to "a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life." R.C. 2929.17(G) and R.C. 2929.01(Y). Monitored time is an element of community control. *In re J.F.* (2009), 121 Ohio St.3d 76, 2009-Ohio-318.

{¶ 3} On September 18, 2009, White was indicted for one count of possession of heroin and one count of possession of criminal tools in Case No. 2009-CR-2613. In response to these new charges, the Adult Probation Department filed a Notice of Revocation on October 13, 2009, advising the trial court that White had violated the terms of his monitored time sanctions by failing to "refrain [from] violation of any law (Federal, State, and City)."

{¶ 4} On February 11, 2010, White pled no contest to possession of heroin and possession of criminal tools in Case No. 2009-CR-2613, and the court found him guilty of both counts. In lieu of imprisonment, the trial court imposed a second term in MonDay for violating state law and monitored time. White filed a timely notice of appeal with this Court on March 3, 2010, challenging the trial court's decision to modify his community control sanctions by ordering him to serve 180 days in the MonDay Program.

II

{¶ 5} White's sole assignment of error is as follows:

{¶ 6} "THE COURT SHOULD NOT HAVE IMPOSED ADDITIONAL SANCTIONS ON DEFENDANT'S COMMUNITY CONTROL SANCTIONS AFTER DEFENDANT'S PLEA OF NO CONTEST IN CASE NO. 2009-CR-2613."

{¶ 7} In his sole assignment, White contends that the trial court erred when it modified his existing community control sanctions and ordered him to serve an additional 180 days in the Monday Program in light of his conviction in Case No. 2009-CR-2613. Specifically, White argues that "but for the conviction in Case No. 2009-CR-2613," the court would not have sentenced him to a second term in the MonDay Program as an additional community control sanction in Case No. 2007-CR-787/1.

{¶ 8} When an offender violates the terms of his or her community control, the trial court may impose a longer time under the same community control sanction [not to exceed five years]; impose a more restrictive community control sanction; or impose a definite jail term. R.C. 2929.15(B)(1)(a)(b) and (c). "The right to continue on community control depends on compliance with community control conditions and 'is a matter resting within the

sound discretion of the court.” *State v. Schlecht*, Champaign App. No.2003-CA-3, 2003-Ohio-5336, at ¶ 7, quoting *State v. Johnson* (May 25, 2001), Montgomery App. No. 17420. “An alleged violator of community control conditions is entitled to due process.” *State v. Blakeman*, Montgomery App. No. 18983, 2002-Ohio-2153, ¶¶2-4.

{¶ 9} Upon finding White guilty after he pled no contest in Case No. 2009-CR-2613, the trial court held that White had violated his community control in Case No. 2007-CR-787/1. The trial court stated as follows:

{¶ 10} “The Court: Ok, considering purposes and principles of sentencing, and the seriousness of the facts, in Case No. 07-CR-787, I’m going to sentence you to a period of, well I’m going to continue the community control with the additional sanction of the MonDay

{¶ 11} program. You are to complete the MonDay program and any follow up recommended by the folks of MonDay or the folks at – in the criminal justice services department or the Court. You are to finish any other sanctions in that matter. You will be on a no grace status.¹

¹We note that on March 10, 2009, the trial court modified White’s community control sanctions (basic Probation Supervision) and ordered a term of monitored time. From that point forward, White was not subject to any previously imposed sanctions other than that he lead a law-abiding life. R.C. 2929.01(Y). On the basis of White’s conviction in Case No. 2009-CR-2613, the court found that he had violated his community control in Case No. 2007-CR-787/1 and imposed mandatory attendance at the MonDay program as an additional sanction. In an entry filed on February 12, 2010, the court also “continued” White’s “community control subject to previous sanctions.” However, since White’s term of basic probation supervision was previously modified to a term of monitored time, the court essentially reinstated the conditions of his probation supervision plus MonDay. This issue was not raised by either party on appeal, nor did White’s trial counsel object to the court’s

{¶ 12} “On Case No. 09-CR-2613, [I am] going to have to consider the purpose and principles and seriousness of the facts. I’m going to sentence you to a period of community control not exceed five years – you will be on a term of intensive probation supervision. You will have to pay court costs as determined by the Clerk of Courts, supervision fee of \$50.00, and drug testing fee of \$125.00, all at the rate of \$10.00 per month. You will obtain and maintain full-time verifiable and legitimate employment, you are to have no contact with Mr. Brian Wells, that is the condition from your old case – oh, I won’t make that a condition of this case, I’m sorry Robert. That will just be a condition of his old case. You will complete 200 hours of community service work. That’s an additional 200 hours beyond what you were to complete in your prior case at a rate of at least ten hours per month, and you will follow through with any treatment recommended by the criminal justice services department or the court in this matter.”

{¶ 13} The court sentenced White to a second 180-day term in the MonDay Program for violating his community control in Case No. 2007-CR-787/1 when he was found guilty of the felony offenses for which he was indicted in Case No. 2009-CR-2613. Pursuant to R.C. 2929.15(B)(1)(b), the court had the discretion to sentence White to a “more restrictive sanction” for violating the conditions of his community control imposed in Case No. 2007-CR-787/1. White’s subsequent conviction for possession of heroin and possession of

characterization of his monitored time at the plea hearing in Case No. 2009-CR-2613. Since the issue was not raised before the trial court pursuant to an objection, it has been waived for the purposes of the instant appeal. We also note that the court imposed an additional five years of community control (Intensive Supervision) in light of White’s conviction in Case No. 2009-CR-2613.

criminal tools in Case No. 2009-Ohio-2613 was clearly the type of community control violation for which the court could impose the additional sanction of a 180-day term in the MonDay Program. Simply put, White did not lead a law-abiding life and was, therefore, subject to a more restrictive community control sanction and/or incarceration for violating state law. Thus, the trial court did not abuse its discretion when it imposed the additional sanction of MonDay for violation of community control in Case No. 2007-CR-787/1.

{¶ 14} White's sole assignment of error is overruled.

III

{¶ 15} White's sole assignment of error having been overruled, judgment of the trial court is affirmed.

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GRADY, P.J. and FROELICH, J., concur.

Copies mailed to:

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