

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

STATE OF OHIO

Plaintiff-Appellee

v.

JOHN P. STEVENS

Defendant-Appellant

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C.A. CASE NO. 2014-CA-10

T.C. NO. 11CR466

(Criminal Appeal from  
Common Pleas Court)

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**OPINION**

Rendered on the 20th day of March, 2015.

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Attorney for Plaintiff-Appellee

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FROELICH, P.J.

{¶ 1} John P. Stevens appeals from the judgment of the Greene County Court of Common Pleas, which revoked his community control and sentenced him to an aggregate term of 30 months in prison for 19 counts of forgery. Stevens claims that the

trial court erred in imposing consecutive 10-month sentences for three of the forgery counts. For the following reasons, the trial court's judgment will be affirmed.

### **I. Procedural History**

{¶ 2} In August 2011, Stevens was indicted on 19 counts of forgery and 19 counts of receiving stolen property, all fifth-degree felonies. The indictment alleged that, between June 5, 2011 and July 28, 2011, Stevens uttered 19 stolen and forged checks.

{¶ 3} On March 28, 2012, Stevens pled guilty to the 19 counts of forgery, in exchange for which the State dismissed the 19 charges of receiving stolen property. The State also agreed not to indict Stevens for charges related to three additional checks. Stevens agreed to pay restitution of \$5,228, and the State recommended that Stevens be placed on community control with drug and alcohol treatment. The court found that Stevens had entered his plea knowingly, intelligently, and voluntarily, and found him guilty.

{¶ 4} At sentencing on May 23, 2012, the trial court imposed community control sanctions, which consisted of basic supervision for five years, participation in the theft clinic, a chemical dependency evaluation and treatment, and urinalysis.<sup>1</sup> The court also

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<sup>1</sup> Under certain circumstances, a trial court is required to impose community control for fifth-degree felonies. See R.C. 2929.13(B)(1)(a). The mandatory community control provision does not apply, however, if the offender has been "convicted of or pleaded guilty to a misdemeanor offense of violence that the offender committed within two years prior to the offense for which sentence is being imposed." R.C. 2929.13(B)(1)(a)(iv). The presentence investigation report indicates that Stevens committed misdemeanor domestic violence in May 2011 and was convicted of that offense in September 2011. Thus, the PSI shows that Stevens had "a misdemeanor offense of violence that the offender committed within two years prior to the offense for which sentence is being imposed." R.C. 2929.13(B)(1)(a)(iv). Accordingly, the record indicates that the trial court had the discretion to impose a prison term in this case, but elected to impose community control.

imposed 180 days in jail and participation in the Greene Leaf Therapeutic Community and Aftercare Program, both of which were held in abeyance. The trial court notified Stevens that the failure to comply with community control sanctions would result in additional sanctions, including a prison term of 12 months for each count, with counts 1 through 9 being served consecutively with each other and the remaining counts being served concurrently, for a total of 9 years in prison. The trial court ordered Stevens to pay restitution in the amount of \$5,228, a supervision fee, court costs, and a surcharge to the clerk of courts for the collection of the restitution.

{¶ 5} On October 17, 2013, Stevens's probation officer filed a "motion/affidavit" with the court, indicating that Stevens had violated three conditions of his community control by (1) failing to report to his probation officer on September 24, 2013, and October 8, 2013, (2) failing to make payments toward court costs and fees,<sup>2</sup> and (3) failing to complete an approved theft clinic. The probation officer asked the court to order Stevens to appear for a probable cause hearing. A probable cause hearing was originally scheduled for November 15, but it was continued three times; the record does not reflect the reasons for the continuances. On January 29, 2014, Stevens waived the probable cause hearing and, after several continuances, also waived the evidentiary hearing. He

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<sup>2</sup> We note that "[a]n offender's failure to comply with a condition of his community control that requires him to pay costs or fees cannot constitute the basis for revocation of community control or the imposition of the offender's sentence." *State v. Estep*, 4th Dist. Gallia No. 03CA22, 2004-Ohio-1747, ¶11, citing R.C. 2951.021(B)(4); *State v. Self*, 2d Dist. Montgomery No. 20370, 2005-Ohio-1120 (court erred to the extent it revoked community control due to nonpayment of court costs). Rather, the failure to pay court costs and fees may only be considered as a factor in determining whether to modify or revoke community control for other violations. *Id.* Because Stevens admitted to other violations of his community control sanctions, and he has not argued that the revocation of his community control constituted an abuse of discretion, we need not address this issue further.

agreed to proceed to sentencing.

{¶ 6} On February 27, 2014, the trial court found that Stevens had violated his community control, as alleged by the probation officer. The court revoked Steven's community control and ordered him to serve ten months in prison on each count, with counts 1, 2, and 3 to be served consecutively to each other and concurrently with counts 4 through 19, for a total sentence of 30 months in prison.

{¶ 7} Stevens appeals from the revocation of his community control, claiming that the trial court abused its discretion in imposing consecutive prison sentences.

## **II. Imposition of Consecutive Sentences**

{¶ 8} “[C]ommunity control revocation proceedings are not the same as a criminal trial, and a revocation of community control punishes the failure to comply with the terms and conditions of community control, not the specific conduct that led to the revocation.” *State v. Black*, 2d Dist. Montgomery No. 24005, 2011-Ohio-1273, ¶ 17. Upon revoking community control, the trial court may (1) lengthen the term of the community control sanction; (2) impose a more restrictive community control sanction; or (3) impose a prison term on the offender, provided that the prison term is within the range of prison terms available for the offense for which community control had been imposed and the term does not exceed the prison term specified in the notice provided to the offender at the original sentencing hearing. R.C. 2929.15(B).

The trial court has significant discretion in sentencing a defendant for a community control violation, so long as it is consistent with the purposes and principles of sentencing and with notification provided by the trial court when imposing the community control sanctions. See R.C. 2929.15(B)(2);

*State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837, ¶ 20 (stating that a trial court has “a great deal of latitude in sentencing” an offender for a community control violation). When sentencing an offender for a community control violation, the trial court must “consider both the seriousness of the original offense leading to the imposition of community control and the gravity of the community control violation.” *Id.* at ¶ 20.

*State v. Hart*, 4th Dist. Athens No. 13CA8, 2014-Ohio-3733, ¶ 13.

{¶ 9} When an offender’s community control is revoked and multiple prison terms are imposed for the underlying offenses, the trial court must make the findings under R.C. 2929.14(C)(4) before imposing consecutive sentences at the revocation sentencing hearing. See, e.g., *State v. West*, 2d Dist. Montgomery No. 24998, 2012-Ohio-4615 (noting that the prison sentence for violating community control was not imposed until the revocation sentencing hearing, and that the trial court was required to comply with R.C. 2929.14(C)(4) to impose consecutive sentences); *State v. Jacquillard*, 1st Dist. Hamilton No. C-140001, 2014-Ohio-4394 (applying R.C. 2929.14(C)(4) to sentencing upon revocation of community control); *State v. Holman*, 8th Dist. Cuyahoga No. 100468, 2014-Ohio-3908; *State v. Steck*, 6th Dist. Wood Nos. WD-13-017 and WD-13-018, 2014-Ohio-3623.

{¶ 10} R.C. 2929.14(C)(4) allows for the imposition of consecutive sentences if the trial court finds that: (1) a “consecutive service is necessary to protect the public from future crime or to punish the offender”; (2) “consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public”; and (3) one or more of the following three findings are

satisfied:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

R.C. 2929.14(C)(4)(a)-(c).

**{¶ 11}** In this case, the trial court made the following findings at the sentencing hearing and in its judgment entry with respect to consecutive sentencing:

The Court has decided that the defendant shall serve the prison terms consecutively, pursuant to R.C. 2929.14(C)(4), because the court finds that the consecutive service is necessary to protect the public from future crime or to punish the defendant and that consecutive sentences are not disproportionate to the seriousness of the defendant's conduct and to the danger the defendant poses to the public, and the Court also finds the following:

The defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the defendant.

**The defendant was awaiting sentencing in Montgomery County Common Pleas Court Case No. 2010-CR-683 charged with Theft when the offenses were committed in Greene County Court Case No. 2011-CR-466. The defendant was granted Intervention In Lieu Of Conviction in Montgomery County Court on September 19, 2011 and, sentenced to community control in the Greene County case on May 23, 2012. On November 12, 2013, the defendant was convicted of theft in Vandalia Municipal Court.**

**The defendant has shown a continuous pattern of behavior in committing similar crimes with little break in activity. A prison sentence is appropriate given the defendant's criminal activity.**

(Emphasis in original.)

**{¶ 12}** Stevens does not claim that the trial court failed to make the statutory findings under R.C. 2929.14(C)(4); rather, he asserts that the record does not support the trial court's findings. He states that he had no felony convictions prior to the instant case, and his criminal history (other than primarily traffic offenses) consists of a case for which he had been granted ILC in Montgomery County and the misdemeanor theft case in Vandalia Municipal Court, which occurred in November 2013. Stevens argues that the trial court abused its discretion in using the ILC case to support consecutive sentences. He also argues that the trial court erred in relying on the Vandalia misdemeanor

conviction, noting the only reference to that misdemeanor case in the record appears in the trial court's sentencing entry.

{¶ 13} Finally, Stevens asserts that the community control violations themselves do not support consecutive sentences. He states, “[I]t seems the only difference from the time the Trial Court found Mr. Stevens’ actions not serious enough to merit any jail or prison time to the time the same Trial Court found his actions warrant 3 prison sentences to run consecutively is a failure to appear to probation, failure to pay costs, and failure to attend a probation clinic, and the Vandalia misdemeanor.”

{¶ 14} “On appeals involving the imposition of consecutive sentences, R.C. 2953.08(G)(2)(a) directs the appellate court ‘to review the record, including the findings underlying the sentence’ and to modify or vacate the sentence ‘if it clearly and convincingly finds \* \* \* [t]hat the record does not support the sentencing court’s findings under division \* \* \* (C)(4) of section 2929.14 \* \* \* of the Revised Code.’” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 28.

{¶ 15} According to the presentence investigation report prepared at the time of the original sentencing in May 2012, Stevens was 46 years old when he committed the forgery offenses. He had 15 prior misdemeanor cases, 13 of which were traffic-related. In March 2010, he committed a theft offense (fifth-degree felony) in Montgomery County, and he was granted intervention in lieu of conviction for that offense on September 19, 2011. In December 2010, Stevens was charged with passing bad checks, a first-degree misdemeanor; that case was pending in the Miami County Municipal Court as of May 2012. He committed misdemeanor unlawful restraint and domestic violence in May 2011. Stevens committed the instant felony forgery offenses in June and July of 2011.



**{¶ 16}** The PSI indicated that Stevens reported being in “fair” physical health and that he did not have the present ability to pay financial sanctions. Stevens was unemployed at that time, with no current source of income. Stevens had a high-school education and had worked construction-related jobs in the past.

**{¶ 17}** Stevens reported alcohol use and an addiction to heroin; he had completed a 30-day inpatient CADAS program, and reported his last use of heroin was in August 2011. Stevens tested negative for all tested substances on April 4, 2012, but had not attended CADAS group appointments since April 9, 2012.

**{¶ 18}** Stevens was placed on community control in this case in May 2012. The record does not contain an updated PSI, and because no evidentiary hearing was held on the alleged community control violations, the evidence supporting the revocation of Stevens’s community control was limited to the probation officer’s affidavit of alleged violations, stating that Stevens twice failed to report to his probation officer (September 24, 2013 and October 8, 2013), failed to make court cost and fee payments, and did not complete an approved theft clinic. At sentencing on the community control violations, the trial court noted that Stevens had been convicted of a misdemeanor theft offense in Vandalia in November 2013.

**{¶ 19}** Considering Stevens’s original offenses leading to the imposition of community control (19 counts of forgery), the community control violations, and Steven’s criminal history, we cannot clearly and convincingly find that the record does not support the trial court’s imposition of consecutive sentences. The notice of revocation alleged, and Stevens did not dispute, that he had twice failed to meet with his probation officer, that he had failed to attend the theft clinic, and that he had failed to pay court costs and

fee payments. While the court should not have considered Stevens's failure to pay court costs, there is no indication that Stevens had paid any of the ordered restitution or attended the theft clinic, even though he had more than a year to do so. Considering that Stevens had been convicted of 19 forgery offenses based on his uttering stolen checks, the trial court reasonably considered his failure to take measures to address his criminal conduct to be a serious matter.

**{¶ 20}** In sentencing Stevens to consecutive sentences (as opposed to returning him to community control or imposing concurrent sentences), the trial court noted that Stevens had been convicted of theft in Vandalia Municipal Court on November 12, 2013. The record does not detail the nature or facts of the misdemeanor or its sentence. Stevens claims that this conviction should not have been considered, but neither Stevens nor his counsel objected to the trial court's reliance on that conviction nor disputed the veracity of the trial court's information. The trial court did not err in considering, at sentencing, the fact that Stevens had committed another theft-related offense. Moreover, the fact that Stevens had been charged with a misdemeanor theft offense prior to the forgery offenses, pled guilty to 19 forgery offenses in this case, and was convicted of another misdemeanor theft offense in November 2013, while his revocation allegations were pending, supports the trial court's conclusion that Stevens's history of criminal conduct demonstrates that consecutive sentences were necessary to protect the public from future crime by the defendant.

**{¶ 21}** In summary, based on the totality of the record at the time of sentencing on the community control violations, we do not clearly and convincingly find that the trial court erred when it determined (1) that a sentence imposing consecutive sentences on

three of 19 counts of forgery, totaling 30 months in prison, was necessary to protect the public from future crime or to punish Stevens, (2) that consecutive service was not disproportionate to the seriousness of Stevens's conduct and to the danger he posed to the public, and (3) that his history of criminal conduct demonstrated that consecutive sentences were necessary to protect the public from future crime by him. Because these findings are supported by the record, we need not discuss whether the trial court erred in making its additional finding that Stevens was awaiting sentencing in Montgomery C.P. No. 2010-CR-683 when the forgery offenses were committed in June and July of 2011.<sup>3</sup>

{¶ 22} Finally, defense counsel noted that Stevens's offenses were related to his heroin addiction, and Stevens reported that he had been "clean" since August 2011. There is no evidence that Stevens had relapsed, and there is no discussion of a chemical dependency evaluation, treatment, or urinalysis or other sanctions which the court held in abeyance. Nevertheless, once the trial court determined that it would revoke Stevens's community control, the trial court had the discretion to determine the appropriate sanction; it was not required to reinstate community control (with or without more severe sanctions) or to impose concurrent sentences when consecutive sentences were supported by the record.

{¶ 23} Stevens's assignment of error is overruled.

{¶ 24} The trial court's judgment will be affirmed.

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FAIN, J., and WELBAUM, J. concur.

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<sup>3</sup> It appears that the Montgomery County offense which resulted in the September 9, 2011 placement on ILC occurred on March 9, 2010. However, we cannot tell from this record when Stevens applied for ILC.

Copies mailed to:

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