

[Cite as *State v. Norris*, 2015-Ohio-1397.]

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

STATE OF OHIO

Plaintiff-Appellee

v.

TODD M. NORRIS

Defendant-Appellant

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Appellate Case No. 26422

Trial Court Case No. 2014-CR-486

(Criminal Appeal from
Common Pleas Court)

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OPINION

Rendered on the 10th day of April, 2015.

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WELBAUM, J.

{¶ 1} Defendant-appellant, Todd M. Norris, appeals from the decision of the Montgomery County Court of Common Pleas ordering him to complete the MonDay program as a result of Norris violating his community control sanctions. For the reasons outlined below, the judgment of the trial court will be affirmed.

{¶ 2} On June 17, 2014, Norris pled guilty to one count of aggravated assault in violation of R.C. 2903.12(A)(1), a felony of the fourth degree. Following his plea, the trial court sentenced Norris to community control sanctions not to exceed five years. Norris's community control was conditioned upon him satisfying 15 special criteria. Of relevance to this case, Norris was ordered to comply with the general conditions of probation, pay restitution in the amount of \$350, complete all treatment at Nova Behavioral Health, attend community employment classes offered by Goodwill Easter Seals, complete anger management counseling, complete 50 hours of community service, obtain and maintain verifiable employment, submit 10 job applications per week until employment is obtained, and not be in any place where he knows or has reason to know illegal drugs, stolen property, or any firearms are present.

{¶ 3} On September 4, 2014, Norris's probation officer, Ryan Addison, arrested Norris for violating the conditions of his community control sanctions. Shortly thereafter, on September 8, 2014, the probation department filed a notice of revocation of community control sanctions. Norris was then released on bond and the trial court held a revocation hearing on September 24, 2014.

{¶ 4} At the revocation hearing, Addison testified that between June 17, 2014 and September 4, 2014, Norris violated the conditions of his community control by failing to:

(1) report to Addison for a scheduled meeting; (2) obtain and maintain verifiable employment; (3) verify that he submitted ten job applications per week; (4) attend Goodwill Easter Seals employment classes; (5) attend anger management counseling; (6) attend Nova Behavioral Health for drug and alcohol treatment; (7) complete 50 hours of community service; and (8) make restitution payments. According to Addison, Norris also violated the conditions of his community control by possessing stolen property—a University of Dayton identification card that was reported stolen by the owner.

{¶ 5} The defense elicited testimony from Addison and Norris indicating that after Norris was arrested for his violation and let out on bond, Norris reported to Addison weekly, paid all restitution and fines, obtained employment, attended six anger management classes, attended eight meetings at Nova Behavioral Health, attended one Goodwill Easter Seals employment class, and completed ten hours of community service. However, it was also confirmed that prior to his arrest, Norris did almost nothing to comply with the conditions of his community control between June 17, 2014 and September 4, 2014.

{¶ 6} Norris testified that his failure to comply during that period amounted to an “honest mistake” and misunderstanding as to when he needed to satisfy the conditions and meet with his probation officer. He also testified that he had made attempts to comply with the conditions during that period. Norris, however, admitted that that he initially did not “pay close attention” to his community control sanctions and “put it off a little bit.” Trans. (Sept. 24, 2014), p. 23, 30.

{¶ 7} After hearing all the testimony, the trial court found that Norris violated the conditions of his community control sanctions by failing to report to his probation officer,

failing to attend the Goodwill Easter Seals employment classes as ordered, failing to complete community service as ordered, and possessing stolen property. The trial court then ordered Norris to be screened for eligibility to participate in the MonDay and S.T.O.P. programs. After this screening was complete, Norris was determined eligible for both programs.

{¶ 8} The revocation proceedings recommenced on September 30, 2014. On that day, the trial court determined that Norris's violations did not warrant the revocation of his community control sanctions. However, the trial court also found that Norris had not taken his supervision seriously and that his testimony lacked credibility. As a result, the trial court imposed a stricter community control sanction by ordering Norris to complete the MonDay program on a no-breaks status. Norris now appeals from that decision.

{¶ 9} Under his sole assignment of error, Norris contends that the trial court committed prejudicial, reversible error by ordering him to complete the MonDay program. Specifically, Norris claims that the trial court disregarded mitigating factors, such as the progress he has made toward completing the conditions of his community control, the fact that he had no prior felonies, and the anxiety and depression he suffered as a result of the deaths of his father and sister in August 2011 and May 2014, respectively. Norris also claims the trial court exhibited bias and prejudice against him and/or his trial counsel by ordering him to the MonDay program as opposed to the less restrictive S.T.O.P. program.

{¶ 10} “ ‘R.C. 2929.15(B) provides a trial court with three options if an offender violates a condition or conditions of community control. * * * These are: (1) extend the terms of the community control sanction[;] (2) impose a prison term that does not exceed that prison term specified by the court at the offender's sentencing hearing; or (3) impose

a stricter community control sanction.’ ” *State v. Lewis*, 2d Dist. Montgomery No. 23505, 2010-Ohio-3652, ¶ 15, quoting *State v. Palacio*, 6th Dist. Ottawa No. OT-07-015, 2008-Ohio-2374, ¶ 8. “A trial court’s choice of sanction under R.C. 2929.15(B), where the defendant has violated the conditions of community control, is subject to review on appeal under an abuse of discretion standard.” (Citations omitted.) *Id.*

{¶ 11} “A trial court abuses its discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary.” *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34, citing *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). “It is to be expected that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary.” *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). “A decision is unreasonable if there is no sound reasoning process that would support that decision.” *Id.*

{¶ 12} In exercising its discretion, the trial court found that Norris’s community control violation did not warrant the revocation of his community control sanctions. Rather, the court decided to impose a stricter sanction, i.e., completion of the MonDay program on a no-breaks status. Norris contends that due to his progress in completing his community control sanctions, his lack of a felony record, and the anxiety and depression caused by the deaths of his family members, the trial court should have allowed him to continue to meet the original conditions, or, alternatively, ordered him to complete the S.T.O.P. program.

{¶ 13} After reviewing the record in this case, we do not find that the trial court

abused its discretion in sentencing Norris to the MonDay program. At the revocation hearing, Norris admitted that he initially did not pay close attention to his community control sanctions and put off his compliance. Indeed, the record establishes that after Norris was placed on community control on June 17, 2014, he did almost nothing to comply with its conditions until after he was arrested for noncompliance on September 4, 2014. While the record indicates that Norris became more motivated to comply with the conditions after his arrest, and completed some of those conditions, this does not change the fact that he did almost nothing to comply with his community control sanctions for approximately three months. Accordingly, it was reasonable for the trial court to find that Norris did not take his supervision seriously and to question his newfound motivation.

{¶ 14} Although Norris attempted to provide reasons for his noncompliance at the revocation hearing, the trial court found that his statements lacked credibility. We must defer to the trial court's determination on issues of credibility. *State v. Eversole*, 2d Dist. Montgomery No. 22680, 2009-Ohio-2174, ¶ 12, citing *State v. Miller*, 10th Dist. Franklin No. 03AP-1004, 2004-Ohio-1007, ¶ 10. At the revocation hearing, Norris also acknowledged that he has an alcohol problem, which could be treated on a more consistent basis at the MonDay program.

{¶ 15} For the foregoing reasons, we do not find that the trial court abused its discretion in ordering Norris to complete the MonDay program as a result of violating his community control sanctions.

{¶ 16} We also find no merit in Norris's allegation that the trial court exhibited bias or prejudice toward him and/or his trial counsel upon ordering him to complete the MonDay program as opposed to the S.T.O.P. program. "[A] trial judge is presumed not

to be biased or prejudiced, and the party alleging bias or prejudice must set forth evidence to overcome the presumption of integrity.’ ” *Eller v. Wendy’s Internatl., Inc.*, 142 Ohio App.3d 321, 340, 755 N.E.2d 906 (10th Dist.2000), quoting *Okocha v. Fehrenbacher*, 101 Ohio App.3d 309, 322, 655 N.E.2d 744 (8th Dist.1995). (Other citation omitted.) “[T]he appearance of bias or prejudice must be compelling to overcome these presumptions.” (Citation omitted.) *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5. “It is well established that dissatisfaction or disagreement with a judge’s rulings, even if those rulings may be erroneous, does not constitute bias or prejudice * * *.” (Citations omitted.) *In re Disqualification of Floyd*, 101 Ohio St.3d 1217, 2003-Ohio-7351, 803 N.E.2d 818, ¶ 4.

{¶ 17} Here, Norris has failed to present compelling evidence of judicial bias or prejudice. Instead, Norris simply disagrees with the trial court’s decision ordering him to the MonDay program, which was a decision entirely within the trial court’s discretion. We also note that Norris’s claim of bias and prejudice is belied by the fact that the trial court decided not to revoke his community control sanctions, as the court ultimately gave him a second chance to comply, albeit on stricter conditions.

{¶ 18} Having concluded that the trial court did not abuse its discretion in ordering Norris to complete the MonDay program and finding no evidence of judicial bias or prejudice, Norris’s sole assignment of error is overruled and the judgment of the trial court is affirmed.

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DONOVAN, J. and HALL, J., concur.

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