**[Cite as *State v. Springer*, 2015-Ohio-1941.]**

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

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| STATE OF OHIO | : | |
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| Plaintiff-Appellee | : | C.A. CASE NO. 2014-CA-86 |
| | : | |
| v. | : | T.C. NO. 14CR214 |
| | : | |
| KRISTINA SPRINGER | : | (Criminal appeal from |
| | : | Common Pleas Court) |
| Defendant-Appellant | : | |
| | : | |

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**O P I N I O N**

Rendered on the ___15th___ day of _____May_____, 2015.

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DONOVAN, J.

**{¶ 1}** Defendant-appellant Kristina Springer appeals her conviction and sentence for three counts of child endangering, in violation of R.C. 2919.22(A)(1), all felonies of the fourth degree. Springer filed a timely notice of appeal with this Court on July 30, 2014.

**{¶ 2}** The incident which forms the basis for the instant appeal occurred on March

18, 2014, when an intoxicated Springer drove to the Ooh Ooh Drive Thru in Springfield, Ohio, with three of her children, ages four, six, and seven, in the vehicle. After being confronted regarding her drunken condition and erratic driving by another customer, Springer drove away, leaving her three children at the drive thru. The police were called and given a description of Springer. Additionally, another customer who witnessed Springer's conduct followed her to her residence and reported the location to the police.

**{¶ 3}** Shortly thereafter, Springer was found by Springfield police at her residence. Springer's other two other children, ages ten and thirteen, were also at the residence. Springfield Police Officer Sergeant Pergram described Springer as appearing very intoxicated and bleeding from the nose. Sgt. Pergram stated that Springer briefly became belligerent when she was questioned regarding her actions at the drive thru but was eventually taken into custody without further incident. Once at the police station, Springer admitted to police that prior to driving to the drive thru, she drank two "screwdrivers" and ingested two klonopin pills.

**{¶ 4}** On March 25, 2014, Springer was indicted for five counts of child endangering, all felonies because of a previous conviction for misdemeanor child endangering dating back to October 19, 2012. On May 29, 2014, Springer pled guilty to three counts of child endangering in return for dismissal of the remaining two counts. The trial court ordered that a presentence investigation report (PSI) be prepared and set the matter for disposition on July 11, 2014. Springer was released on her own recognizance after her plea hearing without any condition other than compliance with the "orders and/or recommendations of the Clark County Job and Family/Social Services."[1]

[1] We note that the record is devoid of any case plan or other recommendations made by

**{¶ 5}** At her sentencing hearing, the trial court ordered Springer to submit to a drug screen.[2] Springer tested positive for cocaine use which she ultimately admitted to during the sentencing hearing. By testing positive for cocaine, the trial court found that Springer had violated a condition of her bond and sentenced her to eighteen months in prison pursuant to R.C. 2929.13(B)(1)(b)(iii).

**{¶ 6}** It is from this judgment that Springer now appeals.

**{¶ 7}** Springer's sole assignment of error is as follows:

**{¶ 8}** "APPELLANT'S 18 MONTH PRISON SENTENCE IS CONTRARY TO LAW."

**{¶ 9}** In her sole assignment, Springer contends that because she was not expressly instructed to refrain from illegal drug usage while awaiting sentencing on her own recognizance, her admitted use of cocaine does not constitute a violation of the stated bond conditions. Thus, Springer asserts that the trial court erred when it sentenced her to eighteen months in prison rather than a term of community control as mandated by R.C. 2929.13(B)(1)(a).

**{¶ 10}** Initially, we note that Springer did not object to the trial court's imposition of the prison sentence at disposition. Accordingly, Springer has waived all but plain error regarding the sentence that was imposed. Crim.R. 52(B); see *State v. Boykin,* 2d Dist. Montgomery No. 19896, 2004-Ohio-1701, ¶ 18. "Counsel's failure to object 'constitutes

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the Clark County Job and Family/Social Services.

[2] The facts in instant case are similar to those found in our recent opinion, *State v. Mollett*, 2d Dist. Clark No. 2014-CA-85, 2015-Ohio-1670. In *Mollett*, the trial court released the appellant on an own-recognizance bond pending sentencing after she pled guilty to one count of receiving stolen property. At the sentencing hearing, the trial court ordered appellant to submit to a drug test without any prior notification. The appellant tested positive for opiates, and the trial court imposed a prison term of ten months. Because the appellant had completed her sentence before her appeal reached this Court, we did not address the merits of the appeal regarding the issue of the drug test.

a waiver of any claim of error thereto, unless, but for the error, the outcome of the trial clearly could have been otherwise.' " *Id*.

**{¶ 11}** R.C. 2929.13(B)(1)(a) sets forth a presumption of community control if an offender is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence or that is a qualifying assault offense. See *State v. Taylor*, 15 N.E.3d 900, 2014-Ohio-2821, ¶ 6 (2d Dist.). However, pursuant to R.C. 2929.13(B)(1)(b)(iii), the trial court has discretion to impose a prison term upon said offender if the offender violated a term of the conditions of bond as set by the court. The relevant portions of R.C. 2929.13(B)(1) provide as follows:

> (a) Except as provided in division (B)(1)(b) of this section, if an offender is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence ***, the court shall sentence the offender to a community control sanction of at least one year's duration if all of the following apply:
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> ***
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> (ii) The most serious charge against the offender at the time of sentencing is a felony of the fourth or fifth degree.
>
> ***
>
> (b) The court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence if any of the following apply:
>
> ***
>
> (iii) The offender violated a term of the conditions of bond *as set by the*

*court*.

(Emphasis added).

**{¶ 12}** At the sentencing hearing in the instant case, the trial court specifically relied on *In re Mason*, 116 Ohio App.3d 451, 454, 668 N.E.2d 552 (7th Dist.1996), which stated as follows:

> The fact that the court did not expressly state as conditions to bail that petitioner may not violate criminal provisions of the Revised Code is immaterial. These inherent conditions exist for every issuance of bail. Any conditions that a court may attach to the issuance of bail are not granted in lieu of the criminal provisions of the Revised Code, but in addition to them. These are conditions by which all citizens of the state are bound, regardless of status. *** Where an accused is free on bail, however, and the court determines that the accused has violated conditions of bail, whether the conditions be express or implied, the accused is subject to the court's sanctioning authority for violation of the conditions ***.

**{¶ 13}** Based on the language in *Mason*, the trial court found that refraining from the use of illegal drugs was an inherent or implied condition of Springer's bond which she violated by testing positive for cocaine at the sentencing hearing. The trial court reasoned that she was not entitled to mandatory community control, and it sentenced her to a prison term pursuant to R.C. 2929.13(B)(1)(b)(iii).

**{¶ 14}** The facts in *Mason*, however, are distinguishable from those presented in the instant case. In *Mason*, the issue before the Seventh District concerned a defendant's petition for habeas relief from a trial court's order revoking his bail pending his

trial on a charge of carrying a concealed weapon. Shortly after the defendant was released on bail, he was charged with two counts of attempted murder and one count of witness intimidation. The trial court subsequently revoked his bail, citing the increased level of the new offenses and the risk of the defendant fleeing the jurisdiction.

**{¶ 15}** The *Mason* court held that the revocation of the defendant's bail was reasonable under the circumstances. Specifically, the Seventh District found that it was reasonable for a trial court, once it became aware of the new charges of attempted murder and witness intimidation, to revoke defendant's bail in order to protect the integrity of the court.

**{¶ 16}** Unlike *Mason*, the facts in the instant case do not involve a petition for habeas corpus. In *Mason*, the defendant's bond was revoked after he was charged with attempted murder and witness intimidation while awaiting trial for a CCW charge. Conversely, Springer was out on an OR bond while awaiting sentencing on charges of child endangerment. Springer was not charged with any additional offenses while awaiting her sentencing hearing, nor was the trial court given cause to revoke her bond prior to disposition. Springer complied with her own-recognizance bond by appearing at disposition. Accordingly, the trial court's reliance on *Mason* is misplaced.

**{¶ 17}** Recently, the Tenth District addressed similar issues in *State v. Hughey*, 10th Dist. Franklin No. 13AP-135, 2013-Ohio-4155, wherein a defendant pled guilty to three misdemeanor counts of attempted receiving stolen property and one count of receiving stolen property, a felony of the fourth degree. As is the case with Springer, the defendant in *Hughey* was entitled to a presumption of community control pursuant to R.C. 2929.13(B)(1)(a). At his plea hearing, the trial court informed the defendant that as an

express condition of his bond, he would be subject to random drug tests. Approximately two weeks later, the trial court revoked the defendant's bond when he tested positive for heroin. Pursuant to R.C. 2929.13(B)(1)(b)(iii), the trial court sentenced the defendant to fifteen months in prison.

**{¶ 18}** On appeal, the defendant argued that because the bond conditions set by the trial court did not explicitly prohibit using heroin, he did not violate the terms of bond. *Id*. at ¶ 12. Citing *Mason*, the *Hughey* court ultimately held that although the prohibition against heroin use was not expressly stated, the condition to refrain from *any* illegal drug use was implied in the stated requirement that the defendant would be subject to random drug tests. "By requiring appellant to undergo drug screenings while on bond, the trial court clearly expressed its intention that appellant refrain from using illegal substances, including heroin, during that timeframe." *Id*. at ¶ 13.

**{¶ 19}** The critical distinction between *Hughey* and the instant case is that at no time during the plea hearing was Springer ever informed by the trial court that as a condition of her OR bond, she would be subject to random drug screenings. Unless otherwise expressed by the trial court, the only condition of an own-recognizance bond is that the defendant appear on the date specified by the court. See *State v. Crawford*, 2d Dist. Montgomery No. 26073, 2014-Ohio-4599. As done by the trial court in *Hughey*, the court here should have informed Springer at her plea hearing that she would be subject to random screenings as a special condition of her own-recognizance bond. The plain language of R.C. 2929.13(B)(1)(b)(iii) expressly states that the trial court can avoid the presumption of community control and "impose a prison term upon an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of

violence" only if "[t]he offender violated a term of the conditions of bond *as set by the court*."

**{¶ 20}** Here, it is undisputed that at no time did the trial court expressly state that as a special condition of Springer's own-recognizance bond, she would be subject to random drug screenings. All that was required of Springer was that she appear for her sentencing hearing, which she did. Thus, the trial court violated Springer's constitutional right to due process when he, without any prior notice, ordered her to submit to a drug screen at the sentencing hearing. We note that this opinion should in no way be understood to condone or turn a blind eye to the use of illegal drugs. Rather, we simply find that a trial court is required to provide notice to a defendant if it intends to order him or her to submit to a drug screen as a condition of an own-recognizance bond. Therefore, we find that because Springer did not violate "a term of the conditions of bond *as set by the court*," the trial court plainly erred when it imposed a prison sentence upon appellant. R.C. 2929.13(B)(1)(b)(iii).

**{¶ 21}** Springer's sole assignment of error is sustained.

**{¶ 22}** Springer's sole assignment of error having been sustained, the sentence imposed by the trial court is reversed, and this matter is remanded for resentencing in accordance with the law and consistent with this opinion.

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FAIN, J. concurs.

HALL, J., concurring:

**{¶ 23}** I agree that under the circumstances of this case the sentence for the appellant should have presumptively been community control. It is readily apparent from

this case and State v. Mollett, 2d Dist. Clark No. 2014-CA-85, 2015-Ohio-1670 that this trial court has intentionally thwarted the statutory requirement of presumptive community control in R.C. 2929.13(B)(1)(a). I write separately only to express my opinion that abstaining from the use of illegal drugs while on bond is an implied condition of bond that does not have to be separately stated. But I agree that in this case the trial court's sentence was the result of a denial of due process and therefore I concur.

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