[Cite as *State v. Grodhaus*, 2001-Ohio-2511.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	Case No. 00CA40
vs.	:	
	:	DECISION AND JUDGMENT ENTRY
Joseph Grodhaus,	:	
	:	Released: 7/13/01
Defendant-Appellant.	:	

APPEARANCES

Michael E. Morgan, Marietta, Ohio, for appellant.

Alison L. Cauthorn, Marietta, Ohio, for appellee.

Kline, J.:

Joseph Grodhaus appeals the Washington County Court of Common Pleas' judgment sentencing him to two years imprisonment for his violation of community control sanctions. Because the trial court failed to select a specific prison term from the range of possible prison terms available for Grodhaus' offense at the original sentencing hearing, we regretfully agree. Accordingly, we reverse the judgment of the trial court.

I.

Grodhaus burglarized a residence in Washington County on March 17, 1997. Grodhaus pled guilty to the burglary charge arising from that incident. The maximum term of imprisonment available for the burglary charge was five years imprisonment. The court sentenced Grodhaus to five years of community control. At the sentencing hearing, the trial court warned Grodhaus that "[i]f you are found to have violated community control, the court will impose a prison term of up to five years."

Grodhaus subsequently committed several violations of his community control sanctions. The trial court found that prison was consistent with the principles and purposes of sentencing and that the shortest possible prison term would demean the seriousness of the offense and would not adequately protect the public. Accordingly, the trial court sentenced Grodhaus to two years in prison.

Grodhaus timely appeals, asserting the following single assignment of error:

> THE TRIAL COURT ERRED WHEN IT SENTENCED APPELLANT TO TWO YEARS IN PRISON AFTER A VIOLATION OF COMMUNITY CONTROL SANCTION WHEN THE COURT HAD NOT PREVIOUSLY CHOSEN THE SPECIFIC PRISON TERM FROM THE RANGE OF PRISON TERMS, PURSUANT TO R.C. 2929.14, AND INDICATED THAT TERM TO APPELLANT FOR AS *(SIC)* A CONSEQUENCE OF SUCH VIOLATION.

II.

Grodhaus argues in his only assignment of error that the trial court erred in sentencing him to two years in prison because the court did not provide the required statutory notice to preserve the availability of a prison sentence as a penalty for a violation of the community control sanctions. We reluctantly agree.

A trial court has three options for punishing offenders who violate community control sanctions. The 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. R.C. 2929.15(B); *State v. Brown* (2000), 136 Ohio App. 3d 816, 821. R.C. 2929.15(B) states that, if the court opts to impose a prison sentence upon an offender who violates the conditions of his community control sanction, the prison term "shall be within the range of prison terms available for the offense for which the sanction that was violated was imposed and shall not exceed *the prison term specified* in the notice provided to the offender at the sentencing hearing pursuant to division (B)(5) of section 2929.19 of the Revised Code." (Emphasis added).

R.C. 2929.19(B)(5) states:

> If the sentencing court determines at the sentencing hearing that a community control sanction should be imposed

> * * * [t]he court shall notify the offender that, if the conditions of the sanction are violated * * * the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the *specific* prison term that may be imposed as a sanction for the violation, *as selected by the court from the range of prison terms* for the offense pursuant to section 2929.14 of the Revised Code. (Emphasis added).

Thus, at a sentencing hearing wherein the court intends to impose community control for an offense but wishes to reserve the option of imprisonment upon a violation of community control, the court must select a *specific* prison term from the range of potential prison terms available for the offense. *State v. Marvin* (1999), 134 Ohio App.3d 63, 68; *State v. McPherson* (Apr. 18, 2001), Washington App. No. 00CA29, unreported.

In *McPherson,* the trial court informed the offender that "all the factors [were] present" to justify sentencing him to the maximum prison term. In sentencing him to community control instead, the court unequivocally informed the offender that he would be sent to prison if he violated community control. However, the court did not select a prison term from the range of prison terms available for the offense. This court determined that, because the trial court failed to select a specific term from the range of prison terms available for the offense, the trial court could not sentence the offender to

prison upon a violation of community control. Likewise, in *State v. Alexander* (Aug. 10, 1999), Lawrence App. No. 98CA29, unreported, we determined that an appealable issue arose when the sentencing court informed an offender of the minimum and maximum terms of imprisonment available, but did not select a specific term from that range of terms.

We recognize that our view is at odds with other appellate courts of this state. In *State v. Nutt* (Oct. 19, 2000), Franklin App. No. 00AP-190, unreported, the court determined that an offender who was informed that he could receive "one to five years" imprisonment for violating community control received sufficient notice under the statute. Likewise, in *State v. Miller* (Dec. 30, 1999), *Tuscarawas App. No. 1999 AP 02 0010,* unreported, the court found sufficient notification where the trial court informed the offender that he might be imprisoned "for up to the maximum stated term."

The state urges us to accept these interpretations of the statutory sentencing scheme and find that, even if the trial court did err in failing to select a specific term, the error did not prejudice Grodhaus. However, in arriving at our decision in *McPherson,* we noted that "[i]t is axiomatic that statutes mean what they say." *McPherson,* citing *Lucas Cty. Auditor v. Ohio Bur. of Emp. Serv.* (1997), 122 Ohio App.3d 237,

246; *Woods v. Farmers Ins. of Columbus, Inc.* (1995), 106 Ohio App.3d 389, 394. Additionally, we noted that the Ohio Supreme Court has "expressed its intent to enforce R.C. Chapter 2929 exactly as it is written." *McPherson* at fn.4, quoting Griffin & Katz, Ohio Felony Sentencing Law (2000 Ed.) 176, Section AC 2929.19-V, citing *State v. Edmonson* (1999), 86 Ohio St.3d 324. Because we are "constrained to apply the law as it is written, not as we might have wished it was written," *McPherson,* we must conclude that merely informing an offender of the maximum prison term does not satisfy the requirements of R.C. 2929.19(B)(5).

The state correctly points out that the present statutory scheme also requires the trial court to hold a new sentencing hearing, pursuant to R.C. 2929.14, before it can impose a sentence after a community control violation. See *State v. Brown* (2000), 136 Ohio App.3d 816, 823; *State v. Gilliam* (June 10, 1999), Lawrence App. No. 98 CA 30, unreported. The state urges that our statutory interpretation, requiring the trial court to notify appellant of a specific prison term to be imposed if he violates community control, pursuant to R.C. 2929.19(B)(5), but then requiring the trial court to revisit the sentencing guidelines when punishing the offender for a violation of those sanctions, presents a conundrum for the sentencing court. However, as we stated in *McPherson:*

> Although we may agree with the State's reasoning, it appears that the Ohio General Assembly has unleashed confusion and complexity with the new sentencing scheme. Moreover, as we have done time and again, we stress that nothing in this opinion should be misconstrued as criticism for the way this case was handled by the trial court or by the prosecutor's office. The problem here lies with the endless complexity of the convoluted and oftentimes contradictory provisions of these statutes.

McPherson, supra, citing *State v. Evans* (Dec. 13, 2000), Meigs App. No. 00CA003, unreported; *State v. Combs* (July 18, 2000), Scioto App. No. 00 CA 2692 & 99 CA 2679, unreported; *State v. Ferguson* (Aug. 19, 1999), Pickaway App. No. 99 CA 6, unreported.

Thus, while the trial court clearly attempted to comply with the statute, we cannot affirm its ruling. Grodhaus abused the trial court's trust, but will escape any prison time because the court failed to select a specific prison sentence that it would impose for a violation of community control.

We regretfully conclude that the trial court did not indicate during sentencing the specific prison term it would impose for a violation of community control sanctions, and therefore that R.C. 2929.15(B) precluded the court from imposing a prison sentence. Accordingly, we sustain Grodhaus' assignment of error, and we remand this case to the trial court for statutorily proper sentencing on Grodhaus' community control violation.

JUDGMENT REVERSED.

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Harsha, J., Dissenting:

Upon reflection, I agree with my colleagues in the Fifth and Tenth Districts that substantial compliance with R.C. 2929.19(B)(5) is all that's necessary to provide a defendant with notice of the sanction for violating community control. See Miller, supra and Nutt, supra. I urge the appellee to seek certification of a conflict on this issue.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE REVERSED and the cause remanded to the trial court for further proceedings consistent with this opinion and that costs herein be taxed to the appellee.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as the date of this Entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, P.J.: Concurs in Judgment and Opinion.
Harsha, J.: Dissents with Attached Dissenting Opinion.

For the Court

BY: _____
Roger L. Kline, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.