

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

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	
	:	Case Nos. 13CA7 & 13CA8
v.	:	
	:	
AMY LEEDY,	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
Defendant-Appellant.	:	Released: 04/28/2015

APPEARANCES:

Timothy Young, Ohio Public Defender and Stephen P. Hardwick, Ohio Assistant Public Defender, Columbus, Ohio for appellant.

Colleen S. Williams, Meigs County Prosecuting Attorney and Jeremy L. Fisher, Meigs County Assistant Prosecuting Attorney, Pomeroy, Ohio for appellee.

Hoover, P.J.

{¶ 1} Appellant-defendant Amy Leedy appeals her sentence from the Meigs County Court of Common Pleas. This appeal is a consolidation of two different matters. In both cases, Leedy entered pleas of guilty to three different charges. Here on appeal, Leedy argues that the trial court erred in ordering her to serve a period of community control consecutively to the two consecutive prison terms. For the following reasons, we overrule appellant's sole assignment of error and affirm the judgment of the trial court.

{¶ 2} On August 7, 2012, Amy Leedy was indicted on two counts of Breaking and Entering, fifth degree felonies, in violation of R.C. 2911.13(A) in case number 12CR134. While case number 12CR134 was pending, Leedy was indicted in a separate case number 12CR185 on

one count of Theft, a fifth degree felony, in violation of R.C. 2913.02(A)(2). In May 2013, Leedy changed her not guilty pleas on all three charges to guilty pleas after she accepted the terms of the following plea agreement:

THE COURT: Madame Prosecutor, would you please advise the Court of the plea agreement?

ATTORNEY FRANZMANN: Yes, Your Honor. The defendant would be agreeing to plead guilty to counts one and two in case number 12 CR 134. The State would be recommending community control on both counts for three years with an underlying sentence of nine months on each count. In case 12 CRB 185 (sic), there is a disagreement between the State and defense counsel. We are both agreeing that she'll plead guilty to one count of theft, which is count one. State would be recommending prison term of twelve months. We would say that judicial release is okay after six months, total jail and prison time combined into the MonDay Program or a similar program. Defendant's counsel will be arguing for community control on that charge. We would also agree with these guilty pleas not to indict on the incident with Sergeant Leonard with the dislocation of his ribs.

{¶ 3} For count one Breaking and Entering in Case Number 12CR134, the trial court sentenced Leedy to twelve months. For count two Breaking and Entering in Case Number 12CR134, the trial court sentenced Leedy to five years community control with an underlying term of twelve months. As for the one count of Theft in case number 12CR185, the trial court sentenced Leedy to twelve months to be served consecutively to the 12 months imposed in count one Breaking and Entering in case number 12CR134. The trial court ordered the 5 years of

community control to be served after Leedy completes her 24-month prison term. In other words, all three sentences run consecutively to one another. Now, Leedy presents this appeal of her sentence.

Appellant's First Assignment of Error:

THE TRIAL COURT ERRED BY RUNNING MRS. LEEDY'S COMMUNITY CONTROL CONSECUTIVELY WITH HER PRISON TERM. JUDGMENT ENTRY (JUL. 25, 2014), CASE NO. 12CR 134; JUDGMENT ENTRY 9JUL. 25, 2014, CASE NO. 12CR 185; T.P. 10 (JULY 25, 2013); R.C. 2929.41(B)(1).

{¶ 4} In her first assignment of error, Leedy argues that the statutory scheme of Senate Bill 2 does not permit a trial court to run a community control sentence consecutive to a prison term. Leedy contends that no statute gives a trial court the authority to impose community control consecutively. Lastly, Leedy argues the trial court lacked any authority to interfere with the executive branch's absolute discretion to monitor a defendant after release from prison.

{¶ 5} When reviewing felony sentences, we apply the standard of review set forth in R.C. 2953.08(G)(2). *State v. Mockbee*, 4th Dist. Scioto No. 14CA3601, 2014-Ohio-4493, ¶ 11; *State v. Graham*, 4th Dist. Highland No. 13CA11, 2014-Ohio-3149, ¶ 31; *State v. Bever*, 4th Dist. Washington No. 13CA21, 2014-Ohio-600, ¶ 13. R.C. 2953.08(G)(2) specifies that an appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either that "the record does not support the sentencing court's findings" under the specified statutory provisions or "the sentence is otherwise contrary to law."

{¶ 6} Leedy concedes that this Court has previously held that trial courts may impose both community control and prison time in the same case, but argues that this Court has not

addressed whether the sentences can run consecutively. However, in *State v. Meredith*, 4th Dist. Athens No. 02CA5, 2002-Ohio-4508, the defendant was found guilty of two counts of non-support of a dependent, in violation of R.C. 2919.21(A)(2) and two counts of non-support in violation of R.C. 2919.21(B). *Id.* at ¶ 5. The trial court sentenced the defendant to eight months in prison for count one and five years of community control for count three. The trial court ordered the defendant to serve five years of community control consecutively to the prison sentence in count one. *Id.* at ¶ 7.

{¶ 7} The appellant in *Meredith* argued that it was impermissible for the trial court to impose a prison sentence for the first violation of R.C. 2919.21(A)(2) and then impose a community control sanction for a second violation of the same statute. *Id.* at ¶ 8. Although the appellant in *Meredith* did not specifically argue that a prison term and a term of community control sanctions could not run consecutively, we found the sentence there was permitted by R.C. 2929.13(A). *Id.* at ¶ 13. R.C. 2929.13(A) states in pertinent part “a court that imposes a sentence upon an offender for a felony may impose any sanction or combination of sanctions on the offender that are provided in Sections 2929.14 to 2929.28 of the Revised Code.” Further, we found that “nothing in sentencing guidelines to prohibit this type of blended sentence.” *Id.*

{¶ 8} Other Ohio Court of Appeals have found that a trial court may order a sentence of community control to be served consecutively to a prison term. *State v. Heidrick*, 8th Dist. Cuyahoga No. 96822, 2012-Ohio-1739, ¶ 8-9; *State v. Kinder*, 5th Dist. Delaware No. 03CAA12075, 2004-Ohio-4340, ¶ 31; *State v. Randolph*, 12th Dist. Butler No. CA2003-10-262, 2004-Ohio-3350, ¶ 6-7; *State v. Ramsey*, 6th Dist. Wood No. WD-04-004, 2004-Ohio-5677, at ¶ 4.

{¶ 9} In the case sub judice, we find nothing in R.C. Chapter 2929 that prohibits trial courts from ordering a period of community control to be served consecutively to a prison sentence. An imposition of community control sanctions to be served consecutively to a prison sentence appears to be a type of combination of sentences permitted under R.C. 2929.13(A). Leedy only argues that the trial court erred in regards to the imposition of community control following the 24 months in prison. Leedy agrees with the state that the trial court made the requisite findings necessary to run two prison sentences consecutively. So the question of specific findings under R.C. 2929.14(C)(4) is not an issue here. Therefore, the sentence here must be contrary to law if it is to be overturned or modified. We do not find the sentence in this case to be in conflict with the sentencing statutes.

{¶ 10} Additionally, Leedy argues that the trial court's sentence conflicts with the Ohio Adult Parole Authority's "absolute discretion," pursuant to R.C. 2967.28(F)(1), to monitor a defendant after release from prison. Leedy contends that the trial court imposed its own post-prison conditions by using a consecutive community control term to bypass R.C. 2967.29, which permits the board of county commissioners to enter into an agreement with the department that allows the court to make joint decisions regarding parole. The appellant with *Heidrick*, 2012-Ohio-1739, also presented this argument before the Eight District Court of Appeals. *Id.* at ¶ 5. The court there rejected the argument stating: "nothing in [R.C. 2967.29] precludes the imposition of a blended sentence." *Id.* at ¶ 12. Community control sanctions and post release control are separate statutory procedures. While it is true individuals leaving prison may or may not be subject to post release control, community control sanctions are a distinct penalty the trial court imposes once an individual is found guilty of an offense. *See generally* R.C. 2929.15.

Accordingly, we do not find that the trial court's sentence of five years of community control conflicts with the discretion of the Adult Parole Authority' to enforce post-prison conditions.

{¶ 11} In conclusion, because the sentence of community control sanctions ordered to be served consecutively to a prison term is permitted under R.C. 2929.13(A), it is not contrary to law. Appellant's sole assignment of error is overruled; and the decision of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

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

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of the proceedings in that court. If a stay is continued by this entry, it will terminate at the earliest of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to the expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to [Rule 27 of the Rules of Appellate Procedure](#).

Abele, J. and McFarland, A.J.: Concur in Judgment and Opinion.

For the Court

By: _____
Marie Hoover, Presiding 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.