[Cite as *State v. Taylor*, 2015-Ohio-5394.]

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 15CA11
vs.	:	
JIMMY R. TAYLOR,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

William T. Cramer, Westerville, Ohio, for appellant.

Abigail M. Saving, Law Director for City of Logan, Logan, Ohio, for appellee.

CRIMINAL APPEAL FROM MUNICIPAL COURT
DATE JOURNALIZED: 12-14-15
ABELE, J.

{¶ 1} This is an appeal from a Hocking County Municipal Court judgment that revoked "probation" and sentenced Jimmy R. Taylor, defendant below and appellant herein, to serve his previously suspended jail sentences. Appellant assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT WAS NOT PERMITTED TO IMPOSE JAIL TIME FOR A COMMUNITY CONTROL VIOLATION BECAUSE IT FAILED TO INFORM APPELLANT AT SENTENCING OF THE POTENTIAL JAIL TIME IN ACCORDANCE WITH R.C. 2929.25."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT ABUSED ITS DISCRETION IN IMPOSING NEARLY

MAXIMUM SENTENCES CONSECUTIVELY FOLLOWING A COMMUNITY CONTROL VIOLATION."

{¶ 2} On November 18, 2014, law enforcement was summoned to deal with an intoxicated (and knife-wielding) person (appellant) who threatened several other people. The following day, three complaints were filed and each charged appellant with aggravated menacing in violation of Section 135.05(A) of the Codified Ordinances of the City of Logan. A fourth complaint was also filed and charged appellant with disorderly conduct, in violation of Section 132.04(B) of those ordinances.

{¶ 3} Subsequently, appellant agreed to plead guilty to the aggravated menacing charges in exchange for the dismissal of the disorderly conduct charge. On February 3, 2015, the trial court accepted appellant's pleas, found him guilty of the charges, and sentenced him to serve one hundred eighty days in jail on each charge, with those sentences to be served consecutively to one another. However, the court suspended the remainder of the jail sentences and imposed conditions of "probation."[1] Apparently, appellant intended to travel to South Carolina to stay with his brother and was not to return to the State of Ohio, as well as to abstain from consuming alcohol and to have no contact whatsoever with, inter alia, Cleo Taylor.

{¶ 4} Unfortunately, the terms of appellant's "probation" were apparently too rigorous. The morning after appellant's release from jail, he checked into a local hotel, drank alcohol to excess and contacted Taylor.[2] Soon thereafter, officers apprehended appellant "naked," during

[1] The record suggests that appellant had spent seventy eight days in jail prior to the hearing.

[2] The record is not exactly clear who appellant contacted. He stated that he contacted his "ex-wife." The trial court noted that appellant was caught "with the person [he] was supposed to stay away

his attempt to "walk out" of the hotel.[3]

{¶ 5} Authorities filed a notice of probation violation on February 4, 2015 and the matter came on for hearing the following month. After appellant admitted to the violation(s), the trial court reimposed the suspended jail sentences which, after credit for time served, amounted to four hundred forty days of incarceration. This appeal followed.

I

{¶ 6} In his first assignment of error, appellant asserts that the trial court erred by sentencing him to serve the previously suspended jail sentences because the court did not adequately notify him this was a possibility for a probation violation.

{¶ 7} The complaints in this case are for misdemeanor offenses. Sentences for misdemeanors may include community control sanctions. R.C. 2929.25(A)(1)(a). The terms "community control" and "probation" are functional equivalents. *State v. Guevara*, 6th Dist. Wood No. WD-05-040, 2005-Ohio-7006, at ¶5; *State v. Stevens*, 12th Dist. Butler No. CA2010–08–211, 2011-Ohio-2595, at ¶11; *State v. Evans*, 4th Dist. Meigs No. 00CA003, 2000 WL 33538779 (Dec. 15, 2000). If a court imposes one or more community control sanctions, R.C. 2929.25(A) sets forth the following requirements:

> "(3) At sentencing, if a court directly imposes a community control sanction or combination of community control sanctions . . . the court shall state the duration of the community control sanctions imposed and shall notify the offender that if any of the conditions of the community control sanctions are violated the court

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from[.]" As appellant was ordered to stay away from four people, and Taylor is the only female on the list, we assume Taylor is appellant's ex-wife.

[3] Our factual recitation of the events that followed appellant's release from jail is taken from the March 3, 2015 hearing transcript.

> may do any of the following:
>
> (a) Impose a longer time under the same community control sanction if the total time under all of the offender's community control sanctions does not exceed the five-year limit specified in division (A)(2) of this section;
>
> (b) Impose a more restrictive community control sanction under section 2929.26, 2929.27, or 2929.28 of the Revised Code, but the court is not required to impose any particular sanction or sanctions;
>
> (c) Impose a definite jail term from the range of jail terms authorized for the offense under section 2929.24 of the Revised Code." (Emphasis added.)

{¶ 8} If a court does not provide notice of the sanction that could be imposed for a community control violation, it may not impose a sanction when a defendant violates community control. See e.g. *State v. Shugart*, 7th Dist. Mahoning No. 08MA197, 2009-Ohio-2635, at ¶25; *State v. Maxwell*, 4th Dist. Ross No. 04CA2811, 2005-Ohio-3575, at ¶14; *Chillicothe v. Smittle*, 4th Dist. Ross No. 05CA2836, 2005-Ohio-4806, at ¶4. Here, it appears that appellant did not receive notice of the possible consequences for a "probation" violation.

{¶ 9} The appellee cites *Smittle* wherein we held that R.C. 2929.25(A)(3) requires a trial court to "give [a] defendant notice that it can impose a definite jail term" from a range of terms authorized by law. (Internal quotation marks omitted.) 2005-Ohio-4806, at ¶3. The appellee then cites the trial court's remarks at the February 23, 2015 hearing to show that the court satisfied this standard: (1) that it "would give a lot of days sitting on the shelf"; and (2) that "[i]f you get caught, I'm going to lock you back up." However, we believe that these statements do not fully comply with the R.C. 2929.25(A) notice requirements because they did not provide notice of the precise terms(s) of appellant's probation nor adequately warn appellant of the potential consequences that might ensue if he violated community control.

{¶ 10} We certainly sympathize with the trial court's frustration in this matter. Having been granted very generous terms of "probation," appellant almost immediately violated two terms of that community control. Consequently, our holding should not be construed to approve of appellant's behavior or criticize the trial court's desire to punish appellant. Furthermore, we noted in *Maxwell*, supra at ¶16, as follows:

"We recognize that this result appears to bar the court from ever imposing a sanction on [a defendant] for violating his community control. But this is not necessarily true. When an offender violates community control sanctions, the trial court conducts a second sentencing hearing. The trial court could notify the offender at this hearing of the possible sanctions for any further community control violations. Then, if a subsequent violation occurs, the trial court could choose a sanction from those that it noted at this second hearing." (Citations omitted.)

{¶ 11} Thus, on remand the trial court may inform appellant of the potential consequences for a violation of community control sanctions. If appellant violates those sanctions, and if proper notice had been provided, the trial court may then impose appropriate legal sanctions.

{¶ 12} Accordingly, for all of these reasons, we hereby sustain appellant's first assignment of error.

II

{¶ 13} Appellant's second assignment of error asserts that the trial court abused its discretion when it sentenced him to a "nearly maximum" prison sentence for violation of its previously imposed community control. However, in view of our disposition of appellant's first assignment of error, this assignment of error has been rendered moot and we disregard it. See App.R. 12(A)(1)(c).

{¶ 14} Having sustained appellant's first assignment of error, we hereby reverse the trial

court's judgment and remand this matter for further proceedings consistent with this opinion.

JUDGMENT REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

JUDGMENT ENTRY

It is ordered that the judgment be reversed and this case be remanded for further proceedings consistent with this opinion. Appellant to recover of appellee 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 Hocking County Municipal Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

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

Hoover, P.J. & Harsha, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, 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.