[Cite as *State v. Chamblin*, 2016-Ohio-595.]

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 14CA991
vs.	:	
MATTHEW CHAMBLIN,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Timothy Young, Ohio Public Defender, and Terrence K. Scott, Ohio Assistant Public Defender, Columbus, Ohio, for appellant.

David Kelley, Adams County Prosecuting Attorney, and Kris D. Blanton, Adams County Assistant Prosecuting Attorney, West Union, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:1-27-16

ABELE, J.

{¶ 1} This is an appeal from an Adams County Common Pleas Court judgment of conviction and sentence. Matthew Chamblin, defendant below and appellant herein, pled guilty to four counts of the illegal use of "food stamps"[1] in violation of R.C. 2913.46(B). Appellant

[1] The title of the statute actually proscribes illegal use of "Supplemental Nutrition Assistance Program," or S.N.A.P. benefits. This program replaced the traditional "food stamp" program in 1996. See generally, The History of S.N.A.P., http://www.snaptohealth.org/snap/the-history-of-snap/ (accessed October 9, 2015). Nevertheless, the indictment used the phrase "food stamps," so we do the same to be consistent.

assigns the following error for review:

> "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT IMPOSED AN UNREASONABLE PROBATION REQUIREMENT AGAINST MR. CHAMBLIN, IN VIOLATION OF R.C. 2929.15 AND IN VIOLATION OF MR. CHAMBLIN'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATE CONSTITUTION, AND ARTICLE I, SECTIONS 10 AND 16 OF THE OHIO CONSTITUTION."

{¶ 2} Appellant engaged in a scheme to use "food stamps" to buy groceries for others in exchange for cash payments. On November 7, 2013, the Adams County Grand Jury returned an indictment that charged him with eleven counts of the illegal use of food stamps in violation of R.C. 2913.46(B). Appellant initially pled "not guilty," but later agreed to plead guilty to four counts in exchange for the dismissal of the remaining counts. The trial court accepted appellant's pleas and scheduled the matter for sentencing.

{¶ 3} At the sentencing hearing, the trial court found appellant amenable to community control. The court's community control sanctions included (1) restitution of $1,711.50, (2) community service, (3) one hundred eighty day jail sentence, (4) permanent "disqualification" for food stamps, and (5) an order that appellant "not enter food pantries for assistance." This appeal followed.

{¶ 4} Appellant asserts in his assignment of error that the trial court erred by ordering that he be banned from entering food pantries in the future. We begin by noting the limited extent of the appeal in this case. Appellant does not challenge any sanction other than the court's order that he "shall not enter food pantries for assistance." Appellant argues that this order constitutes an abuse of discretion.

{¶ 5} Generally, the terms of a community control sanction are left to a trial court's sound discretion. *State v. Cauthen*, 1st Dist. Hamilton No. C– 130475, 2015-Ohio-272, at ¶11; *State v.*

Marcum, 4th Dist. Hocking Nos. 11CA8 & 11CA10, 2012-Ohio-572, at ¶8. An abuse of discretion implies that a court's attitude is unreasonable, arbitrary or unconscionable. *State v. Adams*, 60 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

{¶ 6} At the outset we wish to point out that we share the trial court's outrage about the events of this case. When asked at the change of plea hearing how he fed his family, appellant responded that he did not sell all of his food stamps and, in any event, visited food pantries to make up for the food that he did sell. At the April 29, 2014 hearing, the trial court remarked:

> "And the food pantry folks kept saying that they couldn't keep anything on their shelves, because people that were getting food stamps were selling their food stamps, and then coming and taking all the food from them, and that the truly needy people couldn't get food. * * * [W]hat little food they had was all being taken because of people abusing food stamps."

{¶ 7} We find the trial court's comments remarkably restrained in light of the extent to which appellant's behavior deprived many others of local, charitable nutrition assistance. Nevertheless, we reluctantly agree that the court's order to bar appellant future entry to food pantries is unreasonable.

{¶ 8} In *State v. Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888, 814 N.E.2d 1201, the Ohio Supreme Court set out a number of factors to determine whether a trial court abuses its discretion when it imposes terms of community control. The Court, relying on *State v. Jones*, 49 Ohio St.3d at 52–53, 550 N.E.2d 469 (1989) that addressed conditions of probation rather that community control, held:

> "Having so limited our analysis in Jones, we set forth the test for determining whether a condition reasonably relates to the three probationary goals—as reflected in former R.C. 2951.02(C)—of "doing justice, rehabilitating the offender, and insuring good behavior." 140 Ohio Laws, Part I, at 604. We stated that courts must "consider whether the condition (1) is reasonably related to

> rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation."
>
> In addition to considering whether a condition relates to these statutory goals, we observed that probation conditions "cannot be overly broad so as to unnecessarily impinge upon the probationer's liberty." This proposition, although having roots in Ohio case law, has been recognized and applied in other jurisdictions.
>
> The requirement that a condition may not be overbroad is connected to the reasonableness of a condition." (Emphasis added.) (Citations to Case Law Omitted.)

{¶ 9} Although we understand the connection between this condition and appellant's previous criminal activity, we believe that it is nevertheless overbroad. The offense for which appellant was convicted did not directly involve the local food pantry. The State cited no authority as precedent for this kind of restriction, nor have we found any such authority. To this extent, we agree the court's ruling is unreasonable and we sustain appellant's assignment of error. We point out, however, that the local charity may choose to exercise control over its premises, as all land owners are permitted to do, and deny appellant access to the premises under the threat of a trespass violation.

{¶ 10} Having sustained the assignment of error, we hereby modify the trial court's judgment to delete that portion of the final judgment that ordered appellant not to "enter food pantries for assistance." See App.R. 12(A)(1)(b). Consequently, that judgment is hereby affirmed in part and reversed in part and modified consistent with this opinion.

JUDGMENT AFFIRMED IN PART AND REVERSED IN PART AS MODIFIED.

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Harsha, J.: concurring:

{¶ 11} Just like Judge Abele, I am reluctant to reverse the trial court's sanction. But likewise, I join him in believing the sanction is too broad and lacks a reasonable nexus to the conduct/crime involved, or future criminality. *See Talty, supra.* As a general rule our court does not favor "indirect sanctions" that are permanent in nature. In fact, it is the permanent nature of the prohibition involved here that causes me to concur with the principal opinion. Had the court imposed a short-term prohibition to have the effect of teaching Chamblin a lesson in good behavior, i.e. to aid in rehabilitating him, I may have joined the dissent.

{¶ 12} Indeed, if it were up to me, Chamblin's community service would include assisting the local food bank(s) that he exploited in any manner it saw fit. For instance, I am sure their restrooms need periodic attention. Alas, I do not have that opportunity here. But as Judge Abele also points out, we are aware of nothing that would prohibit a private charity from refusing to assist Chamblin in response to his abuse of their beneficence.

{¶ 13} In the end, the prohibition is purely a punitive sanction that does nothing to ensure future good behavior. Therefore, I concur in judgment and opinion.

McFarland, J., dissenting.

{¶ 14} I respectfully dissent. Initially, I find the *Tally* case factually distinguishable because it addressed a sentencing order restricting a fundamental right and ordered Tally to "make all reasonable efforts to avoid conceiving another child". Here, the order of not entering a food pantry does not infringe on a fundamental right such as that of procreation.

{¶ 15} Secondly, because I see the order here as temporal in nature for only the two years

of Appellant's community control I don't see the permanency or find it overbroad. And, R.C. 2929.15(C) permits a trial court the ability to reduce the period of time under the sanction or impose a less restrictive sanction "if the offender, for a significant period of time, fulfills the condition of a sanction imposed." I also agree with the dissent in *Tally*, which noted the slight difference between "probation" which was at issue in *Jones* and "the community control statute" here and conclude that it "must have been enacted for a reason, as separate from probation." *Tally* at paragraph 30.

{¶ 16} Lastly, R.C. 2925.15(A)(1) provides a trial court "may impose any other conditions of release under a community control sanction that the court considers appropriate" and the order here is appropriate in my view. Further, I find the sanction imposed herein reasonably related to the overriding purposes of felony sentencing. Here, the Appellant did admit that he "visited food pantries to make up for the food that he did sell." In my view, this sanction will protect the public from future crime of the offender and punish him accordingly.

{¶ 17} Accordingly, I respectfully dissent.

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JUDGMENT ENTRY

It is ordered that the judgment be affirmed in part and reversed in part and modified consistent with this opinion. Appellee shall pay costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Adams 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, 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.

Harsha, J.: Concurs in Judgment & Opinion with Concurring Opinion
McFarland, J.: Dissents with Dissenting 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.