[Cite as *State v. Keeton*, 2010-Ohio-3173.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- LLOYD KEETON Defendant-Appellant	JUDGES: Hon. W. Scott Gwin, P.J. Hon. William B. Hoffman, J. Hon. Sheila G. Farmer, J. Case No. 09CA0126 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Richland County Court of Common Pleas, Case No. 2001-CR-324H
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	July 1, 2010

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JAMES J. MAYER, JR. PROSECUTING ATTORNEY RICHLAND COUNTY, OHIO BY: KIRSTEN L. PSCHOLKA-GARTNER Assistant Richland County Prosecutor 38 Sourt Park Street Mansfield, Ohio 44902	SAMUEL H. SHAMANSKY 511 South High Street Columbus, Ohio 43215

Hoffman, J.

{¶1} Defendant-appellant Lloyd Keeton appeals the October 5, 2009 Community Control Violation Journal Entry entered by the Richland County Court of Common Pleas. Therein, the trial court sentenced him to an aggregate term of imprisonment of five years after the trial court found him guilty of two counts of violating the terms of his community control following Appellant's guilty pleas. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE[1]

{¶2} On June 6, 2001, the Richland County Grand Jury indicted Appellant in a twenty-six count Indictment, which included counts of theft, breaking and entering, receiving stolen property, having weapons under disability, and failure to comply with the order or signal of a police officer. Appellant ultimately appeared before the trial court, withdrew his former pleas of not guilty, and entered pleas of guilty to all twenty-six counts.

{¶3} In exchange for his guilty pleas, the State recommended Appellant be sentenced to four one-year consecutive sentences on Counts 1, 2, 3, and 4, and be placed on community control thereafter. The trial court deferred sentencing on the remaining twenty-two counts contingent upon Appellant's compliance with the plea agreement. Pursuant to the plea agreement, any violation of the terms set forth therein could result in the imposition of any sentence authorized by law for the remaining twenty-two counts. Appellant also agreed not to challenge the fact he was receiving the maximum sentences on Counts 1, 2, 3, and 4, or challenge the fact the sentences were

[1] A Statement of the Facts is not necessary for our disposition of Appellant's appeal.

to be run consecutively with each other. Further, Appellant agreed not to challenge any sentence imposed by the trial court in the event the trial court determined he had violated the terms of the agreement. The trial court conducted a sentencing hearing on September 28, 2001, and imposed an aggregate term of imprisonment of four years. In late August, 2002, Appellant was released from prison and placed on community control which included electronic monitoring.

{¶4} On February 21, 2003, the State filed a Motion to Impose Sentence, asking the trial court to sentence Appellant on the remaining twenty-two counts because Appellant had failed to comply with the plea agreement as he was indicted on additional offenses in Case No. 02CR584H. Pursuant thereto, the trial court sentenced Appellant to six months on each of Counts 5, 6, 7, and 8. The trial court ordered the sentences be served consecutive to each other, and to the sentences for Counts 1, 2, 3, and 4, and run consecutively with the six month term of incarceration imposed in Case No. 02CR584H. The trial court also ordered Appellant to serve five years of community control following his release from prison.

{¶5} Appellant was placed on probation on December 14, 2007. As part of the conditions of his probation, Appellant was confined to his home on electronic monitoring. On September 15, 2009, Appellant's parole officer filed a notice of probation violations. The notice alleged, on September 14, 2009, Officer Dan Myers of the Richland County Adult Probation Department attempted a home visit on Appellant. The officer, while on route to Appellant's home, received information Appellant had tampered with his electronic monitoring watch. Officer Myers found Appellant inside his home and took him to the Richland County Courthouse for further investigation. The

officer viewed the electronic monitoring watch and found the pins which hold the watch together had been removed. Appellant was arrested and transported to the Richland County Jail. During the transport to the jail, Appellant threatened the officer's life, and referred to Officer Myers as a "bitch" and a "fag". Although the State chose not to, the threats made against Officer Myers could have been charged as disorderly conduct or aggravating menacing, and thus constituted a violation of the terms of Appellant's original agreement with the State.

{¶6} Appellant appeared before the trial court on October 2, 2009, for a hearing on the violations of the terms of his probation and the terms of his agreement. Appellant pled guilty to both violations. The trial court sentenced Appellant to six months each on Counts nine through twenty-two, and twenty-five, and one year each on Counts twenty-four and twenty-six. The trial court ordered the sentences in Counts nine through eighteen be served consecutively, and the sentences in Counts nineteen through twenty-six be served concurrently, for an aggregate term of imprisonment for five years. The trial court memorialized the sentences via Community Control Violation Journal Entry filed October 5, 2009.

{¶7} It is from this sentence Appellant appeals, raising the following assignment of error:

{¶8} "I. THE TRIAL COURT ERRED WHEN IT SENTENCED APPELLANT TO PRISON AFTER A VIOLATION OF COMMUNITY CONTROL SANCTIONS WHEN THE COURT, AT THE TIME OF THE ORIGINAL SENTENCING HEARING, DID NOT SPECIFY WHAT SENTENCE APPELLANT WOULD RECEIVE UPON A VIOLATION OF COMMUNITY CONTROL."

{¶9} Herein, Appellant maintains the trial court erred in sentencing him to a term of incarceration which had not been specified at the time Appellant was originally sentenced.

{¶10} Pursuant to the agreement executed between Appellant and the State in September, 2001, Appellant agreed he would "not challenge the fact that he is receiving the maximum sentence upon four(4) counts nor that said sentences are ordered to run consecutively with each other; further [Appellant] will not challenge any sentence imposed on him by the court in the event it is determined that [Appellant] has violated the terms of this agreement." Agreement at 2.

{¶11} We find Appellant has waived any right to appeal the sentence imposed by the trial court for his violation of community control. Accordingly, we find we need not reach the merits of Appellant's appeal.

{¶12} Appellant's sole assignment of error is overruled.

{¶13} The judgment of the Richland County Court of Common Pleas is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Farmer, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
LLOYD KEETON	:	
	:	
Defendant-Appellant	:	Case No. 09CA0126

For the reason stated in our accompanying Opinion, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER