

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RICHARD JAMERSON

Defendant-Appellant

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JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 2014 AP 09 0034

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Case No. 2010 CR 03 0064

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

June 11, 2015

APPEARANCES:

For Plaintiff-Appellee

PATRICK J. WILLIAMS
125 East High Avenue
New Philadelphia, OH 44663

For Defendant-Appellant

GERALD A. LATANICH
153 North Broadway
New Philadelphia, OH 44663

Farmer, J.

{¶1} On May 26, 2010, appellant, Richard Jamerson, pled guilty to one count of intimidation in violation of R.C. 2921.04, one count of tampering with evidence in violation of R.C. 2921.12, and one count of assault in violation of R.C. 2903.13. The trial court ordered a presentence investigation.

{¶2} A sentencing hearing was held on July 19, 2010. By judgment entry filed July 20, 2010, the trial court sentenced appellant to three years of community control upon his release from prison on unrelated charges.

{¶3} On March 26, 2014, a motion to revoke or modify appellant's community control sanctions was filed. Appellant admitted to a violation. By judgment entry filed April 8, 2014, the trial court modified appellant's community control to include a term of sixty days of house arrest.

{¶4} On August 25, 2014, a second motion to revoke or modify appellant's community control sanctions was filed. A hearing was held on September 15, 2014. By judgment entry filed September 16, 2014, the trial court granted the motion, revoked appellant's community control, and sentenced him to an aggregate term of four years in prison (two years on the intimidation count and two years on the tampering count).

{¶5} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶6} "A SENTENCE IS CONTRARY TO LAW WHEN AT A COMMUNITY CONTROL SANCTIONS REVOCATION HEARING THE TRIAL JUDGE REIMPOSES A

PREVIOUSLY SUSPENDED SENTENCE AND ORDERING A DEFENDANT TO PRISON WHEN

1. THE COURT REIMPOSES A SENTENCE THAT HAS NEVER BEEN IMPOSED OR SUSPENDED PREVIOUSLY AND;

2. THE JUDGE DOES NOT CONSIDER ANY OF THE FELONY SENTENCING STATUTES, AT THE TIME OF THE SENTENCING AT THE REVOCATION HEARING BEFORE IMPOSING A PRISON SENTENCE."

I

{¶7} Appellant claims the trial court erred in sentencing him to a term of imprisonment of four years for violating his community control sanctions as the trial court never reviewed the sentencing guidelines of R.C. 2929.11 and the sentencing factors of R.C. 2929.12. We disagree.

{¶8} As explained by this court in *State v. Gullet*, 5th Dist. Muskingum No. CT2006-0010, 2006-Ohio-6564, ¶ 23, "[o]nce a court finds that a defendant violated the terms of probation, the decision whether to revoke probation lies within the court's sound discretion." In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217 (1983).

{¶9} Pursuant to R.C. 2929.15(B), if an offender violates a condition of community control, a trial court may impose:

(a) A longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit specified in division (A) of this section;

(b) A more restrictive sanction under section 2929.16, 2929.17, or 2929.18 of the Revised Code;

(c) A prison term on the offender pursuant to section 2929.14 of the Revised Code.

{¶10} Subsection (B)(2) provides:

The prison term, if any, imposed upon a violator pursuant to this division 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)(2) of section 2929.19 of the Revised Code. The court may reduce the longer period of time that the offender is required to spend under the longer sanction, the more restrictive sanction, or a prison term imposed pursuant to this division by the time the offender successfully spent under the sanction that was initially imposed.

{¶11} The gravamen of this assignment is what mechanics or "magic words" must a trial court use in revoking community control sanctions. Appellant argues the

trial court's original findings during the 2010 sentencing hearing are insufficient and a fait accompli. Appellant argues the trial court must evaluate the community control violation and determine the appropriate punishment under R.C. 2929.11 and 2929.12 again.

{¶12} Apart from appellant's esoteric argument, it is important to discuss the procedural history of this case. In July 2010, the trial court was well aware that appellant was serving a prison term on an unrelated offense and was considered a moderate risk in his presentence investigation. July 19, 2010 T. at 4, 9-10. In sentencing appellant to three years of community control, the trial court stated the following during the original sentencing hearing (*Id.* at 11-13):

THE COURT: And if you fail to do so, the three year time-frame can be extended to five years, you can be given greater restrictions that could even include local jail time or the Court can revoke your supervision and impose a prison term. Likewise, on the misdemeanor, those are the terms and conditions for your misdemeanor and if there is a revocation, the Court can impose time, which would be local time on the misdemeanor. If all the time is imposed, the misdemeanor is required to be concurrent with any felony. The misdemeanor is a six month period.

Based upon your prior history, I cannot agree to give a minimum term on a felony three. I had concluded that a two year term on each of the two felony three's would be appropriate as consecutive terms, which actually leaves you with a four year sentence.

THE COURT: So, after Judge O'Farrell releases you, whenever that is, then if for some reason you're not held at the jail, you need to be sure that you personally report to the Community Corrections Office, okay?

MR. JAMERSON: May I ask you a question?

THE COURT: Mhmm.

MR. JAMERSON: The two years consecutive on this case, those are suspended sentences?

THE COURT Yes, oh yeah.

MR. JAMERSON: I was just confused then.

THE COURT: Right, yeah, what I'm imposing is the Community Control that picks up after – whenever Judge O'Farrell lets you out. I know he's selected a date now, but whether that's sooner or later, or right on that date –

MR. JAMERSON: Yes ma'am.

THE COURT: - that's when your three years starts, as soon as you're available to us, so it's – I've – sentenced you to Community Control –

MR. JAMERSON: Okay

THE COURT: - I've reserved the other term. Okay?

{¶13} In its original sentencing entry filed July 20, 2010, the trial court noted it considered "the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors under Ohio Revised Code Section 2929.12," set forth its findings under R.C. 2929.12, and notified appellant of the following:

The Court will impose **two (2) year consecutive** sentences in the appropriate State Penal Institution of the Ohio Department of Rehabilitation and Correction for the offenses of **One Count Intimidation of Attorney, Victim or Witness in Criminal Case**, contrary to and in violation of Section 2921.04 of the Ohio Revised Code, a felony of the third degree; and **One Count Tampering with Evidence**, contrary to and in violation of Section 2921.12 of the Ohio Revised code, a felony of the third degree, if the Community Control Sanctions imposed above are violated.

The Court will further impose a **six (6) month** term of incarceration for the offense of **One Count Assault**, contrary to and in violation of Section 2903.13 of the Ohio Revised Code, a misdemeanor of the first degree, if the sanctions imposed above are violated. This sentence will be imposed **concurrently** with the felony sentences.

The Defendant is hereby advised that the Court may at any time revoke Community Control Sanctions for cause, modify the conditions of Community Control, or reduce or extend the period of Community Control.

The Defendant is subject to arrest for cause and without warrant by Probation Officers or by law enforcement officers for violation of said Defendant's Community Control Sanctions. While on Community Control for a felony, said Defendant does not have the right to hold public office or to sit on juries. When the term of Community Control has been terminated, these rights may be restored to the Defendant. A violation of one or more of the above Rules of Community Control will cause the revocation of Community Control Sanctions.

{¶14} A motion to revoke or modify appellant's community control sanctions was filed on March 26, 2014. Appellant stipulated to a violation and was placed on sixty days of house arrest. April 7, 2014 T. at 6.

{¶15} On August 25, 2014, another motion to modify or revoke appellant's community control sanctions was filed, alleging three violations:

1. The defendant failed to follow all orders verbal or written given to him by his supervising officer or other authorized representatives of the Court or the Community Corrections Program. *More specifically, the defendant failed to report to his supervising officer on 7/9/14 as ordered.*

2. The defendant failed to follow all orders verbal or written given to him by his supervising officer or other authorized representatives of the Court or the Community Corrections Program. *More specifically, the*

defendant failed to report to attend substance abuse treatment group as ordered by his supervising officer, last attending on or about 5/27/14.

3. The defendant failed to keep his supervising officer informed of his place of residence and employment and obtain permission from his supervising officer before changing his residence or employment. *More specifically, the defendant was not residing at 802 Grant Street, Dennison, OH, as previously reported to his supervising officer.*

{¶16} During the revocation hearing, appellant testified and admitted to the violations. September 15, 2014 T. at 15-21. Defense counsel argued the trial court should impose sanctions anew using R.C. 2929.11 requirements. *Id.* at 23-25. Despite appellant's argument that the trial court did not consider his sentence anew, we find the trial court considered the provisions of R.C. 2929.11 in imposing the four year sentence.

{¶17} The record establishes the trial court considered appellant's successful completion of SRCCC, his progress in drug counseling, and his continued heroin addiction. September 15, 2014 T. at 25-28. The trial court stated the following at 28-29:

THE COURT: Upon review of the file, I just wanna note that, you know, there's a lot of discussion here about periods of compliance. When the supervision started, it started at Stark Regional, so from January to May of 2013, the Defendant is at Stark Regional and then from May 2013, we show in the records that he quit reporting in December, missed calling

in on the drug testing equipment, quit attending treatment August of 2013, and then ultimately there was another issue with the residence change that resulted in the Motion to Revoke being filed and then resulted in the period of house arrest and then while on house arrest, these additional items arose as well, and I think that we've used our graduated sanctions, and I'm going to impose the four year prison term with whatever credit there is to date. I will consider a properly filed Motion for Judicial Release. We may look again into a community-based correctional facility. I really don't see any substantial compliance whatsoever and don't find that there's any reason to modify the current community control sanctions.

{¶18} We do not find a violation of R.C. 2929.11 and/or 2929.12 or any abuse of discretion in the trial court's sentence of four years. Although the violations were non-criminal in nature, they were the end of the road for appellant after the trial court had previously exhausted community based remedies.

{¶19} Upon review, we find the trial court did not err in sentencing appellant to four years on the community control violation.

{¶20} The sole assignment of error is denied.

{¶21} The judgment of the Court of Common Pleas of Tuscarawas County, Ohio
is hereby affirmed.

By Farmer, J.

Gwin, P.J. and

Delaney, J. concur.

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