

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

KENNETH EARL SCHOENEMAN

Defendant-Appellant

: JUDGES:

: Hon. John W. Wise, P.J.
: Hon. Patricia A. Delaney, J.
: Hon. Craig R. Baldwin, J.

: Case No. 2015CA00029

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No.
2011CR0657B

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

August 24. 2015

APPEARANCES:

For Plaintiff-Appellee:

JOHN D. FERRERO
STARK COUNTY PROSECUTOR

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For Defendant-Appellant:

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Delaney, J.

{¶1} Defendant-Appellant Kenneth Earl Schoeneman appeals the February 18, 2015 sentencing entry of the Stark County Court of Common Pleas. Plaintiff-Appellee is the State of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} In July 2008, Schoeneman's father was murdered. The father was survived by his five children who engaged in a bitter feud over their father's estate. Schoeneman and his brother claimed their sister, Robin Minor, concealed assets, altered a bank account, fabricated a debt owed to herself by their father, and wrongfully claimed possession of their father's truck.

{¶3} In February 2010, following a number of incidents between Schoeneman and her family, Robin Minor was granted a Civil Stalking Protection Order against Schoeneman.

{¶4} On February 14, 2012, Schoeneman was found guilty after a bench trial on one count of Menacing by Stalking, a fourth degree felony; two counts of Violating a Protection Order, first degree misdemeanors; and not guilty on two counts of Violating a Protection Order, third degree felonies.

{¶5} Schoeneman appealed his conviction of menacing by stalking to this Court in *State v. Schoeneman*, 5th Dist. Stark No. 2012CA00062, 2012-Ohio-4710. We reversed his conviction for menacing by stalking as not being supported by some competent, credible evidence going to all the elements of the case. *Id.* at ¶ 59. The judgment was reversed and the matter remanded to the trial court for resentencing.

{¶6} On February 19, 2013, the trial court resentenced Schoeneman pursuant to this Court's reversal. The trial court sentenced Schoeneman pursuant to his conviction on two counts of violating a protection order, a first-degree misdemeanor violation of R.C. 2919.27(A). The sentencing entry stated:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant shall serve one hundred eighty (180) days in jail on each count of Violating a Protection Order, 2 cts. [R.C. 2919.27(A)] (M1), and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant shall serve these sentences consecutively with each other, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all of the defendant's sentence shall be suspended on the condition of two (2) years Good Behavior, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant shall have no contact directly or indirectly with Robin Minor, Dan Minor or Matthew Minor, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant shall not directly or indirectly remove property placed by Robin Minor from the grave site of Earl Schoeneman, and * * *

{¶7} Schoeneman did not appeal the February 19, 2013 sentencing entry.

{¶8} On March 29, 2013, the State filed a Motion to Reimpose Suspended Sentence. The State argued Schoeneman violated the conditions of the February 19, 2013 sentencing entry when Schoeneman was observed taking a wreath placed on the grave of Earl Schoeneman by Robin Minor.

{¶9} The trial court held a hearing on May 17, 2013. It issued its sentencing entry on May 24, 2013. The trial court found that Schoeneman did not comply with the good behavior order in the February 19, 2013 sentencing entry. The trial court ordered Schoeneman to be committed to the Stark County Jail for a stated term of 180 days and all but 15 days were suspended on condition of two years good behavior. Schoeneman was ordered to have no contact with Robin, Dan, or Matthew Minor. The trial court further stated that Schoeneman was banned from the property of the gravesite of his mother and father.

{¶10} Schoeneman did not appeal the May 24, 2013 sentencing entry.

{¶11} On January 8, 2015, the State filed a Motion to Reimpose Suspended Sentence. The State argued Schoeneman violated the May 24, 2013 sentencing entry when he was observed at his father's gravesite removing items placed by Robin Minor.

{¶12} The trial court held a sentencing hearing on February 9, 2015. The trial court issued its sentencing entry on February 18, 2015. The trial court found that Schoeneman did not comply with the good behavior order. The trial court ordered that Schoeneman be committed to the Stark County Jail for a stated term of 180 days and all but 75 days were suspended on condition of two years good behavior. Schoeneman was ordered to have no contact with Robin, Dan, or Matthew Minor. The trial court further stated that Schoeneman was banned from the property of Forest Hill Cemetery and the gravesite of his mother and father.

{¶13} It is from this sentencing entry Schoeneman now appeals.

ASSIGNMENT OF ERROR

{¶14} Schoeneman raises one Assignment of Error:

{¶15} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN IMPOSING 75 DAYS INCARCERATION (15 SUSPENDED) AND CONTINUING TWO YEARS' GOOD BEHAVIOR FROM PRIOR SENTENCING ORDERS."

ANALYSIS

{¶16} Schoeneman argues on appeal that the trial court was not authorized to impose additional time and conditions to Schoeneman's original sentence.

Res Judicata

{¶17} The State argues the doctrine of res judicata applies to Schoeneman's arguments on appeal. "Under the doctrine of res judicata, a final judgment of conviction bars the defendant from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that the defendant raised or could have raised at the trial which resulted in that judgment of conviction or on appeal from that judgment." *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967). The State contends the cemetery ban opposed by Schoeneman was imposed in the May 24, 2013 sentencing entry. Schoeneman did not appeal the May 24, 2013 sentencing entry.

{¶18} We agree with the State that the trial court first imposed the cemetery ban in the May 24, 2013 sentencing entry, which Schoeneman did not appeal. Schoeneman's arguments as to this issue are barred pursuant to the doctrine of res judicata.

Community Control Sanctions

{¶19} Both Schoeneman and the State characterize the trial court's imposition of two years good behavior and the cemetery ban as community control sanctions. Schoeneman was sentenced for a violation of R.C. 2919.27(A), a misdemeanor of the first degree. As to misdemeanor community control sanctions, R.C. 2929.25(A)(1) states as follows:

(A)(1) Except as provided in sections 2929.22 and 2929.23 of the Revised Code or when a jail term is required by law, in sentencing an offender for a misdemeanor, other than a minor misdemeanor, the sentencing court may do either of the following:

(a) Directly impose a sentence that consists of one or more community control sanctions authorized by section 2929.26, 2929.27, or 2929.28 of the Revised Code. The court may impose any other conditions of release under a community control sanction that the court considers appropriate. If the court imposes a jail term upon the offender, the court may impose any community control sanction or combination of community control sanctions in addition to the jail term.

(b) Impose a jail term under section 2929.24 of the Revised Code from the range of jail terms authorized under that section for the offense, suspend all or a portion of the jail term imposed, and place the offender under a community control sanction or combination of community control sanctions authorized under section 2929.26, 2929.27, or 2929.28 of the Revised Code.

{¶20} In this case, the trial court imposed a sentence of 180 days on each count of a violation of R.C. 2919.27(A), to be served consecutively. The trial court then suspended the jail time imposed and placed Schoeneman under a community control sanction of two years good behavior, pursuant to R.C. 2929.27.

{¶21} R.C. 2929.27 states:

(A) Except when a mandatory jail term is required by law, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, may impose upon the offender any nonresidential sanction or combination of nonresidential sanctions authorized under this division.

Nonresidential sanctions include, but are not limited to, the following:

* * *

(7) A term of monitored time;

* * *

(C) In addition to the sanctions authorized under division (A) of this section, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, upon an offender who is not required to serve a mandatory jail term may impose any other sanction that is intended to discourage the offender or other persons from committing a similar offense if the sanction is reasonably related to the overriding purposes and principles of misdemeanor sentencing.

{¶22} Schoeneman argues the trial court abused its discretion when it reimposed the two years good behavior in the February 18, 2015 sentencing entry. He states it improperly extended the term of good behavior. Schoeneman also argues the

trial court abused its discretion in imposing a jail term of 75 days (with credit for 15 days).

{¶23} Pursuant to R.C. 2929.25(D)(2), if the offender violates a community control sanction, the trial court may impose upon the violator one or more of the following penalties:

- (a) A longer time under the same community control sanction if the total time under all of the community control sanctions imposed on the violator does not exceed the five-year limit specified in division (A)(2) of this section;
- (b) A more restrictive community control sanction;
- (c) A combination of community control sanctions, including a jail term.

{¶24} The trial court originally sentenced Schoeneman in February 2012. R.C. 2929.25(A)(2) states that the “duration of all community control sanctions imposed upon an offender and in effect for an offender at any time shall not exceed five years.” The trial court may maintain Schoeneman on community control until February 2017.

{¶25} Pursuant to R.C. 2929.25 and 2929.27, the trial court did not abuse its discretion in reimposing the two years good behavior on Schoeneman and imposing a jail term for 75 days.

{¶26} Schoeneman’s sole Assignment of Error is overruled.

CONCLUSION

{¶27} The judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J.,

Wise, P.J. and

Baldwin, J., concur.