

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-03-1299

Appellee

Trial Court No. CR-200002203

v.

Jerry Malone

DECISION AND JUDGMENT ENTRY

Appellant

Decided: September 24, 2004

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney and Marla Osgood, Assistant Prosecuting Attorney, for appellee.

Deborah Kovac Rump, for appellant.

* * * * *

KNEPPER, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, in which the trial court found that appellant, Jerry Malone, admittedly violated the terms of his community control, sentenced appellant to serve 18 months in prison and ordered him to pay the costs of his supervision, confinement, assigned counsel and prosecution.

{¶ 2} On appeal, appellant sets forth the following two assignments of error:

{¶ 3} "I. Appellant did not knowingly, voluntarily and intelligently admit to the community control violations.

{¶ 4} "II. The lower court did not make the necessary findings to support entering an order of restitution.

{¶ 5} The relevant facts are as follows. In June 2000, appellant was indicted by the Lucas County Grand Jury for failing to verify his address, a violation of R.C. 2950.06(F). The violation arose because appellant, who had previously been adjudicated a sexual predator in Cuyahoga County, moved to Lucas County and failed to register a valid home address with the Lucas County Sheriff's Department, as required by R.C. 2950.04(A) and (C).

{¶ 6} On February 6, 2002, appellant, represented by court-appointed counsel, entered a plea of no contest to the charge of failure to verify. By way of mitigation, appellant's counsel told the court that appellant was homeless, and that he could not register his address with the Lucas County Sheriff because no shelter would accept him as a resident. Counsel stated that appellant's sister in Cleveland was willing to house appellant.

{¶ 7} The trial court found appellant guilty of failure to verify, a fifth degree felony. The trial court placed appellant on community control, and transferred supervision of his case back to Cuyahoga County so that appellant could reside with his sister in Cleveland. Shortly thereafter, appellant attempted to move in with his sister; however, Cuyahoga

{¶ 8} County refused to accept supervision of his community control. Appellant then returned to Lucas County, where he was still unable to obtain permanent housing. Because appellant could not register a home address with the Lucas County Sheriff upon

his return, he was charged with five additional violations of the terms of his community control.

{¶ 9} On July 14, 2003, appellant again appeared in court with his court-appointed attorney. Initially, defense counsel indicated that appellant would admit to violating his community control; however, appellant stated that he had changed his mind and wanted to proceed to a hearing. At that point, the case was briefly continued so that the trial court could attend to other matters. Later that day, appellant's case resumed, and defense counsel stated that appellant wanted to waive his right to a hearing and admit to the community control violations. The trial court then asked appellant if he acknowledged committing the following five violations: failure to verify his address and failure to report to his probation officer, both of which are fifth degree felonies; failure to seek and maintain employment; failure to complete community service hours; and failure to pay court costs. Appellant responded in the affirmative. Defense counsel then advised the court as to appellant's continuing homelessness, and stated that appellant had tentative arrangements to obtain housing either in California, or with a female friend in Lucas County.

{¶ 10} At the close of all the evidence, the trial court found that appellant was in violation of the terms of his community control. The court then sentenced appellant to serve a total of 18 months in prison, advised appellant of his right to appeal, and appointed counsel to represent appellant on appeal.

{¶ 11} On July 16, 2003, the trial court filed a judgment entry in which it stated that appellant had been afforded rights pursuant to Crim.R. 32. The court further found

that appellant was no longer amenable to community control, and stated that "a prison term is consistent with the purposes of R.C. 2929.11." The trial court stated that, in this case, an 18 month prison term is "necessary to fulfill the purposes of Section 2929.11 and is not disproportionate to the seriousness of [appellant's] conduct and the danger this defendant poses to the public." The court further found that "[this] defendant's criminal history requires consecutive sentences." The trial court also found that appellant had, "or reasonably may be expected to have, the means to pay all or part of the applicable costs of supervision, confinement, assigned counsel, and prosecution as authorized by law," and ordered him to reimburse those costs to the state of Ohio and Lucas County. A timely appeal was filed.

{¶ 12} In support of his first assignment of error, appellant asserts that his admissions were not knowingly and voluntarily made. While acknowledging that this case is not directly governed by Crim.R. 11, appellant nevertheless argues that the trial court should have been guided by the "parameters" of Crim.R. 11 in accepting his admission.

{¶ 13} This court has previously held that "the requirements of Crim.R. 11 apply only to guilty and no contest pleas. (Citation omitted.) Concordantly, a defendant at a

{¶ 14} community control revocation hearing need not be afforded the full panoply of rights given a defendant in a criminal proceeding." *State v. Martin*, 6th Dist. No. S-02-012, 2002-Ohio-5202, ¶7; *State v. Artiaga*, 6th Dist. No. L-02-1021, 2003-Ohio-2357, ¶13, citing *State v. Martin*, supra.

{¶ 15} The applicable provision governing the revocation of community control is Crim.R. 32.3, which states, in relevant part, that:

{¶ 16} "(A) * * * The court shall not impose a prison term for violation of the conditions of a community control sanction or revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which action is proposed. * * *

{¶ 17} "(B) * * * The defendant shall have the right to be represented by retained counsel and shall be so advised. * * *."

{¶ 18} In this case, the requirements of Crim.R. 32.3 have been met. The record shows that appellant was given the opportunity for a hearing. When appellant indicated that he wanted to waive a hearing and enter an admission, the trial court addressed appellant personally and advised him as to the nature of the five alleged violations. After consulting with his court-appointed counsel, appellant admitted to all five violations and was thereafter found guilty and sentenced to prison.

{¶ 19} Upon consideration of the foregoing, this court finds that the trial court did not err by not adhering to the requirements of Crim.R. 11 before accepting appellant's admissions and finding that he violated the terms of his community control. Appellant's first assignment of error is not well-taken.

{¶ 20} As to appellant's second assignment of error, appellant asserts, and the state of Ohio does not dispute, that the record contains no evidence to support the trial court's finding that appellant has, "or reasonably may be expected to have, the means to pay all or part of the applicable costs of supervision, confinement, assigned counsel, and

prosecution as authorized by law." In fact, the record contains undisputed evidence to the contrary, as appellant was found to be homeless at all times relevant to this appeal. Accordingly, the trial court erred when it ordered appellant to pay the costs of "supervision, confinement, assigned counsel, and prosecution." Appellant's second assignment of error is found well-taken. See *State v. Golladay* (Dec. 29, 2000), 6th Dist. App. Nos. L-00-1092, L-00-1093, L-00-1094; *State v. McGee*, 7th Dist. No. 02-JE-39, 2003-Ohio-2239, ¶ 8.

{¶ 21} The judgment of the Lucas County Court of Common Pleas is hereby affirmed in part and reversed in part. Pursuant to App.R. 12(B), we hereby modify the trial court's judgment entry by striking from it that portion in which the trial court ordered appellant to pay the costs of "supervision, confinement, assigned counsel, and prosecution." The costs of these appellate proceedings are assessed to appellee, the state of Ohio.

JUDGMENT AFFIRMED IN PART
AND REVERSED IN PART.

State v. Malone
L-03-1299

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Richard W. Knepper, J.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J. _____
CONCUR.

JUDGE

JUDGE