

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

State of Ohio

Court of Appeals No. L-10-1284

Appellee

Trial Court No. CR0200401629

v.

John T. Boone

DECISION AND JUDGMENT

Appellant

Decided: September 2, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
James E. Vail, Assistant Prosecuting Attorney, for appellee.

John Boone, pro se.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, John T. Boone, appeals the September 16, 2010 judgment of the Lucas County Court of Common Pleas which, in the nunc pro tunc entry entered in compliance with *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330 and

following his 2004 no contest plea, sentenced appellant to four years in prison for burglary following his community control violation.

{¶ 2} On March 25, 2004, by information, appellant was charged with one count of burglary, in violation of R.C. 2911.12(A)(3), a third degree felony. On March 29, 2004, appellant entered a no contest plea and on May 3, 2004, appellant was sentenced to four years of community control with various conditions. The sentencing entry stated that if the terms of community control were violated, appellant could be sentenced to a maximum of five years of imprisonment.

{¶ 3} On October 5, 2004, a capias was ordered issued due to appellant's failure to appear on a community control violation charge. Ultimately community control was continued with added conditions. Thereafter, on October 25, 2005, appellant appeared in court on a community control violation; the hearing was continued. Appellant failed to appear at the hearing and a capias was ordered to be issued. On February 6, 2006, following appellant's admission to a community control violation, community control was continued with the additional requirement that appellant submit to DNA testing. The sentencing entry stated that a community control violation would "lead to a longer or more restrictive sanction for defendant, including a prison term of four (4) years."

{¶ 4} On September 4, 2007, appellant again admitted to a community control violation and, on October 12, 2007, he was sentenced to four years in prison. On September 16, 2010, pursuant to *Baker*, supra, the court issued a nunc pro tunc judgment entry. This pro se appeal followed.

{¶ 5} Appellant raises the following assignment of error for our review:

{¶ 6} "Failure of the trial court to notify the appellant of a specific prison term at the community control sentencing hearing prohibits the trial court from imposing a prison term for violating community control."

{¶ 7} In his sole assignment of error, appellant contends that the trial court, in contravention of R.C. 2929.19(B), failed to inform him at the time he was originally sentenced to community control, of the specific prison term that would be imposed if he violated the terms of his sentence.

{¶ 8} R.C. 2929.19(B) provides, in relevant part:

{¶ 9} "(5) If the sentencing court determines at the sentencing hearing that a community control sanction should be imposed and the court is not prohibited from imposing a community control sanction, the court shall impose a community control sanction. The court shall notify the offender that, if the conditions of the sanction are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to section 2929.14 of the Revised Code."

{¶ 10} In *State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, the Supreme Court of Ohio held that R.C. 2929.19(B)(5) requires that notice of the specific prison

term that may be imposed for a community control violation must be given at the sentencing hearing.

{¶ 11} At the April 29, 2004 sentencing hearing, the trial court stated: "[I]t goes without saying, if there is a violation and you are back in court, you would be subject, and I think it would be a strong likelihood, that you would be subject to serving a prison term and I'll tell you right now you're going to have five years of prison hanging over your head * * *." The court later stated: "Violation of this sentence may lead to a longer more restrictive sanction for the defendant up to and including a prison term of five years."

{¶ 12} Based on the foregoing, we find that the trial court complied with R.C. 2929.19(B) and the *Brooks* holding when it notified appellant that he may receive a five-year prison term if he violated his community control sentence. Appellant's assignment of error is not well-taken.

{¶ 13} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair proceeding and the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

JUDGMENT AFFIRMED.

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

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.