[Cite as *State v. Schwartz*, 2013-Ohio-3958.]

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

State of Ohio	Court of Appeals No. WD-12-060
Appellee	Trial Court No. 11 CR 205 11 CR 316
v.	
Russell Schwartz	**DECISION AND JUDGMENT**
Appellant	Decided: September 13, 2013

* * * * *

Paul Dobson, Wood County Prosecuting Attorney, and
Heather Baker and Jacqueline M. Kirian, Assistant Prosecuting Attorneys,
for appellee.

Joanna M. Orth, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, Russell Schwartz, appeals his sentence imposed for violating community control. For the reasons that follow, we affirm.

{¶ 2} On May 5, 2011, appellant was indicted on one count of domestic violence against his wife, a violation of R.C. 2919.25(A) and (D)(3) and, a felony of the fourth degree (case No. 11-CR-205). On July 7, 2011, appellant was again indicted for felony domestic violence against his wife. He was also indicted on one count of abduction in violation of R.C. 2905.02 and a felony of the third degree (case No. 11-CR-316).

{¶ 3} On September 14, 2011, in case No. 11-CR-205, appellant entered a guilty plea to the domestic violence charge. Also on September 14, 2011, in case No. 11-CR-316, appellant entered a guilty plea to one count of abduction. The domestic violence charge was dismissed. The court accepted his pleas, found him guilty and sentenced him to three years community control. Among the conditions of his community control sanction, he was ordered to have no contact, directly or indirectly, with his wife. The court reserved the right to sentence appellant to eighteen months in prison for case No. 11-CR-205 and five years in prison for case No. 11-CR-316, should he violate his community control.

{¶ 4} On June 5, 2012, the state filed a petition to revoke appellant's community control alleging that he had violated the no contact order by having contact with his wife. A hearing was held on June 25, 2012, wherein, appellant admitted to the violation. The court continued appellant's community control but ordered him to serve 30 days in jail.

{¶ 5} On September 5, 2012, the state once again filed a petition to revoke appellant's community control alleging that he had violated the no contact order by having contact with his wife. A hearing was held on October 29, 2012, wherein,

appellant admitted to the violation. As a result, the court sentenced him to concurrent sentences of 12 months in prison for case No. 11-CR-205 and three years in prison for case No. 11-CR-316. Appellant now appeals setting forth the following assignments of error:

> I. Defendant/appellant's sentence should be vacated as the court abused its discretion in revoking Defendant/appellant's Community Control.
>
> II. Defendant/appellant's sentence should be vacated as the trial court erred by imposing conditions of community control that were overbroad.

{¶ 6} In his first assignment of error, appellant contends that the court abused its discretion in revoking his community control.

> The privilege of community control rests upon the probationer's compliance with the community control conditions and any violation of those conditions may properly be used to revoke the privilege. *State v. Sturgill*, 12th Dist. Butler No. CA2011–08–166, 2012–Ohio–4102, ¶ 13, citing *State v. Simpson,* 12th Dist. Butler No. CA2000–12–251, 2002–Ohio–1909. An appellate court will not reverse a trial court's decision to revoke community control absent an abuse of discretion. *Simpson*, citing *State v. Theisen,* 167 Ohio St. 119, 124–25 (1957). More than an error of law, an abuse of discretion connotes that the trial court's attitude in

reaching its decision was unreasonable, arbitrary, or unconscionable.

Simpson. State v. Painter, 12th Dist. Clermont No. CA2012–04–031, 2013-Ohio-529, ¶ 20.

{¶ 7} At appellant's first community control revocation hearing, appellant told the court that it was "crystal clear" to him that he was to have no contact whatsoever with his wife. His second community control violation, the subject of this appeal, arose when he was found in a parked car with his wife at his place of employment. His wife had gotten him a job at the same place she worked. Appellant had notified his probation officer that he was working; yet, he failed to notify his probation officer that he was working with his wife.

{¶ 8} Appellant does not now, nor has he ever, denied that he violated the no contact order. He does, however, argue for leniency based on what he contends is his wife's unrelentless pursuit of him through phone calls, mail, social contacts, etc. For purposes of appellate review, his wife's conduct is irrelevant. As there was ample evidence presented to demonstrate that appellant violated the no contact condition of his community control sentence, we find that the court did not abuse its discretion in revoking his community control. Appellant's first assignment of error is found not well-taken.

{¶ 9} In his second assignment of error, appellant contends that the no contact order was an overbroad condition of his community control.

{¶ 10} A trial court's discretion in imposing community-control sanctions is not limitless. *State v. Jones*, 49 Ohio St.3d 51, 52, 550 N.E.2d 469 (1990). Rather, community-control conditions must be reasonably related to the statutory ends of community control and must not be overbroad. *Id*.

> [C]ourts should consider whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation. *Id*. at 53.

{¶ 11} The record in this case shows that appellant's original charges stem from one incident where he repeatedly hit his wife in the face and another incident where he once again hit his wife and prevented her from leaving their home. Based on these facts and the above cited case, we cannot say the no contact order was an overly broad condition of his community control. Appellant's second assignment of error is found not well-taken.

{¶ 12} On consideration whereof, the judgment of the Wood County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

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.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE