

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92268

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MARK MCCORD

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-511606

BEFORE: McMonagle, J., Rocco, P.J., and Sweeney, J.

RELEASED: May 28, 2009

JOURNALIZED:

ATTORNEY FOR APPELLANT

James R. Willis
323 W. Lakeside Avenue
Suite 420
Cleveland, OH 44113-1009

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor
Matthew E. Meyer
Katherine Mullin
Brian Radigan
Assistant Prosecuting Attorneys
The Justice Center
1200 Ontario Street
Cleveland, OH 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement

of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

CHRISTINE T. McMONAGLE, J.:

{¶ 1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc.App.R. 11.1.

I.

{¶ 2} In August 2008, defendant-appellant, Mark McCord, pled guilty to drug trafficking and possession of criminal tools, both fifth degree felonies. On September 12, 2008, the trial court sentenced him to one year of community control. Only six days later, McCord was arrested again when the police responded to a complaint of drug activity involving a black H2 Hummer. McCord was one of three men in the Hummer; the police found a bag of suspected crack cocaine next to him and \$5,300 on his person.

{¶ 3} At the community control revocation hearing, McCord's counsel told the judge that the crack cocaine belonged to one of the other men in the Hummer. McCord admitted to possessing the money, and told the judge that he intended to buy recording equipment with it so he could become a disc jockey. When the judge asked where the money had come from, McCord told him that "some of it was some savings that I had had, and then the previous night before I had won some in a card game." The judge asked McCord if he had been gambling, and McCord responded, "[y]es, sir." The judge then found McCord in

violation of the terms of his community control for gambling and sentenced him to one year of incarceration. McCord now appeals the trial court's judgment.

II.

{¶ 4} Because a community control revocation hearing is not a criminal trial, the State does not have to establish a violation with proof beyond a reasonable doubt. *State v. Hayes*, Cuyahoga App. No. 87642, 2006-Ohio-5924, ¶11, citing *State v. Payne*, Warren App. No. CA2001-09-081, 2002-Ohio-1916. Instead, the evidence required to establish a violation and to revoke community control sanction must be "substantial." *State v. Hylton* (1991), 75 Ohio App.3d 778, 782. A defendant's own admissions are sufficient to prove a violation of community control conditions. *Hayes*, supra at ¶16, citing *State v. Willis*, Fairfield App. No. 05 CA 42, 2005-Ohio-6947.

{¶ 5} A trial court's decision finding a violation of community control will not be disturbed on appeal absent an abuse of discretion. *Hayes*, supra at ¶11. "Abuse of discretion" connotes more than an error in law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *State v. Maurer* (1984), 15 Ohio St.3d 239, 253.

{¶ 6} In his first and third assignments of error, McCord argues that the trial court violated his due process rights in revoking his community control because he had no notice that gambling could result in revocation. In his second assignment, McCord argues that the trial court abused its discretion in revoking

his community control because his violation was only “trivial.” McCord’s arguments fail.

{¶ 7} “When conditions of probation are imposed, the court is not expected to define with specificity all the restricted behavior under all possible circumstances. Rather, the conditions must be clear enough to notify the probationer of the conduct expected of him, with the understanding that the court will act reasonably at a revocation hearing, aware of the practicalities and fundamental goals of probation.” *State v. Bragg*, Cuyahoga App. No. 88517, 2007-Ohio-3273, ¶10, citing *State v. Jones* (1990), 49 Ohio St.3d 51. It goes without saying that McCord had notice not to commit another crime while under community control.

{¶ 8} In Ohio, gambling is a misdemeanor of the first degree. R.C. 2915.02. Under R.C. 2929.15(B), a court may revoke community control sanctions “if the offender violates a law.” McCord’s admission that he had been gambling was “substantial” evidence from which the court could conclude that he had committed a crime and thereby violated the terms of his community control. Accordingly, the trial court did not abuse its discretion in revoking McCord’s community control and sentencing him to one year incarceration.

{¶ 9} Assignments of error one, two and three are overruled; the judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, JUDGE

KENNETH A. ROCCO, P.J., CONCURS;

JAMES J. SWEENEY, J., CONCURS IN JUDGMENT ONLY