

[Cite as *State v. Jones*, 2010-Ohio-2448.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92622

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANTHONY L. JONES

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-431985

BEFORE: Boyle, J., Stewart, P.J., and Dyke, J.

RELEASED: June 3, 2010

JOURNALIZED:

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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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Anthony L. Jones, appeals from a judgment sentencing him to six months in prison for violating the terms of his community control sanctions.

{¶ 2} He raises two assignments of error for our review:

{¶ 3} “[1.] The trial court violated Mr. Jones’s rights to due process and equal protection under the law when it found that he had violated the terms of his community control by failing to pay the entire restitution amount owed without first determining whether Jones had the ability to pay.

{¶ 4} “[2.] The trial court had no jurisdiction over this matter when it entered the order imposing a term of imprisonment after his term of community control expired.”

{¶ 5} Finding merit to his second assignment of error, we reverse the judgment of the trial court and vacate Jones’s sentence.

Procedural History

{¶ 6} On November 14, 2003, Jones pled guilty to theft, in violation of R.C. 2913.02.

{¶ 7} On December 8, 2003, the trial court sentenced Jones to six months in prison, but then suspended those six months on the condition that Jones pay restitution to the victim. The trial court then placed Jones on

three years of community control sanctions and ordered that he pay the victim “according to his income ability,” and stated, “we’ll give him more time if he can’t pay it off in three years.” Thus, Jones’s original period of community control sanctions would have terminated on December 8, 2006.

{¶ 8} Jones filed a Motion to Modify Order on November 23, 2005, requesting that the court modify the amount of restitution he owed. According to Jones, the court had failed to note in its original sentencing entry that Jones had already paid the victim over half of the amount of restitution owed to her.

{¶ 9} The court set the matter for a “probation violation hearing” on December 13, 2005. In a December 23, 2005 entry, the trial court found that Jones was not in violation of his community control sanctions. The trial court ordered, “community control is continued with prior conditions. Conditions of community control amended as to restitution payments. Defendant to continue with monthly regular payments at 20% of net income after child support.” The trial court also modified the amount of restitution owed from \$50,000 to \$26,000.

{¶ 10} The December 23, 2005 entry, however, failed to indicate how long the trial court continued Jones’s period of community control sanctions. But at the hearing, the trial court stated: “[w]e’ll extend the probation and we’ll keep it up to five years if necessary,” so Jones could continue to make

restitution payments to the victim.

{¶ 11} On November 22, 2006, the trial court issued an order, apparently sua sponte, to clarify the December 23, 2005 entry that had failed to indicate how long Jones's community control sanctions had been extended. The trial court explained: "defendant's probation is extended to 12/3/08 as determined at probation violation hearing 12/13/05. Defendant is paying restitution regularly and is maintaining his employment." This order was journalized on December 20, 2006.

{¶ 12} On November 13, 2008, nearing the end of Jones's five-year period of community control sanctions, the trial court held a probation violation hearing. The trial court found Jones to be in violation of community control sanctions because he had not fully made restitution to the victim. It set the matter for sentencing for December 2, 2008, one day before Jones's community control was scheduled to terminate.

{¶ 13} At the December 2, 2008 sentencing hearing, the trial court sentenced Jones to six months in prison, notified him that he would be subject to three years of postrelease control, and ordered him to pay the remaining restitution. This order was not journalized until one day after Jones's community control terminated, i.e., on December 4, 2008.

{¶ 14} It is from this judgment that Jones appealed. The trial court stayed execution of his sentence pending appeal.

Subject Matter Jurisdiction

{¶ 15} Because we find Jones's second assignment of error to be dispositive, we will address it first. Jones argues that because the trial court did not journalize the order sentencing him to six months in prison until one day after his period of community control sanctions had terminated, the trial court no longer had jurisdiction to sentence him to the six-month term. We agree.

{¶ 16} The Ohio Supreme Court explained in *Kaine v. Marion Prison Warden*, 88 Ohio St.3d 454, 455, 2000-Ohio-381, 727 N.E.2d 907:

{¶ 17} "Under R.C. 2951.09, '[a]t the end or termination of the period of probation, the jurisdiction of the judge or magistrate to impose sentence ceases and the defendant shall be discharged.' And pursuant to the statute, "[i]t matters not that the alleged violation of probation occurred during the period of probation and could have resulted, if timely prosecuted, in a revocation of probation and imposition of sentence." *State v. Jackson* (1995), 106 Ohio App.3d 345, 348, 666 N.E.2d 255, 257, quoting *State v. Jackson* (1988), 56 Ohio App.3d 141, 565 N.E.2d 848."

{¶ 18} In *Rash v. Anderson* (May 7, 1997), 9th Dist. No. 97CA006728, the court considered a petition for writ of habeas corpus where the petitioner argued that the trial court lacked jurisdiction to revoke his probation and sentence him after his five-year probation period had terminated. The

“[p]etitioner’s original sentence was journalized on October 2, 1981. Although a probation hearing was held, probation revoked, and sentence imposed in an entry dated August 11, 1986, that entry was not journalized until October 3, 1997.” *Id.* In determining whether the petitioner was entitled to relief, the court explained:

{¶ 19} “Petitioner would be entitled to habeas corpus relief if the order revoking his probation was entered after his five-year probation period expired. To determine whether that period had expired, we look first to the dates of the original and subsequent sentencing and then to the record to determine whether the probation period was ever tolled. Although various dates are cited by the parties for the same orders, we look to the dates that the orders were journalized. An entry is effective only when it has been journalized. *State v. Ellington* (1987), 36 Ohio App.3d 76, 77-78.”

{¶ 20} Looking at the October 3, 1997 journalized entry, the *Rash* court determined that pursuant to R.C. 2951.09, the trial court could not revoke the petitioner’s probation and impose sentence “five years and a day after the original sentence had been imposed.” *Id.*

{¶ 21} Here, similar to the petitioner in *Rash*, the trial court held a probation violation hearing on November 13, 2008 and a sentencing hearing on December 2, 2008, both of which took place during Jones’s period of community control sanctions. But the entry sentencing Jones to six months

in prison was not journalized until December 4, one day after Jones's period of community control sanctions had expired. The trial court lost jurisdiction over the case on December 3, 2008. Thus, since an entry is only effective upon journalization, the trial court lacked jurisdiction to sentence Jones on December 4, 2008 to six months in prison for the probation violation.

{¶ 22} During the December 2, 2008 sentencing hearing, the trial court even acknowledged that it would lose jurisdiction over Jones on the following day — on December 3. At the hearing, Jones asked the court to further extend his period of community control so that he could continue to pay restitution to the victim, rather than go to prison. But the trial court denied Jones's request, correctly informing Jones several times during the hearing that it could not do so because it would lose jurisdiction over the case on December 3, 2008 — and it did.

{¶ 23} Accordingly, Jones's second assignment of error is sustained, and Jones's first assignment of error is moot.

{¶ 24} Judgment is reversed and remanded with instructions to vacate the sentence.

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

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

MARY J. BOYLE, JUDGE

MELODY J. STEWART, P.J., CONCURS;
ANN DYKE, J., CONCURS IN JUDGMENT ONLY
WITH SEPARATE OPINION

ANN DYKE, J., CONCURRING IN JUDGMENT ONLY:

{¶ 25} I concur in judgment only with this separate opinion.

{¶ 26} I concur with the majority that the trial court lacked jurisdiction to extend Jones's community control sanctions but would find that jurisdiction ceased on December 8, 2006 and not December 3, 2008.

{¶ 27} As the majority indicated, the law is clear that the subject matter jurisdiction of a sentencing court ceases when the period of community control sanctions expires, and the court may not impose any further penalties thereafter. *Kaine*, supra. Furthermore, the majority acknowledges that when determining the actual date of a trial court's judgment, either imposing the original community control sanctions, or in the alternative, the additional penalties thereafter, we look to the filing date of the journal entry. See *Rash*, supra, quoting *State v. Ellington* (1987), 36 Ohio App.3d 76, 77-78, 521 N.E.2d 504. It is a long-standing rule that "a judgment is effective only when entered on the journal by the clerk." Crim.R. 32(C). See, also, *State ex rel. White v. Junkin* (1997), 80 Ohio St.3d 335, 337,

1997-Ohio-340, 686 N.E.2d 267.

{¶ 28} In this case, the majority determined that the trial court lost jurisdiction to impose community control sanctions on December 3, 2008. I, however, would find that the trial court lost jurisdiction much earlier — on December 8, 2006. The trial court filed its judgment entry imposing three years of community control sanctions upon Jones on December 8, 2003. Thus, his community control began on this date. As such, his sentence was set to expire on December 8, 2006. The trial court attempted to extend Jones's period of community control sanctions prior to the date of expiration on November 22, 2006. The court, however, did not file its journal entry doing so until December 20, 2006, some 12 days after the expiration of the original three-year period. As a result of this delay, I would find that the trial court lost jurisdiction back on December 8, 2006 to impose the additional two years of community control upon Jones and any other actions thereafter.