

[Cite as *Lakewood v. Ryan*, 2010-Ohio-5370.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94770

CITY OF LAKEWOOD

PLAINTIFF-APPELLEE

vs.

THOMAS P. RYAN

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Lakewood Municipal Court
Case No. 2009 CRB 2159

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

RELEASED AND JOURNALIZED: November 4, 2010

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ANN DYKE, J.:

{¶ 1} Defendant-appellant, Thomas P. Ryan (“appellant”), appeals the trial court’s imposition of community control supervision for a minor misdemeanor violation. For the reasons provided below, we reverse and remand for resentencing.

{¶ 2} On December 11, 2009, appellant was cited for disorderly

conduct/intoxication in violation of Section 509.03 of the Lakewood Codified Ordinances. On February 4, 2010, he pled no contest to the charge. The court found him guilty and imposed a fine of \$150, \$50 of which was stayed, plus court costs, as well as one year of community control supervision. As a condition of the community control supervision, the court ordered appellant to submit letters of apology to two Lakewood police officers. Once appellant complied with this order, his community control supervision would terminate.

{¶ 3} Appellant submitted letters of apology twice but each time the court found the letters unsatisfactory. The court then sent appellant a Notice of Community Control Supervision. Appellant filed this appeal shortly thereafter and on March 4, 2010, we stayed appellant's sentence until resolution of this appeal.

{¶ 4} In this appeal, appellant presents two assignments of error for our review. His first provides:

{¶ 5} "The trial court erred when it imposed a term of probation for a violation of a minor misdemeanor offense."

{¶ 6} As an initial matter, we note that because crimes and their penalties are statutory, the only sentence a trial judge may levy is that provided for by statute. Accordingly, a court shall not substitute a different sentence for that prescribed by law. *State v. Beasley* (1984), 14 Ohio St.3d 74, 75, 471 N.E.2d 774. "Any attempt by a court to disregard statutory requirements when imposing a sentence renders the attempted sentence a nullity or void." *Id.* "The effect of

determining that a judgment is void is well established. It is as though the proceedings had never occurred; the judgment is a mere nullity and the parties are in the same position as if there had been no judgment.” *State v. Bezak*, 114 Ohio St.3d, 94, 96, 2007-Ohio-3250, 868 N.E.2d 961.

{¶ 7} In this case, the trial court convicted appellant of one count of disorderly conduct and sentenced him to a fine of \$150, with \$50 suspended, and one year community control supervision unless he wrote two letters to the police officers. In Ohio, minor misdemeanors are distinguished from misdemeanors. See R.C. 2901.02 (classification of offenses). There is no dispute that disorderly conduct, under the facts of this case, is a minor misdemeanor. Thus, pursuant to R.C. 2929.28(A)(2)(a)(v), the trial court was within the purview of the law to impose a fine of no more than \$150 plus court costs. However, the court’s imposition of the other punishments for the minor misdemeanor offense of disorderly conduct must be reversed as contrary to law.

{¶ 8} R.C. 2929.22 governs imposition of sentences for misdemeanor offenses and provides in relevant part:

{¶ 9} “Unless a specific sanction is required to be imposed *or is precluded from being imposed by the section setting forth an offense or the penalty for an offense or by any provision of sections 2929.23 to 2929.28 of the Revised Code*, a court that imposes a sentence upon an offender for a misdemeanor may impose on the offender any sanction or combination of sanctions under sections 2929.24 to 2929.28 of the Revised Code.” (Emphasis added.)

{¶ 10} R.C. 2929.25(A)(1) governs misdemeanor community control sanctions and yields the following:

{¶ 11} “(A)(1) Except as provided in sections 2929.22 and 2929.23 of the Revised Code or when a jail term is required by law, in sentencing an offender for a misdemeanor, *other than a minor misdemeanor*, the sentencing court may do either of the following:

{¶ 12} “(a) Directly impose a sentence that consists of one or more community control sanctions authorized by section 2929.26, 2929.27, or 2929.28 of the Revised Code. The court may impose any other conditions of release under a community control sanction that the court considers appropriate. If the court imposes a jail term upon the offender, the court may impose any community control sanction or combination of community control sanctions in addition to the jail term.

{¶ 13} “(b) Impose a jail term under section 2929.24 of the Revised Code from the range of jail terms authorized under that section for the offense, suspend all or a portion of the jail term imposed, and place the offender under a community control sanction or combination of community control sanctions authorized under section 2929.26, 2929.27, or 2929.28 of the Revised Code.” (Emphasis added.)

{¶ 14} Thus, in Ohio, community control sanctions are permissible in all but minor misdemeanor cases. See *State v. Dudley*, Fairfield App. No. 2005 CA 1005, 2006-Ohio-6290, ¶21. In this case, appellant’s offense of disorderly

conduct is a minor misdemeanor, and thus, not subject to community control sanctions pursuant to R.C. 2929.25.

{¶ 15} This conclusion is further bolstered by a reading of R.C. 2929.27(A), which governs nonresidential sanctions where jail terms are not mandatory and provides the following:

{¶ 16} “Except when a mandatory jail term is required by law, the court imposing a sentence for a misdemeanor, *other than a minor misdemeanor*, may impose upon the offender any nonresidential sanction or combination of nonresidential sanctions authorized under this division.” (Emphasis added.)

{¶ 17} R.C. 2929.27(B) further provides:

{¶ 18} “In addition to the sanctions authorized under division (A) of this section, the court imposing a sentence for a misdemeanor, *other than a minor misdemeanor*, upon an offender who is not required to serve a mandatory jail term may impose any other sanction that is intended to discourage the offender or other persons from committing a similar offense if the sanction is reasonably related to the overriding purposes and principles of misdemeanor sentencing.” (Emphasis added.)

{¶ 19} Finally, R.C. 2929.27(C) states:

{¶ 20} “The court imposing a sentence of a minor misdemeanor may impose a term of community service in lieu of all or part of a fine. The term of community service imposed for a minor misdemeanor shall not exceed thirty hours.”

{¶ 21} Therefore, in this case, because appellant was convicted of the minor misdemeanor offense of disorderly conduct, the court could not impose any community control sanctions other than community service not exceeding thirty hours. Here, however, the court did not follow these guidelines. The trial court sentenced appellant to community control supervision for one year, not community service. This is not the same punishment as that permitted in R.C. 2929.27. As such, the trial court imposed a sentence contrary to law. The court's imposition of community control supervision for the minor misdemeanor offense of disorderly conduct must be reversed and the case remanded to the trial court for a new sentence in compliance with the law.¹

{¶ 22} His second assignment of error states:

{¶ 23} "The trial court erred when it determined appellant had violated his probation."

{¶ 24} A review of the record indicates that the court never determined that appellant violated his community control sanctions. A hearing concerning the alleged violation was scheduled for March 5, 2010, which was stayed per this court's directive on March 4, 2010. Accordingly, the lower court never held the aforementioned hearing and never determined appellant violated community control sanctions. His second assignment of error is overruled.

¹In this assignment of error, appellant also moves for a writ of supersedeas "against Lakewood Municipal court to cease from imposing terms of probation for individuals that are convicted of minor misdemeanor offenses." In order to assert a writ of supersedeas, appellant must file the motion as an action separate from his direct

{¶ 25} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is, therefore, considered that said appellant recover of said appellee his costs herein.

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.

ANN DYKE, JUDGE

KENNETH A. ROCCO, P.J., and
MELODY J. STEWART, J., CONCUR

appeal. Accordingly, we decline to review the substance of this motion.