

[Cite as *State v. Benson*, 2015-Ohio-5151.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 103016 and 103018

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

EARL BENSON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART AND
REVERSED IN PART

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-14-591077-A and CR-14-591755-A

BEFORE: E.A. Gallagher, P.J., McCormack, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: December 10, 2015

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EILEEN A. GALLAGHER, P.J.:

{¶1} In this consolidated appeal, defendant-appellant Earl Benson appeals his sentence from the Cuyahoga County Court of Common Pleas. Benson argues that the trial court erred by imposing consecutive community control sanctions. For the following reasons, we affirm in part and reverse in part.

{¶2} Benson pled guilty to three counts of non-support of dependants in CR-14-591755-A and one count of attempted forgery in CR-14-591077-A. The trial court imposed six months of community control sanctions in CR-14-591077 to run concurrent to Benson's sentence in CR-14-591755. Benson has presented no challenge to this sentence in CR-14-591077, therefore, that sentence is affirmed.

{¶3} In CR-14-591755, the trial court imposed five years of community control sanctions on the three counts of non-support of dependants. A discrepancy exists in that the trial court at the sentencing hearing indicated that the three sentences would be served consecutively. However, the sentencing journal entry reflects that the counts are to be served concurrently. The trial court also ordered Benson to pay restitution in the amount of \$11,527.24.

{¶4} In his sole assignment of error, Benson argues that the trial court improperly ordered his three community control sanction sentences to be served consecutively. The state concedes this error, citing R.C. 2929.15(A)(1) that provides that "[t]he duration of all community control sanctions imposed upon an offender under this division shall not exceed five years."

{¶5} This court has previously held that sentences that impose consecutive community control sanctions exceeding five years violate R.C. 2929.15(A)(1). *State v. LaSalla*, 8th Dist. Cuyahoga No. 99424 2013-Ohio-4596, ¶ 35.

{¶6} Furthermore, even if Benson’s sentences did not run afoul of R.C. 2929.15(A)(1), the above noted discrepancy between the pronouncement of sentence at the sentencing hearing and the sentencing entry mandates reversal. *State v. Moore*, 8th Dist. Cuyahoga No. 100401, 2014-Ohio-2979, ¶ 29. A criminal defendant needs to be present when sentence is imposed. *State v. Kimmie*, 8th Dist. Cuyahoga No. 98979, 2013-Ohio-2906, ¶ 23. Thus, when a discrepancy between the sentencing hearing and the journal entry exists, there should be a remand for the limited purpose of a new sentencing hearing. *State v. Jones*, 8th Dist. Cuyahoga No. 94408, 2011-Ohio-453, ¶ 15-16.

{¶7} Benson’s sole assignment of error is sustained.

{¶8} The judgment of the trial court is affirmed in part and reversed in part and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant and appellee share the 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. The defendant’s convictions having been affirmed in part, any bail pending appeal is terminated.

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

EILEEN A. GALLAGHER, PRESIDING JUDGE

TIM McCORMACK, J., and
ANITA LASTER MAYS, J., CONCUR

