

[Cite as *State v. Dorsey*, 2016-Ohio-8315.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104229

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RAY M. DORSEY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART;
REVERSED IN PART

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-600165-A

BEFORE: E.A. Gallagher, P.J., Boyle, J., and Blackmon, J.

RELEASED AND JOURNALIZED: December 22, 2016

ATTORNEY FOR APPELLANT

Susan J. Moran
55 Public Square
Suite 1616
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: Melissa Riley
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

EILEEN A. GALLAGHER, P.J.:

{¶1} Defendant-appellant Ray Dorsey appeals the conditions of his community control sanctions imposed in the Cuyahoga County Court of Common Pleas. For the following reasons we affirm in part, and reverse in part.

Factual and Procedural Background

{¶2} Dorsey was found guilty of assault on January 20, 2016. The trial court imposed a five-year sentence of community control sanctions with conditions requiring Dorsey to (1) maintain verifiable employment, (2) complete an anger management program, (3) avoid any establishment where alcohol is served, sold or used, (4) not use drugs or alcohol and (5) have no contact with anyone with a criminal record or engaged in illegal activities.

Law and Analysis

I. Conditions of Appellant's Community Control Sanctions

{¶3} Dorsey argues that the trial court's alcohol-related prohibitions and the requirement that he not associate with anyone who has a criminal record were overly broad and unreasonable conditions. We agree, generally, a trial court has broad discretion when deciding and imposing the terms and conditions of community control. *State v. Patton*, 8th Dist. Cuyahoga No. 103737, 2016-Ohio-4867, ¶ 18, citing *Lakewood v. Hartman*, 86 Ohio St.3d 275, 277, 1999- Ohio-101, 714 N.E.2d 902. Accordingly, we review the imposition of these terms and conditions for an abuse of discretion. *State v.*

Talty, 103 Ohio St. 3d 177, 2004-Ohio-4888, 814 N.E.2d 1201, ¶ 10. A court abuses its discretion if its decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶4} Probation “conditions cannot be overly broad so as to unnecessarily impinge upon the probationer’s liberty.” *State v. Jones*, 49 Ohio St.3d 51, 52, 550 N.E.2d 469 (1990). Appellate courts evaluate the reasonableness of probation conditions using the three-prong test articulated in *Jones*. Under the test, courts 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; *State v. Nolan*, 3d Dist. Marion No. 9-15-48, 2016-Ohio-2985, ¶ 22.

{¶5} Recently in *Patton*, this court upheld a trial court’s prohibition against alcohol consumption as a condition of community control where the defendant argued that he had never had any problems with alcohol consumption and there was no connection between alcohol and the subject offense. *Patton* at ¶ 21. The defendant in *Patton* admitted that he was high on cocaine when he committed his offense and attributed his actions to his clouded judgment from the drug use. *Id.*

{¶6} We cannot say that the trial court abused its discretion by imposing the alcohol-related prohibitions in this instance. Dorsey has two prior convictions for disorderly conduct and a conviction for violating an open container prohibition. Dorsey also has prior convictions for attempted carrying concealed weapons, aggravated menacing and felonious assault. Furthermore, Dorsey failed to comply with the trial

court's bond condition that he not abuse alcohol prior to sentencing. Under these facts, we find no error in the imposition of the alcohol prohibition conditions of Dorsey's sentence.

{¶7} However, the prohibition on associating with any persons with a criminal record is overly broad. The record contains no evidence to suggest that the present offense or any of the prior offenses in Dorsey's criminal history were connected to associations with individuals with criminal records. The court in *State v. Weimer*, 11th Dist. Trumbull No. 2004-T-0040, 2005-Ohio-2361, reversed a probation condition barring associations with individuals with prior felony convictions because the condition had no connection to the underlying offense of driving under the influence and was not reasonably related to preventing future criminal behavior. *Id.* at ¶ 53. The court noted that such a prohibition could also conflict with the trial court's order that the defendant seek treatment for his alcohol problems that could require him to interact with individuals with a criminal history. *Id.* at ¶ 53. The same deficiencies exist in the present case.

{¶8} Furthermore, the terms of Dorsey's association condition are plainly overly broad in that the trial court barred him not merely from associating with felons but any individual with a criminal record. Dorsey would be in violation from associating even with individuals with prior misdemeanor convictions. The record provides absolutely no connection between such associations and Dorsey's offense. We conclude that the trial court abused its discretion in imposing the association condition of Dorsey's community control sanction sentence.

{¶9} Dorsey's first assignment of error is sustained in part, and overruled in part.

{¶10} This cause is affirmed in part, and reversed in part

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 Cuyahoga County Court of Common Pleas 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.

EILEEN A. GALLAGHER, PRESIDING JUDGE

MARY J. BOYLE, J., and
PATRICIA ANN BLACKMON, J., CONCUR