

[Cite as *State v. Griffin*, 2016-Ohio-937.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103112

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

THERON GRIFFIN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-579921-A

BEFORE: Blackmon, J., Jones, A.J., and Stewart, J.
RELEASED AND JOURNALIZED: March 10, 2016

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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By: Frank Romeo Zeleznikar
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PATRICIA ANN BLACKMON, J.:

{¶1} Theron Griffin (“Griffin”) appeals pro se from the trial court’s journal entries extending his community control sanctions (“CCS”) and assigns the following errors for our review:

I. The judgement [sic] entry extending appellant [sic] probation is void and must be vacated, where defendant was not present when his sentence [sic] was modified.

II. The court lacked authority and jurisdiction and violated appellant [sic] due-process of law when his community control supervision was modified.

{¶2} Having reviewed the record and pertinent law, we affirm. The apposite facts follow.

{¶3} On January 17, 2014, Griffin pled guilty to attempted robbery in violation of R.C. 2923.02 and 2911.02(A)(3), a fourth-degree felony. On February 18, 2014, the court sentenced Griffin to one year of CCS. A journal entry on the court’s docket dated September 30, 2014, states as follows: “At the request of the probation department, community control sanctions extended to 08/18/2015. Defendant to report weekly.”

{¶4} On May 13, 2015, the court held a status report hearing. At this hearing, a probation officer noted that the reason for the previous extension of Griffin’s CCS, on September 30, 2014, was “noncompliance,” with the specific “violation” being “multiple missed report days and a new arrest and charge of drug possession” in *State v. Griffin*, Cuyahoga C.P. No. CR-14-586317.

{¶5} The probation officer additionally stated that on April 2, 2015, Griffin was sentenced to five years of CCS in another case, *State v. Griffin*, Cuyahoga C.P. No. CR-14-590332. Furthermore, Griffin still owed costs and fees associated with the CCS

in the instant case. The probation officer recommended that Griffin's CCS "be continued and extended until February 18th of 2016 and transferred to Group E supervision to accompany * * * Case 590332 in which [Griffin] is being supervised."

{¶6} During this hearing, Griffin stated on the record as follows: "I oppose my Probation to be extended an additional 6 months because of supervision fees and fines * * *. I have 90 days left * * * for the current case * * *. And I believe even though it's 90 days, I could perform community service and satisfy those fines and be done with that."

{¶7} Although the court acknowledged that a new conviction may be a violation of Griffin's current CCS, the court did not find that a violation occurred. Rather, the court stated the following:

You still have \$240 in supervision fees and \$370 in court costs. I think an extension is warranted through April 2nd, 2016 so I'm going to order it.

What will happen, sir, is if you finish and you pay your supervision fees and your court costs early and you continue to do everything that is required of you under this case I can't imagine your officer wouldn't consider terminating you in this case, only not for the 5 years on the other case.

{¶8} The court's May 13, 2015 journal entry memorialized its decision: "Defendant's supervision in [the case at hand] is transferred to Group E and extended to 4/2/2016. Defendant may pay balance of the court costs and fines through community work service."

{¶9} On June 10, 2015, Griffin appealed the September 30, 2014 and May 13, 2015 journal entries.

Law and Analysis

{¶10} Griffin’s first assigned error relates to the September 30, 2014 journal entry extending his CCS from February 18, 2015 to August 18, 2015. “[A] party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal * * * within 30 days of that entry.” App.R. 4(A). In the instant case, Griffin filed his notice of appeal on June 10, 2015, well beyond 30 days after September 30, 2014. We find that Griffin’s appeal, as it relates to the September 30, 2014 journal entry, is untimely. Griffin’s first assigned error is overruled.

{¶11} In Griffin’s second and final assigned error, he argues that the court violated his due process rights by extending his CCS at the May 13, 2015 status hearing.

{¶12} Pursuant to R.C. 2951.07, “[a] community control sanction continues for the period that the judge or magistrate determines, and subject to [a] five-year limit * * *, may be extended.” We review a court’s decision to extend CCS for an abuse of discretion. *See State v. Fonte*, 8th Dist. Cuyahoga No. 98144, 2013-Ohio-98.

{¶13} “It is well established that once execution of sentence has begun, the trial court may not amend the sentence to increase the punishment.” *State v. Hooks*, 128 Ohio App.3d 750, 752, 716 N.E.2d 778 (8th Dist.1998). Applying this law to CCS, “the trial court may not modify the terms of a defendant’s [CCS] after execution of his sentence has commenced if the defendant has satisfied the originally announced terms of that probation.” *Id.* at 753. Therefore, it is within the court’s discretion to extend a defendant’s CCS based on the defendant’s “new conviction.” *State v. Washington*, 8th

Dist. Cuyahoga Nos. 101157 and 101170, 2015-Ohio-305, ¶ 31. Additionally, failure to pay court costs and fees is a “sufficient rational basis” to extend CCS. *State v. Rose*, 8th Dist. Cuyahoga No. 70984, 1997 Ohio App. LEXIS 1072 (Mar. 20, 1997).

{¶14} In the instant case, the court expressly stated at the May 13, 2015 hearing that it was not going to “deal with” Griffin’s new conviction as a CCS violation. Rather, the court extended Griffin’s CCS by six months, over Griffin’s objection, based on the failure to pay his supervision fees and court costs. Upon review, we find that the court acted within its discretion.

{¶15} This court has previously upheld an extension of community control sanctions for nonpayment of costs, reasoning that the trial court was “within its discretion to call upon its vast experience and note that the payment of a large fine at the last moment is difficult for defendants. The court rationally based its decision on the fact that at the time of the hearing the appellant had not paid any of the pending fines or court costs.” *State v. Vlahopoulos*, 8th Dist. Cuyahoga No. 68436, 1995 Ohio App. LEXIS 3798 (Aug. 31, 1995). *See also State v. Criss*, 55 Ohio App.3d 238, 563 N.E.2d 727 (8th Dist.1988) (a trial court has discretion to extend a defendant’s “probation period without a hearing for the nonpayment of costs”). Accordingly, Griffin’s second assigned error is overruled.

{¶16} The trial court’s May 13, 2015 journal entry is affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to 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.

PATRICIA ANN BLACKMON, JUDGE

LARRY A. JONES, SR., A.J., CONCURS;
MELODY J. STEWART, J., CONCURS
IN JUDGMENT ONLY