

[Cite as *State v. Cox*, 2018-Ohio-748.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 105932

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**CHARLES C. COX, IV**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-16-610179-A

**BEFORE:** Boyle, P.J., Blackmon, J., and Keough, J.

**RELEASED AND JOURNALIZED:** March 1, 2018

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MARY J. BOYLE, P.J.:

{¶1} Defendant-appellant, Charles C. Cox, IV, appeals from the trial court's judgment finding that he violated the terms of his community control sanctions and sentencing him to prison. He raises one assignment of error for our review:

The trial court erred when determining that appellant violated the terms of his probation and imposed a prison sentence.

{¶2} Finding no merit to his appeal, we affirm.

### **I. Procedural History and Factual Background**

{¶3} In October 2016, Cox was indicted for failure to provide notice of change of address in violation of R.C. 2950.05(F)(1), a felony of the fourth degree. Cox was required to report any change of address to the Cuyahoga County sheriff because he was classified a Tier I sex offender in April 2015 after he was convicted of unlawful sexual conduct with a minor. Cox pleaded guilty in March 2017, to failure to provide notice of change of address. The trial court sentenced Cox to one year of community control sanctions and advised him that if he violated the terms of his sanctions, it may sentence him to a more restrictive sanction or a prison term of 17 months.

{¶4} On May 10, 2017, Cox's probation officer informed the court that Cox failed to report for supervision. The court issued a *capias* for Cox's arrest. Cox was subsequently arrested on May 23, 2017.

{¶5} Cox challenged probable cause for the alleged violation. The trial court held a hearing on the matter in June 2017, after which the trial court found that Cox

violated the terms of his community control sanctions. The trial court revoked his community control sanctions and sentenced him to 17 months in prison. The trial court further notified Cox that upon his release from prison, he may be subject to three years of postrelease control. It is from this judgment that Cox now appeals.

## **II. Hearing**

{¶6} Lakisha Sharp, Cox's probation officer, testified that after Cox was sentenced to community control supervision, his case was transferred to the Mental Health and Developmental Disabilities Unit by court order on April 21, 2017. Sharp received the case on April 28.

{¶7} Sharp testified that on May 5, 2017, the probation department received a call from Detective Katie Orlando of the Cuyahoga County Sheriff's Department. Detective Orlando informed the probation department that she received a call from a man who alleged that Cox "had been in recent contact with [the man's] daughter." The man knew that Cox was a sex offender and was asking the detective how to proceed. Sharp told Detective Orlando to give the man her telephone number.

{¶8} Sharp stated that when she talked to the man, "he provided a very troubling narrative." The man told Sharp that his daughter met Cox through Facebook. The man reviewed "most of the Facebook communication and noted there was no mention of sex," but Cox did tell the girl that Cox "could obtain marijuana and alcohol for their consumption."

{¶9} The man also told Sharp that his daughter ran away from home on April 23,

2017. RTA transit police found the girl on April 30, 2017, riding on a bus with Cox. The girl told police that she and Cox had been living together in an abandoned house “in the West 25th area.” Sharp stated that “it was unclear why Mr. Cox was not arrested and/or the probation department was not notified about this matter.” The girl is now living with her older sibling and has had no contact with Cox.

{¶10} Sharp further testified that on May 8, 2017, Cox contacted the probation department, and told them that “he would be reporting later that day but failed to do so.” As a result, “a status report was afforded to the court on May 10, 2017.” The court issued a capias for Cox’s arrest two days later, and Cox was arrested on May 23 when he reported to his probation officer. Cox submitted to drug testing on the day he was arrested; he tested negative for all illegal substances.

{¶11} Cox testified that on May 8, 2017, he went to work instead of seeing his probation officer. He said that he called his probation officer and left a message that he could not make it and asked if he could reschedule. He stated that his probation officer told him that he did not have to come that day and could come on May 23 instead.

{¶12} Defense counsel argued that Cox’s testimony showed that he did not violate the terms of his probation. The court disagreed, asking defense counsel, “[y]ou don’t think him [being] with a minor child on an RTA bus rises to a violation?” Defense counsel replied no, because Cox was “not on probation for that”; he was on probation for failure to provide a notice of change of address. The court disagreed, stating that being on probation for failure to provide notice of change of address was “to protect the

community from him committing further sexual offenses which includes young kids[.]”

Defense counsel disagreed.

{¶13} Subsequently, the court found Cox to be in violation of the failure to report.

Defense counsel requested the court give Cox “time served” and let him “go back with his mother.” The court terminated community control sanctions and ordered Cox serve the 17-month prison sentence. It is from this judgment that Cox now appeals.

### III. Law and Analysis

{¶14} In his sole assignment of error, Cox argues that the trial court erred when it determined that he violated the terms of his community control sanctions.

{¶15} A defendant is entitled to a preliminary hearing to determine whether there is probable cause to believe that the defendant has violated the terms of his or her community control. *State v. Roberts*, 2d Dist. Champaign No. 2016-CA-8, 2017-Ohio-481, ¶ 18, citing *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973). Due process also requires a final hearing to determine whether community control should be revoked. *Id.* The trial court held a hearing on probable cause and revocation on the same day.

{¶16} A community control revocation hearing is not a criminal trial, so the state is not required to establish a violation of the terms of community control beyond a reasonable doubt. *State v. Davis*, 8th Dist. Cuyahoga No. 105299, 2017-Ohio-8873, ¶ 14, citing *State v. Hylton*, 75 Ohio App.3d 778, 600 N.E.2d 821 (4th Dist.1991). Instead, the quantum of evidence required to establish a violation and revoke a

community control sanction must be “substantial.” *Id.* In a community control violation hearing, the trial court must consider the credibility of the witnesses and make a determination based on substantial evidence. *State v. Lenard*, 8th Dist. Cuyahoga No. 93373, 2010-Ohio-81, ¶ 14, citing *State v. Hayes*, 8th Dist. Cuyahoga No. 87642, 2006-Ohio-592. “Substantial evidence has been defined as being more than a scintilla of evidence, but less than a preponderance.” *Davis* at ¶ 14, citing *State v. McCants*, 1st Dist. Hamilton No. C-120725, 2013-Ohio-2646.

{¶17} “The revocation of community control is an exercise of the sentencing court’s criminal jurisdiction, and pursuant to R.C. 2929.15(B)(1), the court may extend the term of the offender’s community control or impose a more restrictive sanction or a prison term if the conditions of community control are violated.” *State v. Morris*, 2016-Ohio-7614, 73 N.E.3d 1010, ¶ 12 (8th Dist.). Thus, a trial court’s decision finding a violation of community control will not be disturbed on appeal absent an abuse of discretion. *Hayes* at ¶ 11.

{¶18} In this case, the trial court found that Cox was in violation of the terms of his community control sanctions because he failed to report to his probation officer on May 8, 2017.<sup>1</sup> Cox argues that he provided “a compelling reason for not reporting,” i.e., employment. He asserts that “[t]he decision not to lose his job and to reschedule his

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<sup>1</sup>Initially, the trial court found that he also violated the terms of his sanctions because he was allegedly found riding on a bus with a minor in violation of his sex-offender classification requirements. But after defense counsel objected and argued that was not a violation in this case, the trial court withdrew this finding and based it only on the fact that Cox failed to appear on May 8.

probation appointment was an attempt at maturing and doing the right thing to further his life.” Cox testified at the hearing that he called his probation officer to tell her that he could not make it that day because of work. He said that he left a message, but then he implied that he actually talked to her because he testified that she told him he did not have to report that day and could report instead on May 23, which he then did (and was arrested).

{¶19} Cox’s probation officer, however, testified during the probable cause portion of the hearing that Cox contacted the probation department and said that “he would be reporting later that day but failed to do so.” The trial court was in the best position to judge the credibility of Cox and his probation officer regarding this matter.

{¶20} Cox further argues that imposing the 17-month prison sentence in this case goes against the “overriding purpose” of R.C. 2929.11’s mandate that trial courts use minimum sanctions to accomplish the purposes of felony sentencing.

{¶21} With respect to sentencing offenders after finding that they violated the terms of their community control sanctions, the Ohio Supreme Court has explained:

“If the conditions of community control are violated, R.C. 2929.15(B) provides the trial court a great deal of latitude in sentencing the offender.” [*State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837], ¶ 20. The court must “consider both the seriousness of the original offense leading to the imposition of community control and the gravity of the community control violation.” *Id.* After weighing these factors, the only restriction is that the judge may not impose a prison sentence longer than that which the trial court stated it could impose at the original sentencing hearing. But there is no predetermined sentence. The community-control-sanctions statute plainly grants the trial court discretion to impose a longer period of community control, a more restrictive community-control sanction, or a prison term of any length within the range



of that available for the original offense, up to the maximum term the trial court specified at the first sentencing hearing. R.C. 2929.15(B).

A trial judge's broad discretion to fashion a sentence after finding that the offender violated the conditions of community control reinforces our conclusion that a community-control- revocation hearing is a sentencing hearing for purposes of R.C. 2929.19(A) and Crim.R. 32(A)(1) [both regarding allocution at sentencing]. Permitting an offender to speak on his or her own behalf at a community-control-revocation hearing serves the criminal-justice system's essential goals of fairness and due process.

*State v. Jackson*, 150 Ohio St.3d 362, 2016-Ohio-8127, 81 N.E.3d 1237, ¶ 13-14.

{¶22} Although it is undisputed that Cox called his probation officer on May 8, 2017 (according to both Cox and the probation officer), and then reported in person 15 days later, we cannot say that the trial court abused its "broad discretion" when it revoked Cox's community control sanctions. *See Jackson* at ¶ 14. According to Cox's probation officer, who the trial court obviously believed over Cox, Cox lied to the court regarding May 8; he said that his probation officer told him that he could just come in on May 23. But that is not what occurred according to the probation officer.

{¶23} Accordingly, Cox's sole assignment of error is overruled.

{¶24} Judgment affirmed.

It is ordered that appellee recover from appellant 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 conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

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MARY J. BOYLE, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and  
KATHLEEN ANN KEOUGH, J., CONCUR