

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 08CA0081-M

Appellee

v.

SABRINA MCQUADE

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 02CR0028

DECISION AND JOURNAL ENTRY

Dated: September 14, 2009

BELFANCE, Judge.

{¶1} Defendant-Appellant Sabrina McQuade appeals from the decision of the Medina County Court of Common Pleas. For reasons set forth below, we affirm.

FACTS

{¶2} In 2002, McQuade pled no contest to theft charges alleging that she stole money from her employer, Medina World Cars. On September 13, 2002, the trial court sentenced McQuade to five years of community control and ordered her to pay \$40,000 in restitution. The judgment was journalized September 18, 2002.

{¶3} A violation of supervision complaint was filed in September 2005¹ against McQuade, which ultimately resulted in McQuade’s monthly restitution payments being lowered. On February 7, 2007, the trial court ordered a capias to issue for McQuade stating that McQuade “failed to report to her probation officer on January 23, 2007 and January 30, 2007, and for

failure to make her monthly payments.” A *capias* was issued to the sheriff on February 12, 2007. McQuade was arrested on February 21, 2008 and the *capias* was returned and filed February 25, 2008. On February 27, 2008, a community control sanction/violation of supervision complaint was filed in the trial court, related to the incidents described in the *capias*, as well as additional violations. McQuade was arraigned on the community control violations on March 3, 2008. McQuade filed a motion to dismiss the community control violation complaint, arguing the trial court lacked jurisdiction as the community control period had expired. The trial court denied the motion to dismiss. Additionally, two more community control violation complaints were filed. At an arraignment for the additional violations, McQuade entered a plea of admission to the charges. McQuade was sentenced on September 9, 2008 to six months in prison; the judgment was journalized October 1, 2008.

{¶4} McQuade appeals from the October 1, 2008 judgment entry as well as the May 8, 2008 entry denying McQuade’s motion to dismiss.

JURISDICTION

{¶5} McQuade argues that the trial court erred in denying her motion to dismiss because she believes the trial court did not have jurisdiction over her as her period of community control had expired. We disagree.

{¶6} We review McQuade’s motion to dismiss *de novo* as her assignment of error presents us with a question of law, i.e. whether the issuance of a *capias* is sufficient to toll the running of the community control period. See, e.g., *State v. Denny*, 9th Dist. No. 08CA0051, 2009-Ohio-3925, at ¶4, citing *Med. Mut. of Ohio v. Schlotterer*, 122 Ohio St.3d 181, 2009-Ohio-2496, at ¶13. The trial court sentenced McQuade to five years of community control in

¹ While a copy of the violation of supervision complaint appears in the record, it appears

September 2002; thus, her term would have expired in September 2007. Nonetheless, “[i]f the offender under community control absconds or otherwise leaves the jurisdiction of the court without permission from the probation officer, the probation agency, or the court to do so, or if the offender is confined in any institution for the commission of any offense, the period of community control ceases to run until the time that the offender is brought before the court for its further action.” R.C. 2951.07. Thus, absent a tolling event, McQuade’s term of community control would terminate in September 2007. McQuade argues that the issuance of the *capias* by the trial court on February 7, 2007 was insufficient to toll the running of the community control period, and thus, the trial court erred in exercising its jurisdiction after September 2007.

{¶7} We have previously concluded that “the issuance of a *capias* or warrant is sufficient to toll the probationary period until the probationer is brought before the court.” *Rash v. Anderson* (May 7, 1997), 9th Dist. No. 97CA006728, at *1. The Supreme Court of Ohio affirmed our decision and stated that “[a]s the court of appeals correctly held, the issuance of two *capiases* for Rash during his five-year probation period tolled the running of his probation period so that the trial court retained jurisdiction to revoke his probation and resentence him on October 3, 1986.” *Rash v. Anderson* (1997), 80 Ohio St.3d 349, 350-351. Since then this has continued to be the law of this Court. See *State v. Wilson*, 9th Dist. No. 02CA007993, 2002-Ohio-4403, at ¶10. Thus, we find no merit to McQuade’s contention that the issuance of *capias* by the trial court did not toll McQuade’s community control period.

{¶8} Therefore, we next examine whether McQuade was still subject to community control when the trial court journalized its sentencing entry, in light of the fact that the period of community control was tolled by the issuance of the *capias*. See *Wilson* at ¶10. McQuade’s

the complaint was never officially filed with the trial court as it was never time stamped.

term of community control began September 18, 2002 and, absent a tolling event, would have expired five years later on September 18, 2007. Thus, at the point in time when the trial court issued the capias, February 7, 2007, McQuade was still subject to her community control sanction. McQuade was not arraigned on the community control violation until March 3, 2008. Thus, over a year of McQuade's community control period was tolled. R.C. 2951.07. Between the March arraignment date and the date McQuade's sentence was journalized on October 1, 2008, less than one year of McQuade's community control period passed.² As such, McQuade's five-year term of community control had not yet expired when McQuade filed her motion to dismiss in March or when the trial court sentenced her on September 9, 2008. The trial court thus retained jurisdiction over the matter. We conclude the trial court did not err.

CONCLUSION

{¶9} In light of the above, we affirm the judgment of the Medina County Court of Common Pleas.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the

² The State has only argued that the February 7, 2007 capias tolled the running of the community control period. As such, we do not address whether additional tolling events may

period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE
FOR THE COURT

DICKINSON, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

MICHAEL J. ASH, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and MICHAEL J. MCNAMARA, Assistant Prosecuting Attorney, for Appellee.

have occurred during the community control period.