

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 14CA010579

Appellee

v.

ROCHELLE H. BENNETT

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 08CR075340

Appellant

DECISION AND JOURNAL ENTRY

Dated: July 20, 2015

MOORE, Judge.

{¶1} Defendant-Appellant, Rochelle Bennett, appeals from the judgment of the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} A grand jury indicted Ms. Bennett on one count of theft, a fourth-degree felony in violation of R.C. 2913.02(A)(1). Ms. Bennett pleaded guilty to the charge and, on November 26, 2008, the court sentenced her to 16 months in prison. As a part of her sentence, the court ordered her to pay restitution, costs, and court-appointed attorney fees.

{¶3} On January 21, 2009, the court granted Ms. Bennett judicial release and placed her on five years of community control. As conditions of her community control, the court ordered her to pay: (1) restitution in the amount of \$72,122.25 to Miller Plumbing within a five-year period; (2) court costs within 180 days; (3) \$10 per month towards a probation supervision fee of \$600; and (4) court-appointed attorney fees of \$797 within three years. By the time the

five-year term of her community control had almost expired, however, Ms. Bennett still had not been able to satisfy all of the foregoing payments.

{¶4} On November 26, 2013, the court set the matter for a probable cause hearing to determine whether Ms. Bennett had violated the conditions of her community control. Although the court originally scheduled the hearing for December 11, 2013, the court had to continue the matter multiple times. The hearing ultimately took place on April 2, 2014.

{¶5} Prior to the hearing, Ms. Bennett filed a motion to dismiss her alleged community control violation. She noted that she was indigent and had made and continued to make bona fide efforts to repay the money she owed. Because she had not intentionally refused to fully repay the money she owed within the timeframe the court ordered, she argued that the court could not find her in violation of community control without offending her equal protection rights. Further, she argued that the court lacked jurisdiction to find her in violation of community control and/or impose any sanctions on her for such a violation. Because her five-year term of community control had already expired at the time the court conducted the violation hearing, Ms. Bennett argued that the court no longer had the authority to act.

{¶6} At the hearing on Ms. Bennett's alleged violation, a representative from the Probation Department notified the court that Ms. Bennett still owed \$30,911.75 on her court-ordered obligation. The court heard argument from both parties and denied Ms. Bennett's motion to dismiss. The court found Ms. Bennett to be in violation of community control, but declined to impose a prison term upon her. Instead, the court ordered her to execute a payment plan and to continue making payments towards her obligation. In its April 2, 2014 journal entry, the court wrote: "[Ms. Bennett] is terminated administratively from community control upon execution of a payment plan in the same amount as is currently being paid." The court's entry

was filed along with a payment plan form, signed by Ms. Bennett, in which she promised to pay \$105 per month until she satisfied her total remaining obligation of \$30,911.75.

{¶7} Ms. Bennett now appeals from the court’s judgment and raises one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED BY ORDERING [MS. BENNETT] TO DO ANYTHING AFTER [HER] TERM OF COMMUNITY CONTROL HAD EXPIRED[.]

{¶8} In her sole assignment of error, Ms. Bennett argues that the trial court erred by exercising jurisdiction over her once her five-year term of community control had expired. She argues that, pursuant to R.C. 2951.09 and *Davis v. Wolfe*, 92 Ohio St.3d 549 (2001), she was entitled to a discharge.

{¶9} Former R.C. 2951.09 provided that “[a]t the end or termination of [a] period of probation, the jurisdiction of the judge * * * to impose sentence ceases and the defendant shall be discharged.” In *Davis*, the Supreme Court held that Former R.C. 2951.09 “prevented a common pleas court from revoking a criminal defendant’s probation and sentencing him after his probationary period had expired even if the revocation proceeding was initiated before the probationary period expired.” *State ex rel. Hemsley v. Unruh*, 128 Ohio St.3d 307, 2011-Ohio-226, ¶ 12. Thus, a trial court only had jurisdiction to impose a sentence for a probation violation while the defendant was still serving his or her probationary period. *See Davis* at 552.

{¶10} “Former R.C. 2951.09 * * * was repealed effective January 1, 2004 * * *.” *State ex rel. Hemsley* at ¶ 13. In *State ex rel. Hemsley*, the Supreme Court considered its application in the context of a defendant who was placed on community control after the statute was repealed.

See id. at ¶ 3. Mr. Hemsley received five years of community control, with his term commencing in March 2005. *See id.* at ¶ 3-4. In January 2010, the trial court notified Mr. Hemsley of an alleged violation of the terms of his community control and set the matter for a hearing that same month. *Id.* at ¶ 4. The hearing was ultimately continued until April, however, at which point Hemsley had already served his five-year term. Because he had served his five-year term, Hemsley moved to dismiss for lack of jurisdiction. *Id.* at ¶ 5. He argued that the court had no authority to sentence him for a violation of community control when his term had already expired. *Id.*

{¶11} The Supreme Court ultimately heard Hemsley’s argument when he later appealed from the denial of a writ of prohibition. The Supreme Court found that, because Hemsley was placed on community control after 2004, Former R.C. 2951.09 and *Davis* were inapplicable to him. *Id.* at ¶ 13. It held that a trial court has jurisdiction to conduct proceedings on community control violations after the expiration of a defendant’s community control term so long as “the notice of violations was properly given and the revocation proceedings were commenced before the expiration [of the term].” *Id.* Because the court had notified Hemsley of an alleged violation and had commenced the revocation proceedings against him before expiration of his term, the Supreme Court concluded that the trial court had jurisdiction to conduct the proceedings. *Id.*

{¶12} Ms. Bennett’s theft conviction arose from conduct that occurred in 2006 and 2007. She was placed on community control in 2009. Because the General Assembly repealed R.C. 2951.09 in 2004, the statute did not apply to her. *See id.* The court notified Ms. Bennett of the need for a hearing on an alleged community control violation almost two months before her community control term was set to expire. It then attempted to schedule the violation hearing for the month before her term was set to expire. Although the hearing ultimately took place after the

expiration of her term, Ms. Bennett received notice of her alleged violation and the revocation proceedings commenced before the expiration of her term. Thus, the court did not lack jurisdiction to conduct the proceedings. *See id.*

{¶13} Ms. Bennett’s brief also contains an argument that “[r]evocation of a defendant’s probation merely because he is unable to pay restitution violate[s] the Equal Protection Clause * * * where there is no evidence that the failure to pay was willful or intentional * * *.” Yet, the foregoing argument falls outside the scope of Ms. Bennett’s stated assignment of error. “[A]n appellant’s ‘assignment of error provides a roadmap for our review and, as such, directs our analysis of the trial court’s judgment.’” *State v. Gary*, 9th Dist. Wayne No. 12CA0014, 2012-Ohio-5813, ¶ 21, quoting *State v. Brown*, 9th Dist. Summit No. 23637, 2008-Ohio-2670, ¶ 24. Because Ms. Bennett has not separately assigned as error a purported violation of her equal protection rights, we decline to address that issue here. *See Gary* at ¶ 21. *See also* App.R. 16(A)(7). Accordingly, Ms. Bennett’s sole assignment of error is overruled.

III.

{¶14} Ms. Bennett’s sole assignment of error is overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

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 Lorain, 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 period for review shall begin to run. App.R. 22(C). 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.

CARLA MOORE
FOR THE COURT

HENSAL, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

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

DENNIS P. WILL, Prosecuting Attorney, and NATAHSHA RUIZ GUERRIERI, Assistant Prosecuting Attorney, for Appellee.