OLMSTED TOWNSHIP, APPELLANT, *v.* RITCHIE, APPELLEE.

[Cite as *Olmsted Twp. v. Ritchie*, 172 Ohio St.3d 39, 2023-Ohio-2516.]

Criminal law—Sentencing—R.C. 2929.25(D)(4)—Under R.C. 2929.25(D)(4), total time spent in jail for both a misdemeanor offense and a violation of a condition of a community-control sanction imposed for that offense may not exceed the statutory maximum jail term provided for the offense in R.C. 2929.24—Court of appeals' judgment reversed and trial-court order reinstated.

(No. 2022-0262—Submitted February 28, 2023—Decided July 25, 2023.)

CERTIFIED by the Court of Appeals for Cuyahoga County,

Nos. 110107 and 110108, 2022-Ohio-124.

KENNEDY, C.J.

{¶ 1} The Eighth District Court of Appeals certified this case to this court after it determined that its judgment conflicts with judgments of the Fourth, Seventh, Ninth, and Eleventh District Courts of Appeals. We determined that a conflict exists and ordered the parties to brief the following question:

> "[Does] R.C. 2929.25(D)(4) authorize[ ] a trial court to impose a jail term for a violation of a condition of a community-control sanction when the original sentence was directly imposed under R.C. 2929.25(A)(1)(a) and no suspended jail time was reserved as contemplated under R.C. 2929.25(A)(1)(b), regardless of notice having been provided under R.C. 2929.25(A)(3)(c)[?]"

166 Ohio St.3d 1483, 2022-Ohio-1284, 186 N.E.3d 814, quoting the court of appeals' February 15, 2022 entry.

{¶ 2} R.C. 2929.25(D)(4) provides that when a trial court imposes a jail term for a misdemeanant's violation of a condition of a community-control sanction, "the total time spent in jail for the misdemeanor offense and the violation of a condition of the community control sanction shall not exceed the maximum jail term available for the offense for which the sanction that was violated was imposed." The Eighth District construed this language as prohibiting the trial court from ordering a jail term for a violation of a condition of community control that exceeds the maximum jail term imposed on the misdemeanant at sentencing.

{¶ 3} We disagree with the court of appeals' construction of R.C. 2929.25(D)(4). The limit on the total length of time that a misdemeanant may be incarcerated for both a misdemeanor offense and a violation of a condition of a community-control sanction that was imposed for that offense is the statutory maximum jail term for the offense set forth in R.C. 2929.24. This limit does not change based on the length of the jail term imposed at sentencing.

{¶ 4} Consequently, we answer the certified question in the affirmative and reverse the contrary judgment of the Eighth District Court of Appeals.

Facts and Procedural History

{¶ 5} In September 2018, in two separate cases, appellee, Chad Ritchie, pleaded no contest to several first-degree misdemeanors: two counts of operating a vehicle while under the influence of alcohol ("OVI"), two counts of endangering children, two counts of domestic violence, and one count each of driving with a suspended license, failure to maintain control of a motor vehicle, and failure to reinstate a license. After merging allied offenses and dismissing one OVI count, the trial court imposed sentences of 30 days in jail for each of four counts, suspended fines, and a five-year period of community-control sanctions. It ordered the jail terms to be served consecutively for an aggregate term of 120 days. For

each count, the trial court informed Ritchie that if he violated a condition of a community-control sanction, the court could impose a sentence of 180 days in jail, which is the statutory maximum jail term provided by R.C. 2929.24(A)(1) for a first-degree misdemeanor.

{¶ 6} In September 2020, the trial court granted Ritchie's motion to modify his sentence to credit against the 120-day jail-term time he had served for convictions in a separate case. The trial court's entry allowing his four 30-day jail sentences to run concurrently with the prison sentence he had already served included the final phrase, "Leaving a 150 day jail sentence on each count." Ritchie moved the trial court to correct the entry, asserting that the court could not impose an additional jail term for a community-control violation, because he had already served the 120-day jail term imposed on him. The trial court corrected a clerical error in the entry and changed the disputed phrase to "leaving 150 days of jail available to sentence on each count," but it otherwise denied the motion, stating: "The Court shall correct the record to amend the case numbers. The request to delete 150 days of jail remaining on each case is denied."

{¶ 7} Ritchie appealed, but the Eighth District remanded the cases for the trial court to file an entry in each case that resolved all counts in a single document. *See State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, ¶ 17 (holding that "[o]nly one document [as opposed to multiple documents considered together] can constitute a final, appealable order"), *modified in part on other grounds by State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph one of the syllabus. The trial court complied, and the case returned to the court of appeals.

{¶ 8} The Eighth District noted that the trial court "did not suspend the additional 150 days that could have been imposed when it sentenced Ritchie on each of the misdemeanor counts." 2022-Ohio-124, 181 N.E.3d 649, ¶ 10. It therefore rejected the trial court's conclusion that 150 days of jail time for each

count remained available to sentence Ritchie for any violation of the terms of his community control. *Id.* at ¶ 16. Construing R.C. 2929.25(D), the court of appeals explained that the statute permits the trial court to impose a jail term for a violation of a condition of community control so long as the time in jail does not exceed the maximum jail term imposed at sentencing. *See id.* at ¶ 19. It concluded that "[b]ecause Ritchie has served the maximum jail term on the sentence that was imposed, Ritchie is not subject to any further jail time for the offenses involved." *Id.* at ¶ 16. The appellate court modified the trial court's ruling and remanded the case "for correction of the trial court's entry to reflect [that] no jail time remains." *Id.* at ¶ 21.

{¶ 9} The Eighth District certified that its judgment conflicts with judgments of the Fourth, Seventh, Ninth, and Eleventh Districts on the following question of law:

> "[Does] R.C. 2929.25(D)(4) authorize[ ] a trial court to impose a jail term for a violation of a condition of a community-control sanction when the original sentence was directly imposed under R.C. 2929.25(A)(1)(a) and no suspended jail time was reserved as contemplated under R.C. 2929.25(A)(1)(b), regardless of notice having been provided under R.C. 2929.25(A)(3)(c)[?]"

166 Ohio St.3d 1483, 2022-Ohio-1284, 186 N.E.3d 814, quoting the court of appeals' February 15, 2022 entry.

Law and Analysis

Statutory Interpretation

{¶ 10} This certified conflict presents an issue of statutory interpretation, which is a question of law that we review de novo, *State v. Pariag*, 137 Ohio St.3d 81, 2013-Ohio-4010, 998 N.E.2d 401, ¶ 9. As we explained long ago, "[t]he

question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact." *Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902), paragraph two of the syllabus. "When the statutory language is plain and unambiguous, and conveys a clear and definite meaning, we must rely on what the General Assembly has said." *Jones v. Action Coupling & Equip., Inc.*, 98 Ohio St.3d 330, 2003-Ohio-1099, 784 N.E.2d 1172, ¶ 12. "An unambiguous statute is to be applied, not interpreted." *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944), paragraph five of the syllabus.

Community-Control Sanctions

{¶ 11} R.C. 2929.25 authorizes the trial court to impose community-control sanctions on misdemeanants, and it provides the consequences for a violation of a condition of those sanctions. Unless otherwise provided by law, a trial court sentencing an offender for a misdemeanor may impose a jail term on the offender in addition to any community-control sanction or combination of community-control sanctions. R.C. 2929.25(A)(1)(a). It also may suspend all or part of any jail term imposed and place the offender on community control. R.C. 2929.25(A)(1)(b). And in contrast to the general rule that a trial court lacks authority to modify a sentence, *see State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, ¶ 20, R.C. 2929.24(B)(1) provides that "[t]he court retains jurisdiction over every offender sentenced to jail to modify the jail sentence imposed at any time, but the court shall not reduce any mandatory jail term."

{¶ 12} When the trial court imposes a community-control sanction, it must inform the defendant at sentencing that a violation of a condition of community control could result in an extended or more restrictive community-control sanction as well as the imposition of "a definite jail term from the range of jail terms authorized for the offense under section 2929.24 of the Revised Code." R.C. 2929.25(A)(3). R.C. 2929.25(D)(2), in turn, permits the trial court to impose on a violator a longer time under the same community-control sanction, a more

restrictive community-control sanction, and "[a] combination of community control sanctions, including a jail term."

{¶ 13} Lastly, R.C. 2929.25(D)(4) states, "If the court imposes a jail term upon a violator pursuant to division (D)(2) of this section, the total time spent in jail for the misdemeanor offense and the violation of a condition of the community control sanction shall not exceed the maximum jail term available for the offense for which the sanction that was violated was imposed."

{¶ 14} Reading these provisions together reveals that unless otherwise provided by law, a trial court handing down a sentence on a misdemeanant may impose a jail term within the statutory range provided in R.C. 2929.24. If the trial court also imposes community-control sanctions, then it may punish the misdemeanant for a violation of a condition of those sanctions with incarceration not to exceed the statutory maximum jail term for the misdemeanor offense. However, the total amount of time that the offender may spend in jail for both the misdemeanor and any violation of a condition of community control is capped at the statutory maximum period for the misdemeanor offense as set forth in R.C. 2929.24.

{¶ 15} Here, the court of appeals concluded that a trial court may punish a violation of a condition of a community-control sanction with incarceration only if time remains on the jail term that the trial court initially imposed at sentencing. However, if R.C. 2929.25(D)(4) meant that, it would read: "[T]he total time spent in jail for the misdemeanor offense and the violation of a condition of the community control sanction shall not exceed the maximum jail term available that was imposed at sentencing for the offense for which the sanction that was violated was imposed." That is not how the General Assembly wrote the statute. Rather, the phrase "was imposed" at the end of the sentence modifies the word "sanction," not the phrase "maximum jail term available." The "maximum jail term available" is not the maximum jail term that the trial court imposed; it is the statutory

maximum term provided in R.C. 2929.24 that the trial court could have imposed for the offense the defendant committed. This is why the trial court must notify the defendant at sentencing that a violation of a condition of a community-control sanction may be punished with "a definite jail term *from the range of jail terms* authorized for the offense under [R.C.] 2929.24." (Emphasis added.) R.C. 2929.25(A)(3)(c).

{¶ 16} Here, the statutory maximum jail term that the trial court could have imposed for each of Ritchie's first-degree misdemeanor offenses is 180 days. R.C. 2929.24(A)(1). For each offense, the trial court sentenced Ritchie to 30 days in jail, which he has served. Therefore, if Ritchie violates a condition of community control, the trial court may order him to serve a jail term for the violation but his time in jail for the violation may not exceed 150 days—the jail time still available for the misdemeanor for which the community-control sanction was imposed. Consequently, the trial court in its entries modifying Ritchie's sentences did not err in calculating the jail time that it could impose for a violation of a condition of the community-control sanction.

Conclusion

{¶ 17} Under R.C. 2929.25(D)(4), the total time spent in jail for both a misdemeanor offense and a violation of a condition of a community-control sanction imposed for that offense may not exceed the statutory maximum jail term provided for the offense in R.C. 2929.24. Applying these statutes, the trial court in its entries modifying Ritchie's sentences properly calculated the jail time that it could impose on him for a violation of a condition of community control. We therefore reverse the judgment of the Eighth District Court of Appeals.

Judgment reversed
and trial-court order reinstated.

DONNELLY, STEWART, BRUNNER, and DETERS, JJ., concur.

DEWINE, J., dissents, with an opinion joined by FISCHER, J.

DEWINE, J., dissenting.

{¶ 18} There is an elephant in the room. We don't have the authority to decide this case. Chad Ritchie has not suffered any present injury. He simply seeks an advisory opinion about something that *might* happen in the future. Because Ritchie lacks standing and his claim is not ripe for review, I would dismiss the appeal and vacate the decision of the Eighth District Court of Appeals.

{¶ 19} Ritchie asked the court of appeals, and now asks this court, for a pronouncement as to the maximum sentence that he might receive for a future community-control violation. The majority answers Ritchie's question, opining that the trial court did not err "in calculating the jail time that it *could* impose for a violation of a condition of the community-control sanction." (Emphasis added.) Majority opinion, ¶ 16. In doing so, the majority ignores the firmly enshrined principle that we lack the authority to decide cases that "rest[] on contingent events that may never occur at all," *State ex rel. Jones v. Husted*, 149 Ohio St.3d 110, 2016-Ohio-5752, 73 N.E.3d 463, ¶ 21 (lead opinion). In the process, it seemingly reverses a long line of appellate cases from across the state that hold that claims like Ritchie's—claims that attempt to challenge a potential future sentence for a community-control violation—are not ripe for review. One wonders what will result.

A lot of ifs

{¶ 20} The question at the center of this appeal is a hypothetical one: *If* Ritchie violates the terms of his probation, and *if* a violation complaint is filed against him, and *if* he is found to have violated his probation, and *if* the trial court decides to sentence Ritchie to jail for that violation, how much jail time may the trial court impose? The majority answers the question with an advisory opinion about the misdemeanor-sentencing statute. What it provides might ultimately end up being helpful advice to Ritchie's judge, and it may be of assistance to other

judges in Ohio. But rendering advice about hypothetical cases is not the business of this court.

{¶ 21} Recall the facts of Ritchie's case. Ritchie was sentenced for four misdemeanors and ordered to serve 30 days in jail on each charge, to be served consecutively, and five years of probation. The court subsequently issued a judgment entry indicating that if Ritchie violated community control, he could be sentenced to "a 150 day jail sentence on each count." Ritchie later violated the terms of his community control, but the trial court did not impose a jail term and instead continued him on community control. Ritchie then filed a motion to correct the earlier judgment and delete the "150 day jail sentence on each count" language. Instead of deleting the language, the court modified that language to read "leaving 150 days of jail available to sentence on each count."

{¶ 22} Ritchie appealed, asking that the language be stricken altogether. The Eighth District acknowledged that there was a ripeness problem, stating: "We recognize that no jail time has actually been imposed for a violation of community-control sanctions, which presents a ripeness concern." 2022-Ohio-124, 181 N.E.3d 649, ¶ 10, fn. 2. But then, without further discussion, the court proceeded to decide the case anyway. The entirety of its analysis of the ripeness issue is this sentence: "Nonetheless, we find any error in the modification of Ritchie's sentence is ripe for review." *Id.* Having brushed by its stated concerns about ripeness, the court of appeals ordered "correction of the trial court's entry to reflect [that] no jail time remains," *id.* at ¶ 21.

{¶ 23} So what we are left with is a question about the potential sentence available for a potential community-control violation. Before we can answer that question, though, we need to address the elephant that the court of appeals closed its eyes to and that the majority ignores completely: our constitutional authority to decide this case.

We decide only cases in which someone has suffered an actual injury

{¶ 24} Our authority is limited. The Ohio Constitution limits this court and inferior courts to the exercise of the "judicial power." Ohio Constitution, Article IV, Section 1. While the Ohio Constitution does not contain the same "cases" and "controversies" language as the United States Constitution, we have long understood that its limitation of our authority to the judicial power imposes similar constraints. *See Fortner v. Thomas*, 22 Ohio St.2d 13, 14, 257 N.E.2d 371 (1970). Thus, Ohio courts may decide only "actual controversies between parties legitimately affected by specific facts." *Id.* And they must "refrain from giving opinions on abstract propositions" or issuing "premature declarations or advice upon potential controversies." *Id.*; *see also Travis v. Pub. Util. Comm.*, 123 Ohio St. 355, 359, 175 N.E. 586 (1931).

{¶ 25} This constitutional standing requirement precludes courts from deciding cases where there has been no "injury in fact." *State ex rel. Walgate v. Kasich*, 147 Ohio St.3d 1, 2016-Ohio-1176, 59 N.E.3d 1240, ¶ 23 (lead opinion); *see also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157-158, 134 S.Ct. 2334, 189 L.Ed.2d 246 (2014). Ripeness is an aspect of the constitutional standing requirement. Wright & Miller, *Federal Practice & Procedure*, Section 3532.1 (3d Ed.2017) (noting that ripeness and mootness may be viewed as "time dimensions of standing"); *see also Trump v. New York*, 592 U.S. ___, ___, 141 S.Ct. 530, 535, 208 L.Ed.2d 365 (2020) (standing and ripeness are "[t]wo related doctrines of justiciability"). For a claim to be ripe, a harm "must be 'concrete and particularized' and 'actual or imminent, not "conjectural" or "hypothetical." ' " *Susan B. Anthony List* at 158, quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992), quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990). Central to the doctrine is the idea that the " 'judicial machinery should be conserved for problems which are real or present and imminent, not squandered on problems which are abstract or

hypothetical or remote.' " *State ex rel. Elyria Foundry Co. v. Indus. Comm.*, 82 Ohio St.3d 88, 89, 694 N.E.2d 459 (1998), quoting Davis, *Ripeness of Governmental Action for Judicial Review*, 68 Harv.L.Rev. 1122, 1122 (1955).

{¶ 26} A concern about a future injury will satisfy the ripeness requirement only when the injury is "certainly impending" or there is at least a "substantial risk" that the harm will occur. *Susan B. Anthony List* at 158, quoting *Clapper v. Amnesty Internatl. USA*, 568 U.S. 398, 409, 414, 133 S.Ct. 1138, 185 L.Ed.2d 264 (2013), fn. 5. But when a claim "rests on contingent events that may never occur at all," the claim is not ripe for review. *Jones*, 149 Ohio St.3d 110, 2016-Ohio-5752, 73 N.E.3d 463, at ¶ 21 (lead opinion); *see also Trump* at 535, quoting *Texas v. United States*, 523 U.S. 296, 300, 118 S.Ct. 1257, 140 L.Ed.2d 406 (1998) (to be justiciable, a claim must be " 'ripe'—not dependent on 'contingent future events that may not occur as anticipated, or indeed may not occur at all' ").

{¶ 27} This point is illustrated by our decision in *State ex rel. Jones v. Husted*, 146 Ohio St.3d 1412, 2016-Ohio-3390, 51 N.E.3d 658. That case arose after several signatures submitted in support of a statewide ballot initiative had been invalidated. *See Jones* 149 Ohio St.3d 110, 2016-Ohio-5752, 73 N.E.3d 463, at ¶ 11. The petitioners sought to restore signatures that had been invalidated because they were concerned that a separate lawsuit filed by opponents of the ballot initiative might lead to additional signatures being disqualified and therefore cause the initiative to drop below the required-signature threshold for placement on the ballot. *See id.* at ¶ 11-12. This court summarily dismissed the challenge "as premature." *Jones*, 146 Ohio St.3d 1412, 2016-Ohio-3390, 51 N.E.3d 658. We later explained that we had dismissed the case as unripe because the proponents'

"claims were contingent upon future events that might or might not occur." *Jones* 149 Ohio St.3d 110, 2026-Ohio-5752, 73 N.E.3d 463, at ¶ 21.[1]

{¶ 28} Like the situation in *Jones*, Ritchie's claim hinges on contingent events that may never occur. Ritchie is not challenging a sentence that has been imposed on him. What he is challenging is a notation in a judgment entry about the upper limit of the sentence he might receive if he violates his community control in the future. But the upper limit of the potential sentence will become an issue only if Ritchie commits a future community-control violation and is found guilty of that violation. If that happens, the trial court must "sentence[] the offender anew and must comply with the relevant sentencing statutes." *State v. Fraley*, 105 Ohio St.3d 13, 2004-Ohio-7110, 821 N.E.2d 995, ¶ 17 (construing analogous felony-sentencing statutes). And at that point, the trial court is free to impose a jail term that is less than the "150 days of jail available to sentence on each count" indicated in Ritchie's judgment entry or not impose a jail term at all.

{¶ 29} Thus, four contingent events must occur before Ritchie suffers any injury in fact. First, Ritchie must engage in prohibited conduct. Second, a violation complaint must be filed. Third, the court must find Ritchie in violation. And fourth, the judge must decide that jail time is appropriate for that violation. Thus, it is purely speculative whether Ritchie will suffer any injury.

The majority uproots an established body of lower-court caselaw

{¶ 30} Ohio's appellate courts have had little difficulty seeing what the majority misses. These courts have widely held that claims similar to Ritchie's—claims that seek to challenge a notification about a sentence that may be imposed in the future for a community-control violation—are not ripe for review. *See, e.g., State v. Poppe*, 3d Dist. Auglaize No. 2-06-23, 2007-Ohio-688, ¶ 14 ("an appeal of

1. Ultimately, the contingent events did come to pass—additional signatures were disqualified in litigation. *See Jones* at ¶ 13. At that point, the lawsuit became ripe, and we proceeded to consider the merits of the challenge. *See id.* at ¶ 22-23.

a reserved sentence of imprisonment that is part of a sentence of community control is not ripe until an actual sentencing order imposes the prison term for community control violation"); *State v. Daniel*, 11th Dist. Trumbull No. 2014-T-0044, 2015-Ohio-3826, ¶ 9 (same); *State v. Wilson*, 1st Dist. Hamilton No. C-061000, 2007-Ohio-6339, ¶ 4-6 (same); *State v. Wilson*, 5th Dist. Muskingum No. CT 2005-0031, 2006-Ohio-3541, ¶ 8 ("this Court has held that appeals challenging potential periods of incarceration for violation of community control sanctions are not ripe until an actual sentencing order imposes a prison term for such violation"); *State v. Williams*, 2d Dist. Greene No. 2012-CA-43, 2014-Ohio-725, ¶ 15 ("when a trial court imposes a sentence of community control with a reserve prison sentence, an appeal of the prison sentence does not become ripe until after a defendant actually violates community control"); *State v. Ellis*, 4th Dist. Washington No. 02CA48, 2003-Ohio-2243, ¶ 12-15 (party lacks authority to appeal sentence that may be imposed for a future community-control violation "because the issues or claims she raises are not yet justiciable"); *State v. Ogle*, 6th Dist. Wood No. WD-01-040, 2002 WL 313386, *4 (Mar. 1, 2002) (challenge to reserved sentence "is not yet ripe for review, as [the] appellant has not yet been found to have violated his community control sanctions"). As the Third District succinctly explained:

> If Poppe violates his community control sanctions, a subsequent sentencing hearing would need to be conducted. Thus, we are constrained from giving advice concerning a potential controversy that may never occur. If, and when, Poppe is sentenced to a term of incarceration for violation of his community control sanctions, he can appeal that sentencing order * * *.

(Citations omitted.) *Poppe* at ¶ 17.

{¶ 31} The apparent effect of the majority opinion is to overrule this line of precedent sub silentio. The majority does so without the benefit of adversarial briefing on the standing issue and without providing any explanation of why the lower courts were wrong. One has to wonder what future complications will result. What happens to all those defendants on community control across the state who in accordance with well-established precedent failed to pursue in a direct appeal a challenge to a sentence that was reserved in case of a future violation? Have they now forfeited their opportunity to do so? Is any challenge barred by res judicata? Stay tuned.

Conclusion

{¶ 32} I would not ignore the elephant. There's no hiding the obvious: this case involves contingent events that may never occur. I would do what the court of appeals should have done: I would dismiss this case on standing and ripeness grounds. And I would vacate the decision of the court of appeals for the same reasons. Because the majority does otherwise, I dissent.

FISCHER, J., concurs in the foregoing opinion.

Baker Dublikar, James F. Mathews, and Brittany A. Bowland, for appellant.

Patituce & Associates, L.L.C., Joseph C. Patituce, and Megan M. Patituce, for appellee.
