

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-220458
	:	TRIAL NO. B-2200365
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>OPINION.</i>
ERIC JACKSON,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed in Part and Reversed in Part, and Cause Remanded

Date of Judgment Entry on Appeal: June 30, 2023

*Melissa A. Powers*, Hamilton County Prosecuting Attorney, and *Paula E. Adams*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

*Raymond T. Faller*, Hamilton County Public Defender, and *Sarah E. Nelson*, Assistant Public Defender, for Defendant-Appellant.

**ZAYAS, Presiding Judge.**

{¶1} Eric Jackson appeals from the trial court's judgment revoking his community control and sentencing him to prison. In two assignments of error, Jackson alleges there was insufficient evidence to revoke his community control, and the trial court erred in sentencing him when the court failed to address him personally and ask whether he wished to exercise his right of allocution and failed to properly notify him of postrelease control. For the following reason, we affirm the trial court's judgment in part, reverse the judgment in part, and remand the cause for a new sentencing hearing.

**Factual Background**

{¶2} In April 2022, Jackson pled guilty to violating his duty to register, a felony of the fourth degree. He was placed on community control for two years and notified that if he violated the terms of his community control, he would be sentenced to an 18-month prison term.

{¶3} On May 4, 2022, the Chief Probation Officer of Hamilton County filed a community-control violation which stated that Jackson had committed the following violations:

RULE #1: DURING MY COMMUNITY CONTROL PERIOD, I WILL  
CONDUCT MYSELF PROPERLY, DRESS APPROPRIATELY, AND  
ANSWER ACCURATELY ALL QUESTIONS ASKED WHEN COMING  
IN CONTACT WITH PROBATION DEPARTMENT PERSONNEL.

The defendant failed to maintain his Sex Offender Registration with the  
Hamilton County Sheriff's Office.

RULE #6: I UNDERSTAND THAT I MAY NOT RESIDE OUTSIDE THE STATE OF OHIO WITHOUT PRIOR APPROVAL. I WILL OBTAIN INSTRUCTIONS FROM MY PROBATION OFFICER IN REGARD TO TRAVEL RESTRICTIONS OUTSIDE OF HAMILTON COUNTY AND THE STATE OF OHIO.

On 4/17/22 the defendant left his reported address and failed to update this Officer.

{¶4} At the violations hearing, Mike Wilson, Jackson's parole officer, testified that he placed Jackson at the Volunteers of America ("VOA") halfway house. Jackson left the halfway house without notifying Wilson or seeking permission. Jackson had previously sent text messages to Wilson requesting release, but Wilson informed him that he had to obtain a valid residential address before he could be released from the VOA. Wilson also testified that Jackson was required to register his address and did not do so. On April 18, 2022, Wilson issued a violator-at-large warrant for Jackson, and he was subsequently arrested in Mason on June 6, 2022.

{¶5} Deputy Jeff Caldwell from the sex offender registration unit of the Hamilton County Sheriff's Office testified that Jackson had registered the VOA address with the sheriff's department. Caldwell received notification that Jackson had absconded from the VOA. Jackson did not register a new address after leaving the VOA.

{¶6} After the testimony, Jackson noted to the court that no one from the VOA submitted any evidence that he had absconded. Jackson did not contest the factual allegations and provided no further argument regarding the violations.

{¶7} The trial court found that Jackson had violated the conditions of

community control and imposed a sentence of 18 months.

{¶8} Jackson now appeals arguing that the trial court abused its discretion in revoking Jackson's community control because the state presented insufficient evidence to support a violation. Jackson further contends that the trial court erred in imposing sentence because the court denied Jackson his right of allocution and did not notify him of postrelease control.

### **Community-Control Violation**

{¶9} In order to establish a community-control violation, the state must present substantial evidence that the defendant violated the terms of his community control. *See State v. Richardson*, 1st Dist. Hamilton Nos. C-200288 and C-200289, 2021-Ohio-3362, ¶ 22. "Substantial evidence has been defined as being more than a scintilla of evidence, but less than a preponderance." *State v. McCants*, 1st Dist. Hamilton No. C-120725, 2013-Ohio-2646, ¶ 11.

{¶10} In this case, the state presented un rebutted evidence that Jackson was required to reside at the VOA as a condition of community control and left the facility without notifying Wilson or seeking his permission. After leaving the VOA, Jackson did not inform Wilson of his new address. At some point, Jackson traveled to Mason and was arrested almost two months after he absconded. Jackson also failed to inform the sheriff's department that he no longer resided at the VOA or register his new address.

{¶11} Jackson argues that the failure to register his address with the sheriff did not violate the rule that he "conduct himself properly, dress appropriately, and answer accurately all questions asked when coming into contact with probation department personnel" because the rule speaks only to his conduct while interacting

with probation personnel and not the sheriff's office. However, the rule contains three separate requirements, and only one part of the rule is limited to contact with the probation department. The record reflects that Jackson did not "conduct himself properly" when he failed to register his address with the sheriff.

{¶12} Jackson further argues that he did not violate Rule 6 because he was not prohibited from traveling outside of Hamilton County, and the fact that he was arrested in Mason, outside of Hamilton County, did not violate the rule. It is undisputed that Jackson left his assigned address without prior approval, without updating Wilson, and without obtaining any instructions prior to leaving the county.

{¶13} Therefore, the trial court's finding that Jackson had violated the terms of his community control was supported by substantial evidence. We overrule the first assignment of error.

### **Sentencing**

{¶14} Next Jackson contends that the trial court erred in sentencing him when the court failed to address him personally and ask whether he wished to exercise his right of allocution and failed to properly notify him of postrelease control.

{¶15} When the court is imposing a prison sentence for a community-control violation, a defendant has a right to allocution under R.C. 2929.19(A)(1) and Crim.R. 32(A)(1). *See State v. McAfee*, 1st Dist. Hamilton No. C-130567, 2014-Ohio-1639, ¶ 14. If a trial court imposes sentence without first asking the defendant if he wants to exercise the right of allocution, resentencing is required. *Id.* Additionally, if a trial court imposes postrelease control, the trial court is required to provide notice at the sentencing hearing. *State v. Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700, ¶ 8.

{¶16} The state concedes the error and agrees that the cause should be remanded to the trial court for a new sentencing hearing. Accordingly, we sustain the second assignment of error.

**Conclusion**

{¶17} We sustain the second assignment of error, vacate the sentence, and remand the cause for a new sentencing hearing. We affirm the trial court's judgment in all other respects.

Judgment affirmed in part and reversed in part, and cause remanded.

**WINKLER and BOCK, JJ.**, concur.

Please note:

The court has recorded its own entry this date.