

[Cite as *State v. Martin*, 2009-Ohio-3485.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 08AP-1103
v.	:	(C.P.C. No. 08CR05-3489)
	:	
Shenchez A. Martin,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on July 16, 2009

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*Ron O'Brien*, Prosecuting Attorney, and *Joseph H. Cousins IV*, for appellant.

*W. Joseph Edwards*, for appellee.

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, P.J.

{¶1} Plaintiff-appellant, the State of Ohio ("appellant"), appeals the Franklin County Court of Common Pleas' decision to impose a community control sanction on defendant-appellee, Shenchez A. Martin ("appellee"). Because we conclude that the trial court failed to comply with R.C. 2929.13 and 2929.19 at sentencing, we reverse the sentence and remand for resentencing.

{¶2} Appellee pleaded guilty to felonious assault, a second-degree felony. At the sentencing hearing, the trial court concluded that the statutory presumption for prison that applies to this crime "is overcome" and that "the opportunity for community control is the best way to protect the public." (Nov. Tr. 17.) The court wanted appellee to have the benefit of psychiatric care and said that appellee would receive better care on community control than in prison. The court urged appellee to be amenable to psychiatric care and not "wander off [into] the madness that caused this terrible crime." (Nov. Tr. 18.) The court also concluded that its "not ready to just throw away the keys and put [appellee] in the prison system." (Nov. Tr. 18.) The court said: "Notwithstanding the one brush with the law that [appellee] had in Guernsey County, we otherwise have a man with no criminal record who did a terrible crime." (Nov. Tr. 18.) The court further stated that appellee is "bright" and has "at least a year plus of college." (Nov. Tr. 18.)

{¶3} In its sentencing entry, the court stated that "the presumption in favor of a term of imprisonment is rebutted on the evidence before it." The court indicated that community control "does not demean the seriousness of the offense" and that appellee "is more likely to be rehabilitated successfully and have a much lower likelihood of recidivism" with a community control sanction than with a prison sentence.

{¶4} Appellant appeals, raising the following assignments of error:

FIRST ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN IMPOSING COMMUNITY CONTROL WHEN IT FAILED TO MAKE THE REQUIRED FINDINGS AND FAILED TO GIVE ADEQUATE REASONS

FOR OVERCOMING THE PRESUMPTION IN FAVOR OF A PRISON TERM.

SECOND ASSIGNMENT OF ERROR

THE TRIAL COURT'S IMPOSITION OF COMMUNITY CONTROL IS CONTRARY TO LAW, AS DEFENDANT CANNOT OVERCOME THE PRESUMPTION IN FAVOR OF A PRISON TERM.

{¶5} In its first assignment of error, appellant contends that the trial court erroneously sentenced appellee to community control without providing the required statutory findings and supporting reasons. We agree.

{¶6} Appellee was convicted of a second-degree felony. Ohio's felony sentencing law presumes a prison term for a second-degree felony. R.C. 2929.13(D). This presumption can be overcome for imposition of community control if the trial court makes both of the following findings:

(a) A community control sanction \* \* \* would adequately punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a lesser likelihood of recidivism outweigh the applicable factors under that section indicating a greater likelihood of recidivism.

(b) A community control sanction \* \* \* would not demean the seriousness of the offense, because one or more factors under section 2929.12 of the Revised Code that indicate that the offender's conduct was less serious than conduct normally constituting the offense are applicable, and they outweigh the applicable factors under that section that indicate that the offender's conduct was more serious than conduct normally constituting the offense.

R.C. 2929.13(D)(2)(a) and (b). The court must also state its reasons for making these findings. R.C. 2929.19(B)(2)(b).

{¶7} Here, the trial court attempted to provide the requisite findings and reasons in its sentencing entry. Nevertheless, a trial court must provide the findings and reasons at the sentencing hearing. See *State v. Wooden*, 10th Dist. No. 05AP-330, 2006-Ohio-212, ¶5. Although the trial court said at the sentencing hearing that community control "is the best way to protect the public," the court did not find that, under the R.C. 2929.12 factors, a community control sanction would adequately punish appellee and protect the public from future crime. Likewise, the trial court failed to find at the sentencing hearing that, under the R.C. 2929.12 factors, a community control sanction would not demean the seriousness of appellee's offense. Without these findings, the court failed to provide the required reasons to support a community control sanction. Therefore, we conclude that the trial court contravened R.C. 2929.13(D)(2) and 2929.19(B)(2)(b) when it imposed community control without providing the required findings and supporting reasons at the sentencing hearing. Accordingly, we sustain appellant's first assignment of error.

{¶8} In its second assignment of error, appellant asks us to review the record and determine that appellee must be sentenced to prison because the statutory findings and supporting reasons for a community control sanction cannot be made. We decline. Because the trial court sentenced appellee to community control without providing the required statutory findings and supporting reasons at the sentencing hearing, the sentencing laws mandate that we remand this case to give the trial court the opportunity to do so. R.C. 2953.08(G)(1); *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, ¶35-36. Therefore, we overrule appellant's second assignment of error.

{¶9} In summary, we overrule appellant's second assignment of error, but we sustain appellant's first assignment of error. We reverse the judgment of the Franklin County Court of Common Pleas, and we remand this matter to that court for resentencing.

*Judgment reversed and cause  
remanded for resentencing.*

KLATT and CONNOR, JJ., concur.

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