

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2015-A-0008
ANTHONY SPRAGLING,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Ashtabula County Court of Common Pleas, Case No. 2014CR 293.

Judgment: Affirmed.

Nicholas A. Iarocci, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Michael A. Hiener, P.O. Box 1, Jefferson, OH 44047 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Anthony Spragling, appeals a final judgment revoking community control and sentencing him to an eighteen-month prison term. Under his sole assignment, he asserts that the facts do not support the conclusion that he willfully violated a term of his community control. For the following reasons, we affirm.

{¶2} In May 2014, appellant pled guilty to one charge of attempted obstruction of justice, a fourth-degree felony, violations of R.C. 2921.32(A)(6) and 2923.02(A).

Ultimately, the trial court imposed two years of community control with conditions. The conditions pertinent to appeal include that appellant was ordered to abide by all applicable laws, serve 120 days in the county jail, and complete a jail treatment program for drug and/or alcohol use. Moreover, the sentencing judgment indicated that appellant was subject to an eighteen-month prison term if he violated conditions of the community control.

{¶3} Approximately eighty days after sentencing, the adult probation department filed a complaint against appellant for violating community control. The complaint asserted that appellant was charged with assault while in the county jail and that he failed to complete the jail treatment program.

{¶4} The final hearing on the violations went forward on December 30, 2014. A probation supervisor testified that, as a result of the assault charge, appellant was placed in “lockup” inside the jail and that jail policy expressly forbids an inmate from participating in the jail treatment program while in lockup. In response, appellant testified that he has always been willing to join the jail treatment program, regardless of the pending assault charge. On cross-examination, appellant admitted that, during a squabble over a newspaper, he punched an inmate twice after the inmate threw the newspaper at him.

{¶5} The trial court found appellant guilty of multiple violations of community control conditions. Accordingly, the court revoked community control and imposed an eighteen-month prison term on the “attempted obstruction” charge.

{¶6} In appealing the revocation decision, appellant asserts one assignment of error:

{¶7} “The trial court erred in revoking appellant’s community control and ordering him to serve a sentence of prison incarceration.”

{¶8} In contending that he should have been allowed to continue on community control, appellant raises two arguments. First, he maintains that the trial court erred in requiring him to participate in the jail treatment program as a condition/term of community control. He asserts that the term was not sufficiently related to his rehabilitation to justify its imposition because there was no evidence that he was under the influence of drugs when he committed the underlying offense.

{¶9} As noted, the “treatment program” term was imposed as part of the community control sanction in the trial court’s original sentencing entry. Appellant did not pursue a direct appeal from that judgment.

{¶10} As a general proposition, sentencing errors can only be contested through a direct appeal of the sentencing judgment. *Res judicata* bars an appellant from asserting sentencing errors in appeals from subsequent judgments when such issues could have been litigated in an appeal of the earlier sentencing entry. *State v. Lyons*, 11th Dist. Lake No. 2009-L-034, 2009-Ohio-6515, ¶¶7-9. *See also, State v. Clark*, 7th Dist. Mahoning No. 12-MA-1, 2012-Ohio-5570, ¶¶21-22; *State v. Brackins*, 10th Dist. Franklin Nos. 13AP-904 & 13AP-905, 2014-Ohio-3573, ¶7. (Alleged sentencing errors cannot be raised in “revocation” appeals because such errors are waived by failing to appeal the sentencing judgment.)

{¶11} Given that appellant did not appeal the trial court’s decision requiring him to participate in the jail treatment program, he waived the right to contest that point in the context of his revocation appeal. Thus, his first argument lacks merit.

{¶12} Under his second argument, appellant argues that revocation of community control should not have been predicated upon his failure to complete the jail treatment program. He asserts that it was impossible to satisfy the condition since it was the jail's decision not to allow him to participate in the treatment program after he was placed in lockup. In response, the state contends that appellant cannot rely upon the defense of impossibility when his placement in lockup was caused by his own actions.

{¶13} In *State v. Rader*, 2nd Dist. Montgomery No. 25660, 2013-Ohio-4822, the defendant was required to attend a six-month correctional facility program as a term of community control. Although the defendant began the program, he was dismissed prior to completion due to numerous violations of program rules. On appeal from revocation of community control as a result of his failure to finish the program, the defendant argued that the facility made it impossible for him to complete the program due to the dismissal, and that he was always willing to remain in the program. In rejecting the argument, the appellate court held that the defendant may not rely upon the "impossibility" defense when his own actions created his inability to comply with the requirement. *Id.* at ¶19.

{¶14} In this case, there is substantial evidence that appellant assaulted a fellow inmate while incarcerated in the county jail. On cross-examination, he testified that he punched the other man twice even though that man only threw a newspaper at him. In light of this altercation, the jail officials placed appellant in lockup and refused to allow him to attend the jail treatment program. Given these facts, appellant cannot invoke impossibility. His lack of access to the treatment program was due entirely to his failure

to conduct himself properly during his four-month jail term.

{¶15} The decision to revoke the defendant's community control based upon a "term" violation lies within the trial court's sound discretion. *State v. Dunning*, 11th Dist. Lake No. 2005-L-142, 2006-Ohio-3412, ¶20. Appellee sustained its burden of presenting substantial evidence that appellant violated a term of his community control. Accordingly, the trial court did not abuse its discretion in revoking appellant's community control and sentencing him to an eighteen-month prison term. Appellant's sole assignment is without merit and the trial court's judgment is affirmed.

CYNTHIA WESTCOTT RICE, J.,

COLLEEN MARY O'TOOLE, J.,

concur.