

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
GEauga COUNTY**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

ROBERT G. BOURNE,

Defendant-Appellant.

CASE NO. 2023-G-0003

Criminal Appeal from the
Chardon Municipal Court

Trial Court No. 2022 CRB 00014

OPINION

Decided: August 14, 2023

Judgment: Affirmed

Steven E. Patton, Assistant Police Prosecutor, Patton & Lee, LLC, 7160 Chagrin Road, Suite 155, Chagrin Falls, OH 44023 (For Plaintiff-Appellee).

S. Michael Lear, Larry W. Zukerman, and Adam M. Brown, Zukerman, Lear & Murray Co., LPA, 3912 Prospect Avenue, Cleveland, OH 44115 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} The instant appeal arises from a tragic motor vehicle collision in which appellant, Robert G. Bourne (“Mr. Bourne”), lost control of his automobile, crossed into oncoming traffic, and crashed into the victim’s car, ending a young man’s life, and severely injuring his passenger. Mr. Bourne pleaded no contest to vehicular manslaughter and failure to maintain the right side of the roadway.

{¶2} Mr. Bourne appeals the judgment entry of the Chardon Municipal Court, which, after finding him guilty on both counts, sentenced him to 90 days in jail, with 60 days suspended, and five years of community control with various conditions, including, in relevant part, abstaining from medical marijuana and cannabidiol (“CBD”).

{¶3} In his sole assignment of error, Mr. Bourne contends the trial court abused its discretion when it included a prohibition of medical marijuana and CBD products use as part of a blanket policy, notwithstanding his status as a registered medical marijuana patient.

{¶4} After a thorough review of the record and pertinent law, we find Mr. Bourne's assignment of error to be without merit. Possession of a valid medical marijuana card does not limit a trial court's authority to restrict an offender's marijuana use as a condition of community control or render that condition contrary to state law. Further, there is no evidence the trial court has a "blanket policy" applicable to all defendants prohibiting use of alcohol and other substances as a matter of course, regardless of their situations, without any consideration of the facts and circumstances of each case.

{¶5} In sum, we do not find the trial court's restriction of marijuana or CBD use to be an abuse of discretion under the circumstances of this case. The restriction is reasonably related to Mr. Bourne's rehabilitation, the crimes he committed, and to conduct that remains criminal under Federal law. It also serves the goals of community control, i.e., Mr. Bourne was found guilty of vehicular homicide due to loss of control of his vehicle, which tragically ended someone's life. Further, he has a history of not taking his prescribed medication and now seeks to use marijuana. He also did not present any evidence as to the medical necessity of marijuana use, such as testimony or documentation by his recommending physician.

{¶6} The judgment of the Chardon Municipal Court is affirmed.

Substantive and Procedural History

{¶7} In January 2022, a complaint was filed in Chardon Municipal Court alleging Mr. Bourne caused the death of another as a proximate result of committing a traffic

violation, thus charging him with vehicular manslaughter, a second-degree misdemeanor, in violation of R.C. 2903.06(A)(4), and failure to maintain the right side of the roadway, a minor misdemeanor, in violation of R.C. 4511.25.

{¶8} In December 2022, at a pretrial hearing and as part of his bond conditions, Mr. Bourne was given a drug screen. The preliminary results revealed a positive indication for amphetamines and THC, as well as the potential for the presence of alcohol.

{¶9} One week later, the trial court held a plea and sentencing hearing. The prosecutor reviewed the facts of the incident as follows:

{¶10} “[O]n July 17th, of 2021, at approximately 1:30 p.m., Isaac Mayo and girlfriend passenger, Angel Chapman, were traveling eastbound on Mulberry Road in a 2007 Honda Civic. On said date and time, the Defendant Robert Bourne, was traveling westbound on Mulberry Road, while operating his 2021 Hyundai Palisade. The Defendant, Robert Bourne, failed to drive upon the right half of the roadway, and traveled left of center, and striking the Honda Civic driven by Isaac Mayo in a head-on fashion, which caused the death of Isaac Mayo, who was 19 years old, and seriously injuring Angel Chapman, who is also 19 years of age. The location of the accident on Mulberry Road was in Munson Township, Geauga County, and the State of Ohio.”

{¶11} The trial court accepted Mr. Bourne’s no contest plea and found him guilty on both counts. Mr. Bourne’s counsel addressed the court regarding the drug screen, noting Mr. Bourne had a prescription for amphetamines and a valid medical marijuana card (even though use of marijuana was prohibited as part of his bond conditions) and that the presence of alcohol, without a confirmation of the lab results, indicated a false positive. Mr. Bourne’s counsel also filed a sentencing memorandum with a copy of Mr. Bourne’s medical marijuana card. The approximately one-page memorandum notified

the court Mr. Bourne is a “registered patient” and stated “[i]f this Court intends to include a term or condition of community control sanctions/probation that includes a broad prohibition from ingesting ‘marijuana’, Mr. Bourne respectfully objects and/or respectfully requests an exception thereto to permit him to obtain, possess, and/or use ‘medical marijuana.’”

{¶12} After reviewing the victim impact statements and those of various members of the victim’s family, the trial court noted Mr. Bourne disobeyed the court’s order and was issued the medical marijuana card six days after the incident on July 27, 2021. The court reviewed, “[i]t’s funny, the pre-trials, what I have seen, what I heard, not taking your seizure medication, but you choose substances that are illegal, and the Eleventh District has backed me in saying if you test positive, I can’t tell if it’s the marijuana you’re recommended from a dispensary, or it’s the homegrown stuff in your basement. So you will definitely not be allowed to use medical marijuana.” The trial court also considered Mr. Bourne’s lack of affect and “cavalier” attitude regarding the incident.

{¶13} The trial court sentenced Mr. Bourne to 90 days in jail, with 60 days suspended, 72 days of electronic monitoring house arrest, 730 days’ driver’s license suspension, and five years of community control with conditions, including abstaining from alcohol, narcotic drugs, medical marijuana, and CBD products.

{¶14} Mr. Bourne raises one assignment of error on appeal:

{¶15} “The Trial Court abused its discretion when it imposed a blanket policy upon the Defendant-Appellant that, as a term of community control, he is prohibited from using medical marijuana and CBD products, notwithstanding his status as a lawfully registered medical marijuana patient, and that any such usage constitutes a violation of his community control.”

Community Control Conditions: Prohibiting Medical Marijuana

{¶16} In his sole assignment of error, Mr. Bourne contends the trial court abused its discretion by imposing a blanket policy of prohibiting medical marijuana and CBD products as a condition of community control, notwithstanding his status as a medical marijuana patient.

{¶17} When sentencing a misdemeanor offender to community control, a trial court may impose residential, nonresidential, and financial sanctions and any other conditions the trial court considers appropriate. R.C. 2929.25(A)(1)(a) and (b); *State v. Tobin*, 10th Dist. Franklin Nos. 11AP-776 and 11AP-777, 2012-Ohio-1968, ¶ 6. R.C. 2929.27(A) delineates specific nonresidential sanctions a trial court may impose. In addition to these sanctions, the trial court “may impose any other sanction that is intended to discourage the offender or other persons from committing a similar offense if the sanction is reasonably related to the overriding purposes and principles of misdemeanor sentencing.” R.C. 2929.27(C).

{¶18} We review a trial court’s imposition of community control sanctions under an abuse-of-discretion standard. *State v. Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888, 814 N.E.2d 1201, ¶ 10. An abuse of discretion is the trial court’s “failure to exercise sound, reasonable, and legal decision-making.” *State v. Beechler*, 2d Dist. Clark No. 09-CA-54, 2010-Ohio-1900, ¶ 62, quoting *Black’s Law Dictionary* 11 (8th Ed.2004). “When a pure issue of law is involved in appellate review, the mere fact that the reviewing court would decide the issue differently is enough to find error.” *Id.* at ¶ 67. “By contrast, where the issue on review has been confided to the discretion of the trial court, the mere fact that the reviewing court would have reached a different result is not enough, without more, to find error.” *Id.*

{¶19} A trial court's discretion in imposing community control sanctions is not limitless. *Talty* at ¶ 11. Generally, a court will not be found to have abused its discretion in fashioning a community-control sanction as long as the condition is reasonably related to the probationary goals of doing justice, rehabilitating the offender, and insuring good behavior. *Id.* at ¶ 12. Further, a condition "cannot be overly broad so as to unnecessarily impinge upon the probationer's liberty." *Id.* at ¶ 13, quoting *State v. Jones*, 49 Ohio St.3d 51, 52, 550 N.E.2d 469 (1990).

{¶20} In determining whether a community control sanction is related to the three probationary goals above, courts must "consider whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation." *Jones* at 53. All three prongs must be satisfied for a reviewing court to find that the trial court did not abuse its discretion. *State v. Cintron*, 8th Dist. Cuyahoga No. 110600, 2022-Ohio-305, ¶ 21; *State v. White*, 10th Dist. Franklin No. 14AP-1027, 2015-Ohio-3844, ¶ 10.

{¶21} The Ohio medical marijuana control program ("OMMCP"), R.C. Chapter 3796, defines "medical marijuana" as "marijuana that is cultivated, processed, dispensed, tested, possessed, or used for a medical purpose." R.C. 3796.01(A)(2).

{¶22} As we prefaced in *State v. Ryan*, 11th Dist. Lake No. 2021-L-032, 2021-Ohio-4059:

{¶23} "[W]e must clarify that marijuana continues to be illegal under federal law. See 21 U.S.C. 841(a)(1) and 844. Thus, it remains illegal for physicians to prescribe the controlled substance. A medical marijuana card, referred to as a 'registry identification card' pursuant to Ohio Adm.Code 3796:7-1-01(E), is not a prescription, but rather, is

issued based on a physician's 'recommendation' for its use. See R.C. 4731.30; [Ohio] Adm.Code 4731-32-02. Further, a dispensary is not a pharmacy. A "dispensary", as used in Chapter 3796 of the Revised Code, means an entity licensed pursuant to sections 3796.04 and 3796.10 of the Revised Code and any rules promulgated thereunder to sell medical marijuana to qualifying patients and caregivers.' Ohio Adm.Code 3796:1-01(A)(13)." *Id.* at ¶ 28.

{¶24} Mr. Bourne contends the trial court's prohibition of marijuana and CBD products is contrary to Ohio law because pursuant to the OMMCP, a registered medical marijuana patient "shall not be subject to arrest or criminal prosecution for * * * obtaining, using, or possessing medical marijuana," and/or "possessing any paraphernalia or accessories * * *." R.C. 3796.22(C)(1) and (2).

{¶25} Possession of a valid medical marijuana card, however, does not limit a trial court's authority to restrict an offender's marijuana use as a condition of community control or render that condition contrary to state law. For instance, in *State v. Thomas*, 8th Dist. Cuyahoga No. 111116, 2022-Ohio-2682, the Eighth District upheld the trial court's restrictions against drug use and to submit to drug testing on community control because the appellant's presentence investigation revealed a history of drug abuse and possession and because drug use played a part in the offenses of which he was convicted. *Id.* at ¶ 15. The court dismissed the appellant's argument that the trial court permitted him to obtain a medical marijuana card and then prohibited its use because there was no evidence he possessed a valid card. *Id.* at ¶ 16. The court further noted that possession of a valid card "does not necessarily limit the trial court's authority to restrict [the appellant's] use as a condition of his community-control sanction." *Id.* The court cited its decision in *State v. Hutchings*, 8th Dist. Cuyahoga No. 100735, 2014-Ohio-

4675, in which it determined “a trial court may restrict the use of substances *that may otherwise be legal* to use or consume, such as alcohol,” when imposing community control sanctions. (Emphasis added.) *Thomas* at ¶ 16, quoting *Hutchings* at ¶ 14.

{¶26} Mr. Bourne also contends the trial court’s prohibition of medical marijuana is part of a “blanket policy” and, thus, an abuse of discretion.

{¶27} A “blanket policy” is a policy that is imposed as a matter of course without any consideration of the facts and circumstances of each case. *State v. Beasley*, 152 Ohio St.3d 470, 2018-Ohio-16, 97 N.E.3d 474, ¶ 13. Mr. Bourne has submitted no evidence that the trial court prohibits alcohol and substances as a matter of due course to all defendants, regardless of their situations, “without any consideration of the facts and circumstances of each case.” A pre-printed “Addendum to Order Term of Community Control/Probation,” versions of which are frequently used by municipal and county courts dealing with a high volume of cases, does not in and of itself constitute a blanket policy applied to all defendants, particularly when the form has numerous check boxes that were not used.

{¶28} While there is no evidence of a “blanket policy,” there is evidence the trial court considered the specific facts and circumstances of this case. Even though the trial court prohibited the use of alcohol and marijuana as part of Mr. Bourne’s bond conditions, preliminary results of a drug test yielded positive results for marijuana and alcohol at a pretrial hearing held several days prior to the plea and sentencing hearing. At sentencing, the trial court noted Mr. Bourne did not take his medications as prescribed while he simultaneously sought illegal substances. Apart from a photocopy of his medical marijuana card, which he obtained several days after the collision, Mr. Bourne gave no

reason and submitted no evidence as to why he sought out medical marijuana and its medical necessity.

{¶29} A trial court is permitted to restrict the use of substances where it is rationally related to the offenses and related to the rehabilitation of the offender. See *Jones, supra*, at 53; *Talty, supra*, at ¶ 12. This court has recognized that prohibiting medical marijuana is well within the trial court's discretion. For example, in *State v. Dahlberg*, 11th Dist. Ashtabula No. 2020-A-0030, 2021-Ohio-550, we found the trial court had discretion to include prohibiting marijuana, even if legalized. *Id.* at ¶ 82-83. We found a clear relationship with the various criminal offenses that were committed (drug use and illegal firearms in a motor vehicle) and that it was "necessary for the court to take into consideration known drug use in fashioning a sentence that would 'rehabilitate the offender' and prevent future crime." *Id.* at ¶ 83.

{¶30} Similarly, in *Ryan, supra*, we found "it is clear that prohibiting [the appellant] from using marijuana or having it under his control is reasonably related to rehabilitation, the crimes he committed, and serves the ends of probation, i.e., [the appellant] pleaded guilty to trafficking in drugs and aggravated possession of drugs." *Id.* at ¶ 34. In addition, the trial court's restrictions were acknowledged and agreed to by the appellant despite the possession of an active medical marijuana card at the time of his sentencing. *Id.* at ¶ 32.

{¶31} Since we do not find the trial court has a "blanket policy" prohibiting the use of medical marijuana to all offenders regardless of the facts and circumstances of each case, we do not reach Mr. Bourne's contention that the trial court's "blanket policy" violates the separation of powers doctrine.

{¶32} In sum, we do not find the trial court's restriction against marijuana to be an abuse of discretion under the circumstances of this case. The restriction is reasonably related to rehabilitation and the crimes Mr. Bourne committed; it relates to conduct that remains criminal under Federal law; and it serves the goals of community control, i.e., Mr. Bourne pleaded guilty to vehicular homicide due to loss of control of his vehicle, which tragically ended someone's life. He has a history of not taking his prescribed medication and now seeks to use marijuana; however, he did not submit any evidence as to its medical necessity, such as testimony or documentation by his recommending physician. Simply because an offender is in possession of a valid medical marijuana card does not mean the trial court is prohibited from restricting its use under circumstances such as those presented here.

{¶33} Mr. Bourne's sole assignment of error is without merit.

{¶34} The judgment of the Chardon Municipal Court is affirmed.

JOHN J. EKLUND, P.J.,

EUGENE A. LUCCI, J.,

concur.