

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MERCER COUNTY**

STATE OF OHIO,

CASE NO. 10-26-06

PLAINTIFF-APPELLEE,

v.

KYLE R. POPLASKI,

**J U D G M E N T
E N T R Y**

DEFENDANT-APPELLANT.

STATE OF OHIO,

CASE NO. 10-26-07

PLAINTIFF-APPELLEE,

v.

KYLE R. POPLASKI,

**J U D G M E N T
E N T R Y**

DEFENDANT-APPELLANT.

**Appeals from Mercer County Common Pleas Court
Criminal Division
Trial Court Nos. 25-CRM-095 and 25-CRM-141**

**10-26-06 Judgment Reversed
And
10-26-07 Judgment Affirmed**

Date of Decision: October 26, 2026

APPEARANCES:

Holly M. Simpson for Appellant

Peter Galyardt for Appellee

WALDICK, J.

{¶1} This is a consolidated appeal in which the defendant-appellant, Kyle Poplaski (“Poplaski”), appeals the judgments of sentence entered against him in two cases in the Mercer County Court of Common Pleas. On appeal, Poplaski argues in one case that the trial court erred in its handling of a community control violation filed against him. Poplaski further asserts in both cases that the trial court erred in formulating the sentences imposed against him. For the reasons set forth below, we affirm the trial court’s judgment in one case, but reverse in the other.

Procedural History and Factual Background

{¶2} In Case Number 10-26-06 (25-CRM-095), a one-count indictment was returned against Poplaski on July 24, 2025. In that indictment, Poplaski was charged with Failure to Comply with Order or Signal of Police Officer, a fourth-degree felony in violation of R.C. 2921.331(B).

{¶3} The basis of that indictment was a July 19, 2025 motor vehicle pursuit during which Poplaski drove his car at a high rate of speed while fleeing from a Celina police officer who was attempting to stop Poplaski. During the pursuit, Poplaski crashed his vehicle into a cornfield and then fled on foot.

{¶4} On July 30, 2025, an arraignment was held in Case Number 10-26-06, and Poplaski entered an initial plea of not guilty to the indictment.

{¶5} On September 5, 2025, that case was resolved with a negotiated plea of guilty, pursuant to which Poplaski pled guilty to the indicted charge in exchange for a bond-modification recommendation from the prosecution. The trial court accepted Poplaski's guilty plea and ordered a presentence investigation. The trial court also modified Poplaski's bond, permitting his release from custody on a recognizance bond.

{¶6} On October 8, 2025, a sentencing hearing was held. At that time, the trial court sentenced Poplaski to a term of community control of up to five years. The terms of that community control included the condition that Poplaski enter and successfully complete the treatment program at the W.O.R.T.H. Center, a community-based correctional facility in Lima, with the trial court explaining that Poplaski would be remanded to jail and held until a bed became available for him at the W.O.R.T.H. Center.

{¶7} At the close of the October 8, 2025 sentencing hearing, the trial court ordered that Poplaski be remanded to the custody of the Mercer County Sheriff's Office. In response to that, a deputy in the courtroom began to take Poplaski into custody, but Poplaski broke free and ran from the courtroom, shoving a civilian bystander out of the way while doing so. Poplaski then fled from the courthouse. Officers subsequently located Poplaski on Market Street in Celina, where he

continued to resist arrest, requiring the officers to deploy a taser before Poplaski finally complied and was able to be taken into custody.

{¶8} In Case Number 10-26-07 (25-CRM-141), a three-count indictment was returned against Poplaski on October 16, 2025, based on the October 8th incident. That indictment charged Poplaski as follows: Count 1 – Escape, a third-degree felony in violation of R.C. 2921.34(A)(1) and (C)(2)(b); Count 2 – Assault, a first-degree misdemeanor in violation of R.C. 2903.13(A); and Count 3 – Resisting Arrest, a second-degree misdemeanor in violation of R.C. 2921.33(A).

{¶9} On October 20, 2025, an arraignment was held on that indictment, to which Poplaski entered an initial plea of not guilty.

{¶10} On October 20, 2025, a notice of community control violation was filed against Poplaski in the earlier case (Case Number 10-26-06). That notice alleged that, based upon the indictment in the newer case, Poplaski had violated a federal, state, or local law, in violation of the terms of his community control.

{¶11} On January 8, 2026, a joint hearing was held in the two cases. At that time, in Case Number 10-26-07, Poplaski entered a negotiated plea of guilty to Count 1 of the indictment, being the charge of Escape, in exchange for a dismissal of Counts 2 and 3. The trial court accepted the guilty plea and ordered an updated presentence investigation. Then, in Case Number 10-26-06, Poplaski admitted the allegation contained in the community control violation notice, specifically that he had violated his community control in that case by committing the escape offense,

in violation of state law. Based upon that admission, the trial court found that Poplaski had violated the terms of his community control.

{¶12} On February 11, 2026, a joint sentencing/dispositional hearing was held in the two cases. First, in the newer case, the trial court sentenced Poplaski to a prison term of 36 months for the Escape. Then, in the older case, with Poplaski having violated his original sentence of community control, the trial court imposed a 12-month prison term for the Failure to Comply with Order or Signal of Police Officer, to be served consecutively to the other prison term. On February 12, 2026, the trial court filed a judgment entry in each case that memorialized the court's sentencing orders.

{¶13} On March 23, 2026, Poplaski filed a notice of appeal and a motion for delayed appeal in each of the two cases, and this Court subsequently granted the motions for delayed appeal. On June 1, 2026, this Court ordered that the two appeals be consolidated.

{¶14} In this consolidated appeal, Poplaski has raised two assignments of error for our review.

First Assignment of Error

The trial court erred in sentencing Poplaski to a twelve months incarceration and thirty-six months incarceration to run consecutively to one another when the sentences are not supported by the record and are contrary to law.

Second Assignment of Error

The trial court erred in accepting a plea to a probation violation and sentencing Poplaski on the probation violation when the court was aware the requirements to prove a probation violation had not been met.

{¶15} Due to the nature of the claims asserted in the assignments of error, we opt to address them out of the order in which they are raised.

Second Assignment of Error

{¶16} In the second assignment of error, which relates to Case Number 10-26-06, Poplaski asserts that the trial court erred in accepting his admission to the community control violation and, further, that the trial court erred in the sentencing order made in that case following the finding that Poplaski had violated the conditions of his community control.

{¶17} As to the first claim raised in this assignment of error, Poplaski suggests that he should not have been found to have violated the terms of his community control because the violation at issue occurred without the probation department having first provided Poplaski with a written statement of the rules and conditions governing his community control.

{¶18} In making that argument, Poplaski relies on R.C. 2301.30, which sets forth the duties of county probation departments and provides, in relevant part:

The court of common pleas of a county in which a county department of probation is established under division (A) of section 2301.27 of the Revised Code shall require the department, in the rules through

which the supervision of the department is exercised or otherwise, to do all of the following:

(A) Furnish to each person under a community control sanction or post-release control sanction or on parole under its supervision or in its custody, a written statement of the conditions of the community control sanction, post-release control sanction, or parole and instruct the person regarding the conditions[.]

{¶19} Poplaski asserts that, because the trial court was aware that he escaped from the courthouse on October 8, 2025 before having met with the county probation department to review the conditions of community control, the trial court erred in finding that Poplaski had violated his community control after accepting Poplaski's admission to the same.

{¶20} “The decision of a trial court finding a community-control violation will not be disturbed absent an abuse of discretion.” *State v. Wallace*, 2023-Ohio-676, ¶ 11 (3d Dist.). An abuse of discretion suggests the trial court's decision is unreasonable, arbitrary, or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157 (1980).

{¶21} A hearing on a community control violation is not a criminal trial and the state is not obligated to prove a violation of the conditions of community control beyond a reasonable doubt. *Wallace*, at ¶ 12, citing *State v. Roberts*, 2017-Ohio-481, ¶ 20 (2d Dist.). Instead, the state need only present substantial evidence that the offender violated the terms of his or

her community control sanctions. *Id.*, citing *State v. Boykins*, 2015-Ohio-1341, ¶ 20 (3d Dist.).

{¶22} In this case, while it is undisputed that Poplaski was not provided with a written statement of the conditions of his community control by the probation department, any non-compliance with R.C. 2301.30(A) was due solely to the fact that Poplaski committed a new felony offense within minutes of having been sentenced to community control.

{¶23} Moreover, pursuant to R.C. 2929.15(A)(2)(a), if a court sentences an offender to any community control residential sanction authorized by R.C. 2929.16, as was done here, the county probation department responsible for the offender's supervision must report to the court "a violation of any condition of the sanctions, any condition of release under a community control sanction imposed by the court, *a violation of law*, or the departure of the offender from this state without the permission of the court or the offender's probation officer." (Emphasis added.). Thus, the requirement that an offender obey the law while under community control is imposed by statute. *Accord State v. King*, 2002-Ohio-373, ¶ 6 (1st Dist.). As our judicial colleagues on the First District Court of Appeals noted in *King*, "[a]s a practical matter, it is difficult to conceive that an offender on community control would not know that committing another criminal offense * * * would jeopardize his status." *Id.*

{¶24} Additionally, it has been held that non-compliance with R.C. 2301.30 is harmless where there was no dispute that an offender violated community control under circumstances indicating the offender was aware that the acts at issue would constitute a violation, and did not contest the fact that he committed the violation at issue. *See, e.g., State v. Kelley*, 2012-Ohio-3938 (5th Dist.); *State v. Mynhier*, 146 Ohio App.3d 217 (1st Dist. 2001).

{¶25} In the case at issue here, Poplaski did not dispute in the trial court that his commission of Escape was a violation of the terms of his community control. At the January 8, 2026 plea hearing, after Poplaski pled guilty to Escape in Case Number 10-26-07, Poplaski then admitted in Case Number 10-26-06 that he had violated his community control in that case by committing the escape offense, in violation of state law. Poplaski had notice of the allegation that he had violated his community control, he was aware of the evidence against him, and he had the opportunity to challenge the allegation that he had violated his community control, had he so desired.

{¶26} Under such circumstances, the trial court did not abuse its discretion in finding that Poplaski had violated his community control after he admitted the same.

{¶27} In the second assignment of error, Poplaski also takes issue with the prison sentence imposed by the Court in Case Number 10-26-06 for the community control violation.

{¶28} First, Poplaski argues that the 12-month prison term imposed by the trial court was erroneous because the trial court provided no clarification “regarding which part of the twelve month sentence that ran consecutively to the thirty six month sentence was for the community control violation and which was a re-sentencing for the original charge.” (Amended Merit Brief of Defendant-Appellant, Kyle Poplaski, p. 8). Poplaski cites no authority in support of that claim, nor is there any legal requirement that the trial court so clarify. As the State of Ohio accurately points out, it is well established that the imposition of a prison term following a community control violation is a new sentence for the criminal offense for which the offender was originally convicted and upon which he or she was initially sentenced to community control. *See State v. Fraley*, 2004-Ohio-7110, ¶ 17; *State v. Heinz*, 2016-Ohio-2814, ¶ 15; *State v. Jackson*, 2016-Ohio-8127, ¶ 11. Accordingly, Poplaski’s argument in that regard lacks merit.

{¶29} In the second assignment of error, Poplaski also assigns error with the 12-month prison term imposed by the trial court following the community control violation on the basis that, citing to the October 8, 2025 original sentencing hearing, “the Court did not discuss the rules of community control or what would happen if he was charged with a new offense.” (Amended Merit Brief of Defendant-Appellant, Kyle Poplaski, p. 8).

{¶30} With regard to that assertion, we note as an initial matter that Poplaski fails to cite a single legal authority in support of his claim that the trial court

inadequately advised him, at the original sentencing hearing, of the consequences of violating community control through the commission of a new offense. Poplaski also fails to elaborate further in his merit brief as to that particular claim.

{¶31} Pursuant to App.R. 12(A)(2), “[t]he court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A).” App.R. 16(A)(7) provides that “[t]he appellant shall include in its brief * * * [a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies.” Put another way, a defendant has the burden of affirmatively demonstrating error on appeal and, if an argument exists that can support an assignment of error, it is not this Court’s duty to root it out. *State v. Moore*, 2019-Ohio-2633, ¶ 10 (3d Dist.).

{¶32} Thus, this Court could readily decline to address this sentencing claim of Poplaski’s on the basis that the argument in support of the claim has not been sufficiently presented for review and that the claim has not been supported by the required reference to the specific parts of the record on which he relies. However, in the interest of justice, and particularly because the unsupported claim does have merit, we shall proceed to review that claim.

{¶33} Pursuant to R.C. 2953.08(G)(2), an appellate court will reverse a sentence “only if it determines by clear and convincing evidence that the record does not support the trial court’s findings under relevant statutes or that the sentence is otherwise contrary to law.” *State v. Marcum*, 2016-Ohio-1002, ¶ 1. *See, also, State v. Jung*, 2018-Ohio-1514, ¶ 14 (8th Dist.) (applying the standard of review set forth in R.C. 2953.08(G)(2) to review a sentence imposed after the defendant’s community control was revoked); *State v. Jackson*, 2016-Ohio-8127, ¶ 11 (concluding that a community control revocation hearing is a sentencing hearing for purposes of R.C. 2929.19 and Crim.R. 32(A)(1)). Clear and convincing evidence is that ““which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.”” *Marcum*, at ¶ 22, quoting *Cross v. Ledford*, 161 Ohio St. 469, paragraph three of the syllabus (1954).

{¶34} Pursuant to R.C. 2929.15(B), upon an offender having violated community control, a trial court may (1) lengthen the term of the original community control sanction if the total time under the sanction does not exceed a five-year limit; (2) impose a more restrictive community control sanction; or (3) for a non-technical violation, impose a prison term on the offender, provided that the prison term is within the range of prison terms available for the offense for which community control had been imposed and the term does not exceed the prison term specified in the notice provided to the offender at the original sentencing hearing.

{¶35} However, R.C. 2929.15(B) must be read in conjunction with R.C. 2929.19(B)(4), which governs sentencing hearings at which community control sanctions are imposed. R.C. 2929.19(B)(4) provides:

If the sentencing court determines at the sentencing hearing that a community control sanction should be imposed and the court is not prohibited from imposing a community control sanction, the court shall impose a community control sanction. *The court shall notify the offender that, if the conditions of the sanction are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the range from which the prison term may be imposed as a sanction for the violation, which shall be the range of prison terms for the offense that is specified pursuant to section 2929.14 of the Revised Code and as described in section 2929.15 of the Revised Code.*

(Emphasis added).

{¶36} “Thus, ‘[w]hen a trial court imposes community control, it must notify the offender of the possible results of a violation of those sanctions.’” *State v. Van Den Eynde*, 2023-Ohio-1790, ¶ 5 (3d Dist.), quoting *State v. Lyle*, 2014-Ohio-751, ¶ 12 (3d Dist.). “Compliance with R.C. 2929.19(B)(4) is a prerequisite to imposing a prison term for a community control violation.” *Van Den Eynde*, ¶ 7, quoting *State v. Clinton*, 2022-Ohio-717, ¶ 14 (2d Dist.).

{¶37} “When a sentence fails to include a mandatory provision, such as the notification provision under R.C. 2929.19(B)(4), it may be appealed because such a

sentence is “contrary to law” and is also not “authorized by law.””” *Van Den Eynde*, ¶ 7, quoting *State v. Batty*, 2014-Ohio-2826, ¶ 22 (4th Dist.).

{¶38} “Consequently, where no such notification was supplied, and the offender then appeals after a prison term is imposed under R.C. 2929.15(B), the matter must be remanded to the trial court for a resentencing under that provision with a prison term not an option.” *State v. Brooks*, 2004-Ohio-4746, ¶ 33.

{¶39} In the case at issue in the instant appeal, when Poplaski was sentenced to community control at the initial sentencing hearing on October 8, 2025, the trial court properly notified Poplaski, pursuant to R.C. 2929.19(B)(4), of the range of prison terms that could be imposed if he violated the conditions of his community control. However, the trial court failed to explain the ways in which Poplaski could violate his community control or what could happen if he did, as also required by R.C. 2929.19(B)(4).

{¶40} Because the trial court failed to provide the notice required by R.C. 2929.19(B)(4), the court lacked the authority to sentence Poplaski to prison in Case Number 10-26-06. Accordingly, the 12-month prison term ordered at the February 11, 2026 hearing was contrary to law and must be reversed.

{¶41} On that basis, the second assignment of error is sustained.

First Assignment of Error

{¶42} In the first assignment of error, Poplaski argues that his prison sentences in the two cases are contrary to law in that they are not supported by the record.

{¶43} With regard to this assignment of error, our resolution of the second assignment of error renders the first assignment of error moot as to the sentence imposed in Case Number 10-26-06, and we decline to address it. See App.R. 12(A)(1)(c). Therefore, our analysis of the first assignment of error will relate solely to the sentence imposed in Case Number 10-26-07.

{¶44} It is not clear from the assignment of error, nor from the argument contained in Poplaski's merit brief, whether he takes issue on appeal with the fact that a prison sentence was imposed in Case Number 10-26-07, or whether he is challenging the length of the ordered prison term, or both. Regardless, for the reasons set forth below, we conclude that the sentence in Case Number 10-26-07 is not contrary to law.

{¶45} The standard of review applicable to this sentence-related claim is whether the sentence is clearly and convincingly contrary to law. *State v. Marcum*, 2016-Ohio-1002; R.C. 2953.08. With regard to sentencing-review generally, the Supreme Court of Ohio has limited that review by holding that R.C. 2953.08(G)(2)(b) "does not provide a basis for an appellate court to modify or vacate a sentence based on its view that the sentence is not supported by the record

under R.C. 2929.11 and 2929.12.” *State v. Jones*, 2020-Ohio-6729, ¶ 39. Additionally, a trial court has full discretion to impose any sentence within the statutory range. *State v. Johnson*, 2021-Ohio-1768, ¶ 9 (3d Dist). “A sentence imposed within the statutory range is not contrary to law as long as the trial court considered the purposes and principles of felony sentencing contained in R.C. 2929.11 and the sentencing factors contained in R.C. 2929.12.” *Id.*, citing *State v. Dorsey*, 2021-Ohio-76, ¶ 15 (2d Dist.).

{¶46} With regard to the sentence imposed in Case Number 10-26-07, Poplaski was convicted of Escape, a felony of the third degree in violation of R.C. 2921.34(A)(1) and (C)(2)(b). Pursuant to R.C. 2929.14(A)(3)(b), the authorized range of prison sentences for a third-degree felony of the type at issue here is a definite term of nine, twelve, eighteen, twenty-four, thirty, or thirty-six months. Pursuant to R.C. 2929.13(C), in determining whether to impose a prison term as a sanction for a third-degree felony, a trial court is required to comply with the purposes and principles of sentencing under section 2929.11 and section 2929.12 of the Ohio Revised Code.

{¶47} R.C. 2929.11 sets forth the purposes of felony sentencing. R.C. 2929.11(A) dictates that “the overriding purposes of felony sentencing are to protect the public from future crime by the offender and others, to punish the offender, and to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing

an unnecessary burden on state or local government resources.” R.C. 2929.11(A) then goes on to list factors that a sentencing court must consider in achieving the purposes of felony sentencing, while R.C. 2929.11(B) provides that a sentence imposed for a felony must be commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact on the victim, and must also be consistent with sentences imposed for similar crimes committed by similar offenders. Finally, R.C. 2929.11(C) provides that a sentence imposed for a felony shall not be based on the race, ethnic background, gender, or religion of the offender.

{¶48} R.C. 2929.12 governs the factors that trial courts must consider when imposing sentence for a felony crime. R.C. 2929.12(B) sets forth ten potential factors indicating that an offender’s conduct is more serious than conduct normally constituting the offense, while R.C. 2929.12(C) sets forth four factors indicating that an offender’s conduct is less serious than conduct normally constituting the offense. R.C. 2929.12(D) and (E) then each list five factors that trial courts are to consider that indicate an offender is likely to commit future crimes or is not likely to commit future crimes, respectively. Finally, R.C. 2929.12(F) requires the sentencing court to consider the offender’s military service record, if any.

{¶49} At the February 11, 2026 sentencing hearing in the case before us for review, the prosecutor set forth the purposes of felony sentencing for the trial court’s consideration. Then, prior to imposing sentence, the trial court noted on the record that it had further considered the factors set forth in R.C. 2929.12. In doing so, the

trial court noted that it found none of the factors set forth in R.C. 2929.12(B) or R.C. 2929.12(C) to be applicable to the case. However, pursuant to R.C. 2929.12(D), the trial found that Poplaski was under two different court-ordered sanctions at the time he committed Escape, that he had a history of prior criminal convictions, and that he had failed to respond favorably in the past to sanctions previously imposed for criminal convictions. The trial court further noted that Poplaski had no prior military service, so R.C. 2929.12(F) was not applicable.

{¶50} Additionally, the judgment entry of sentencing filed on February 12, 2026 reflects that the trial court, prior to imposing sentence, “considered the presentence investigation report, all relevant statutes, Criminal Rule 11(F), the statements made in open court, and any evidence presented[.]” (Case No. 25-CRM-141 Judgment Entry Sentencing (Prison), Docket No. 34).

{¶51} In summary, the record before us confirms that the trial court considered the overriding purposes of felony sentencing set forth in R.C. 2929.11 and the statutory factors relating to seriousness and recidivism set forth in R.C. 2929.12. Upon review, consideration and application of those factors relevant to the record before us supports the trial court’s sentencing decision. Additionally, the 36-month prison term imposed by the trial court was within the statutory range established by R.C. 2929.14(A)(3)(b).

{¶52} As the trial court gave consideration to the applicable sentencing factors set forth by statute and because the prison sentence imposed is within the

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statutory range of sentencing options, the sentence in Case Number 10-26-07 is supported by the record and is not clearly and convincingly contrary to law.

{¶53} The first assignment of error is overruled.

Conclusion

{¶54} For the reasons set forth in the second assignment of error, *supra*, the February 12, 2026 sentencing judgment of the Mercer County Court of Common Pleas in Case Number 10-26-06 is reversed, and that matter is remanded for further proceedings in accordance with law and consistent with this decision. In Case Number 10-26-07, the judgment of conviction and sentence entered against the defendant-appellant is affirmed in all respects.

***Case Number 10-26-06:
Judgment reversed***

***Case Number 10-26-07:
Judgment affirmed***

MILLER and WILLAMOWSKI, J.J, concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the judgment and order of this Court is as follows.

In Case Number 10-26-06, the judgment of the trial court is reversed with costs assessed to Appellee for which judgment is hereby rendered. The cause is remanded to the trial court for further proceedings and for execution of the judgment for costs.

In Case Number 10-26-07, the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. See App.R. 30.

Juergen A. Waldick, Judge

Mark C. Miller, Judge

John R. Willamowski, Judge

DATED:
/jlm