

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

State of Ohio

Court of Appeals No. OT-03-047

Appellee

Trial Court No. 01-CR-140

v.

Matthew A. Jaworski

DECISION AND JUDGMENT ENTRY

Appellant

Decided: September 30, 2004

* * * * *

Mark Mulligan, Ottawa County Prosecuting Attorney, and
Lorrain R. Croy, Assistant Prosecuting Attorney, for appellee.

Judy A. Flood, for appellant.

* * * * *

KNEPPER, J.

{¶ 1} This is an appeal from a judgment of the Ottawa County Court of Common Pleas that sentenced appellant to a term of incarceration following a finding that he violated the terms of his community control imposed after he was found guilty of one count of robbery. For the reasons that follow, this court affirms the judgment of the trial court.

{¶ 2} The undisputed facts that are relevant to the issues raised on appeal are as follows. On November 21, 2001, appellant entered a plea of guilty to one count of

robbery in violation of R.C. 2911.02(A)(3). The trial court accepted the plea and made a finding of guilty. At appellant's sentencing hearing on January 11, 2002, the trial court placed him on community control for three years. At that time, the trial court advised appellant as follows: "Now if you violate the conditions of your probation, a number of things could happen. * * * I could sentence you to the penitentiary for a period of up to four years. Do you understand that?" Appellant responded that he did understand.

{¶ 3} On January 3, 2003, appellant appeared in court and admitted being in violation of the terms of his community control. On February 6, 2003, the trial court continued appellant on community control with the added condition that he complete a six-month residential rehabilitation program. On August 28, 2003, however, appellant admitted to another violation of his community control. On October 27, 2003, the trial court revoked his community control and imposed a prison term of three years. It is from that judgment that appellant appeals.

{¶ 4} Appellant sets forth the following assignment of error:

{¶ 5} "I. The trial court erred in sentencing the defendant-appellant to a three year prison term for violation of community control because the trial court failed to reserve a specific prison term at his original sentencing hearing."

{¶ 6} Appellant asserts that the trial court failed to comply with the requirements of R.C. 2929.15(B) and 2929.19(B)(5) at sentencing when it imposed community control rather than a term of imprisonment. Appellant argues that the trial court's statement was "totally lacking in specificity" and did not put him on notice of the consequences he would face if he violated the conditions of his community control.

{¶ 7} R.C. 2929.15(B) provides as follows:

{¶ 8} “If the conditions of a community control sanction are violated * * * the sentencing court may * * * impose a prison term of the offender pursuant to section 2929.14 of the Revised Code. The prison term, if any, imposed upon a violator pursuant to this division shall be *within the range of prison terms* available for the offense for which the sanction that was violated was imposed and *shall not exceed the prison term specified* in the notice provided to the offender at the sentencing hearing * * * .”

[Emphasis added.]

{¶ 9} Upon review of the record, we find that the three-year prison term imposed by the trial court after appellant’s second violation hearing is within the range of prison terms available for a conviction of robbery, a third-degree felony, and did not exceed the prison term specified by the trial court at appellant’s sentencing hearing on January 11, 2002, and in fact was one full year less. There clearly is no language in the statute preventing the court from sentencing the violator to a lesser prison term than that originally stated at the sentencing hearing. *State v. Brooks*, 9th Dist. No. 21360, 2003-Ohio- 3143, citing *State v. Housley*, 12th Dist. No. CA2002-07-060, 2002-Ohio-2223, at ¶ 10 and *State v. Miller* (Dec. 10, 1999), 5th Dist. No. 1999AP020010. This argument is therefore without merit.

{¶ 10} R.C. 2929.19(B)(5) states that if the sentencing court determines at the sentencing hearing that a community control sanction should be imposed “ * * * [t]he court shall notify the offender that, if the conditions of the sanction are violated, * * * the court may impose a prison term on the offender and shall indicate the specific prison term

that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to section 2929.14 of the Revised Code.”

{¶ 11} As we stated above, appellant’s prison sentence is within the range of terms permitted for a third-degree felony. See R.C. 2929.14. As to appellant’s argument that the trial court was not specific enough at the sentencing hearing, we find that claim to be without merit. The trial court clearly gave appellant notice of a specific prison term that could be imposed as a penalty for a community control violation. Further, we believe that the language in R.C. 2929.15(B) stating that the prison term imposed “*shall not exceed*” the term specified at the sentencing hearing manifests the legislature’s intent to give the trial court the ability to sentence the offender to a prison term *up to and including* the term specified, rather than limit the court to imposing a predetermined sentence.

{¶ 12} Based on the foregoing, we find that the trial court did not err by imposing a three-year sentence upon appellant and, accordingly, his sole assignment of error not well-taken.

{¶ 13} Upon consideration whereof, this court finds that appellant was not prejudiced and the judgment of the Ottawa County Court of Common Pleas is affirmed. Pursuant to App.R. 24, costs of this appeal are assessed to appellant.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, P.J.

JUDGE

Richard W. Knepper, J.

JUDGE

Judith Ann Lanzinger, J.
CONCUR.

JUDGE