

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

State of Ohio

Court of Appeals No. S-10-052

Appellee

Trial Court No. 06-CR-1275

v.

Richard Hostetter aka Seph Valentine

DECISION AND JUDGMENT

Appellant

Decided: October 26, 2012

* * * * *

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney,
and Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Megan Mattimoe, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, Richard Hostetter, aka Seph Valentine, appeals from the judgment of the Sandusky County Court of Common Pleas terminating his community control and imposing sanctions. For the reasons that follow, we reverse the imposition of sanctions following the termination of his community control.

{¶ 2} Appellant was indicted on two counts of theft. Count 1, a fifth degree felony, alleged that appellant unlawfully took \$1,550 from the Fremont Federal Credit Union. Count 2, a fourth degree felony, alleged that appellant took \$10,790 from the Old Fort Bank. Pursuant to a plea agreement, appellant, on May 1, 2008, entered a guilty plea to the first count of the indictment. He was sentenced and placed on community control for five years. As a condition of his community control, he was ordered to reimburse the county for the fees and expenses of his court appointed counsel, and ordered to make restitution to the victims in the amount of \$4,000. The sentencing judgment further stated that if appellant violated his community control by committing a felony, he would be subject to a prison term “equal to the amount of time remaining on post release control or twelve months, whichever is longer.”

{¶ 3} On May 14, 2009, a “notice of community control violation” was filed with the trial court stating that appellant had been charged with felonious assault on a police officer and that he had tested positive for marijuana. The Community Control/Probation Department requested that appellant’s community control status be revoked.

{¶ 4} On March 18, 2010, the state filed a motion to dismiss appellant’s probation violation. In their motion, the state explained that appellant has been incarcerated in a different county for various felony offenses, including the one that is described in the notice of a community control violation filed by the probation department. As appellant was expected to remain incarcerated, the state requested that appellant’s probation violation filed in Sandusky County be dismissed. The court terminated appellant’s

community control, granted the state's motion, and ordered appellant to pay for all of the outstanding fines, costs and restitution.

{¶ 5} Appellant now appeals setting forth the following assignments of error:

I. The trial court failed to make an explicit finding, on the record, regarding appellant's present and future ability to pay appointed counsel's fees, failed to consider appellant's present and future ability to pay restitution, and failed to notify appellant that it was imposing the costs of prosecution and supervision as set forth in its November 2008 judgment entry. These errors violated appellant's right to due process as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution and Sections 10 and 16, Article I of the Ohio State Constitution.

II. The trial court erred when it failed to clearly indicate on the record how it arrived at the restitution amount it imposed. This error violated appellant's right to due process as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution and Sections 10 and 16, Article I of the Ohio State Constitution.

III. The trial court failed to give appellant sufficient notice and opportunity to respond to the state's motion to take judgment for outstanding costs and restitution. This error violated appellant's right to due process as guaranteed under the Fifth and Fourteenth Amendments to

the United States Constitution and Sections 10 and 16, Article I of the Ohio State Constitution.

IV. Trial counsel did not effectively assist appellant in his defense by failing to raise the issue of appellant's financial condition when the trial court imposed costs and restitution and to object to the amount and by failing to respond to the state's motion for judgment of costs and restitution. This violated appellant's right to due process and right to counsel as guaranteed under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Sections 10 and 16, Article I, of the Ohio State Constitution.

{¶ 6} Appellant's assignments of error mainly focus on the order of restitution itself. This court, however, finds there to be a bigger problem, one of jurisdiction. "Subject matter jurisdiction is defined as a court's power to hear and decide cases." *Heisler v. Heisler*, 4th Dist. No. 09CA12, 2010-Ohio-98, citing *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, 701 N.E.2d 1002 (1998). "Appellate courts may sua sponte consider subject matter jurisdiction even if not raised in the lower courts." *Brown v. E. Ohio Gas Co.*, 8th Dist. No. 96815, 2011-Ohio-6443, ¶ 6, citing *State ex rel. White v. Cuyahoga Metro. Hous. Auth.*, 79 Ohio St.3d 543, 684 N.E.2d 72 (1997).

{¶ 7} At the end or termination of the period of probation, the jurisdiction of the judge to impose sentence ceases and the defendant shall be discharged. Discharge is required even if the alleged probation violation occurred during the probationary period

and could have resulted in a valid probation revocation and imposition of sentence if it had been timely prosecuted. *State v. Justice*, 5th Dist. No. 08 CA 47, 2009 -Ohio-2064, citing R.C. 2951.09; *Kaine v. Marion Prison Warden*, 88 Ohio St.3d 454, 455, 727 N.E.2d 907 (2000).

{¶ 8} In this case, the judge terminated appellant's community control during his probationary period, and then ordered payment for restitution, fees and costs. However, the restitution order and the order for fees and court costs were imposed as conditions to appellant remaining on community control. After terminating appellant's community control, the trial court lacked jurisdiction to impose the conditions of that same community control sanction on appellant.

{¶ 9} Based on our sua sponte analysis, we hereby reverse the court's decision for lack of subject matter jurisdiction. Appellant's four assignments of error are found moot. Appellee is ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.