

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 112124
 v. :
 :
 FRANK BUKOVEC, JR., :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

**JUDGMENT: REVERSED; VACATED; AND REMANDED
RELEASED AND JOURNALIZED: August 10, 2023**

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-20-651960-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Mallory Buelow, Assistant Prosecuting
Attorney, *for appellee*.

Richard E. Hackerd, *for appellant*.

LISA B. FORBES, J.:

{¶ 1} Frank Bukovec, Jr., (“Bukovec”) appeals the sentence that the trial court imposed after it found that he violated his community-control sanctions (“CCS”) in this misdemeanor assault and aggravated menacing case. After reviewing the facts of the case and pertinent law, we reverse the trial court’s decision, vacate

Bukovec's CCS, and remand this case to the trial court to issue a journal entry consistent with this opinion.

I. Facts and Procedural History

{¶ 2} On September 20, 2021, Bukovec pled guilty to assault in violation of R.C. 2903.13(A) and aggravated menacing in violation of R.C. 2903.21(A), both first-degree misdemeanors. On October 14, 2021, the court sentenced Bukovec to six months in jail on each count and suspended this sentence. The court also sentenced Bukovec to three years of CCS with various conditions, such as 200 hours of community-work service, an anger-management course, and no contact with the victim. At the sentencing hearing, the court stated that “[a]ny violation of these terms will have you brought back before me and face the six-month jail term that I’m today suspending * * *.”

{¶ 3} On January 26, 2022, the court held a CCS violation hearing and issued a journal entry stating as follows: the “Court finds * * * Bukovec * * * to be in violation of [CCS]. [CCS] is continued with prior conditions.” The court held another CCS violation hearing on February 15, 2022, and issued a journal entry finding Bukovec “to be in violation of [CCS].” The court again continued Bukovec’s CCS.

{¶ 4} The court held a third CCS violation hearing on April 21, 2022, at which the court found that Bukovec was “not sufficiently compliant” with his CCS. The court ordered Bukovec to “serve a six-month jail term, the six-month jail term I suspended on one of the two counts before.” The court further notified Bukovec as

follows: “When you come out, you will remain on [CCS] and you must show from that point forward that you are fully — and that means 110 percent — compliant. * * * When you come out, if you continue to violate * * * I will have no hesitation in imposing another six-month jail term * * *.” The court issued a journal entry, stating in part that Bukovec must “fully comply with [CCS] * * *, or another 6-month, jail term may be imposed. Defendant shall serve 6-month jail term effective immediately in the Cuyahoga County jail. Defendant remanded.”

{¶ 5} The record reflects that Bukovec served his six-month sentence and was released from jail on October 3, 2022.

{¶ 6} On October 24, 2022, the court issued a journal entry stating as follows:

Per the probation department, defendant has failed to report as required. Defendant contacted the probation officer on 10-18-22 stating that he moved to Columbus and would not be reporting. The defendant was reminded that he was still on community control and has to report in person until he has been told otherwise by the court or the probation department and that failing to do so is a violation. A *capias* is hereby issued for defendant.

{¶ 7} The court held a hearing on October 27, 2022, at which it found that Bukovec violated his CCS. The court continued Bukovec’s CCS and modified it so that his supervision was transferred to Franklin County. The court notified Bukovec that he “shall fully comply with [CCS] or he may expect to go back to jail.”

{¶ 8} It is from this sentence that Bukovec appeals raising one assignment of error for our review.

1. The trial Court’s sentence is unlawful.

Within this assignment of error, Bukovec raises two sub-issues.

1.1 Where the Trial Court does not impose consecutive sentences and grants community control at sentencing on misdemeanors only, can the Trial Court impose consecutive sentences on a subsequent probation violation?

1.2 Where the Trial Court does not expressly state at sentencing it is imposing consecutive sentences and grants community control at sentencing on misdemeanors only, has the Trial Court imposed concurrent sentences?

II. Law and Analysis

{¶ 9} Generally, the standard of review for sentencing in misdemeanor cases is abuse of discretion. *Lakewood v. Dobra*, 8th Dist. Cuyahoga No. 102011, 2018-Ohio-960, ¶ 8. An abuse of discretion “implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). *See also Johnson v. Abdullah*, 166 Ohio St.3d 427, 2021-Ohio-3304, 187 N.E.2d 436. “However, when a trial court does not comply with the applicable sentencing statutes, we apply a de novo standard of review.” *State v. Barnes*, 1st Dist. Hamilton Nos. C-210346, C-210346, C-210347, and C-210348, 2022-Ohio-1738, ¶ 4.

{¶ 10} Misdemeanor sentencing is governed by R.C. 2929.24, which covers “definite jail terms,” and R.C. 2929.25, which covers CCS. Pursuant to R.C. 2929.24(A)(1), the maximum jail term for a first-degree misdemeanor is 180 days. Pursuant to R.C. 2929.25(A)(1), a court may sentence an offender convicted of a misdemeanor to CCS in either of the following ways:

(a) Directly impose a sentence that consists of one or more community control sanctions authorized by section 2929.26, 2929.27, or 2929.28

of the Revised Code. The court may impose any other conditions of release under a community control sanction that the court considers appropriate. If the court imposes a jail term upon the offender, the court may impose any community control sanction or combination of community control sanctions in addition to the jail term.

(b) Impose a jail term under section 2929.24 of the Revised Code from the range of jail terms authorized under that section for the offense, suspend all or a portion of the jail term imposed, and place the offender under a community control sanction or combination of community control sanctions authorized under section 2929.26, 2929.27, or 2929.28 of the Revised Code.

{¶ 11} Upon review, we find that the trial court sentenced Bukovec to six months in jail on each count under R.C. 2929.24(A)(1), suspended this sentence under R.C. 2929.25(A)(1)(b), and placed Bukovec on a three-year term of CCS under R.C. 2929.25(A)(1)(b). Additionally, because the court did not specify that Bukovec serve his jail terms consecutively, we find that the court sentenced Bukovec to two concurrent six-month jail terms. *See* R.C. 2929.41(B)(1) (“A jail term * * * for a misdemeanor shall be served consecutively to any other * * * jail term * * * when the trial court specifies that it is to be served consecutively * * *.”). In other words, Bukovec’s aggregate suspended jail term was six months, which is the maximum jail term for a first-degree misdemeanor.¹

{¶ 12} We further find that when the court found Bukovec to be in violation of his CCS for the third time and ordered him to serve his six-month jail term, the

¹ We realize that six months is not necessarily the same as 180 days. *See State v. Hall*, 8th Dist. Cuyahoga No. 103517, 2016-Ohio-2844, ¶ 16 (“[S]ix months is not the same as [180] days because each month has a different number of days.”), (quoting *State v. Pierce*, 4th Dist. Meigs No. 10CA10, 2011-Ohio-5353, ¶ 10). However, in the instant case, Bukovec is not challenging his jail sentence, and we decline to pass judgment on this issue.

court reimposed the entirety of Bukovec's previously suspended sentence. Additionally, we find that, as a result, Bukovec's CCS terminated by operation of law. *See, e.g., State v. Jones*, 2020-Ohio-1273, 153 N.E.3d 689, ¶ 17 (8th Dist.) ("After Jones violated the terms of his community control sanctions, the trial court terminated the community control sanctions and reimposed his previously suspended sentences."). *Compare Beaver Creek v. Koch*, 2d Dist. Greene No. 85-CA-2, 1985 Ohio App.LEXIS 7342, 8 (Sept. 18, 1985) ("[W]e believe that imposition of a previously suspended sentence is functionally equivalent to revoking probation."). *See also State v. Wolfson*, 4th Dist. Lawrence No. 03CA25, 2004-Ohio-2750, ¶ 6 ("Most of the case law examining probation revocations is equally applicable to the revocation of community control sanctions.").

{¶ 13} This court has held that a "trial court may not require a defendant to serve a period of [CCS] after serving the maximum jail sentence for a misdemeanor." *State v. Pratt*, 8th Dist. Cuyahoga No. 105791, 2018-Ohio-1394, ¶ 11. *See also State v. Bolger*, 8th Dist. Cuyahoga No. 110769, 2022-Ohio-128, ¶ 11 ("A trial court may not impose a sentence of community-control sanctions after the defendant served the maximum jail sentence for a misdemeanor.").

{¶ 14} The trial court erred when it continued Bukovec's CCS upon his release from jail, after he served the entirety of his reimposed, maximum suspended sentence. Accordingly, Bukovec's sole assignment of error is sustained.

{¶ 15} Judgment reversed. The trial court's October 27, 2022 sentence continuing Bukovec's CCS after he completed his reimposed jail sentence of six

months is vacated. Case remanded to the trial court to issue a journal entry consistent with this opinion.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LISA B. FORBES, JUDGE

ANITA LASTER MAYS, A.J., and
MICHAEL JOHN RYAN, J., CONCUR