

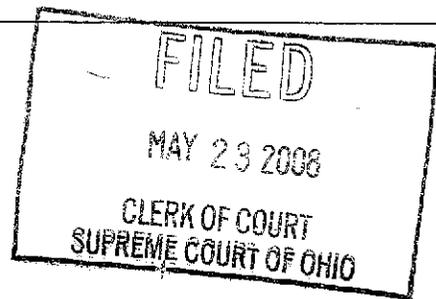
IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : Case No. 07-2182  
 :  
 vs. : On Appeal from the Union  
 : County Court of Appeals  
 : Third Appellate District  
 MICHAEL GOLDSBERRY, :  
 : C.A. Case No. 14-07-06  
 Defendant-Appellant. :

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MERIT BRIEF  
OF APPELLANT MICHAEL GOLDSBERRY

---



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## STATEMENT OF FACTS

Michael Goldsberry pled guilty to ten counts of Nonsupport of Dependents, all felonies of the fifth degree, and was sentenced on March 23, 2005. (Transcript 3/23/05) The court placed him three years community control. (T. 3/23/05, p. 8) In the sentencing entry, the court, in item 9, advised Mr. Goldsberry that if he violated the terms of community control the court “has indicated the Defendant could receive a maximum prison term up to 120 months.” (App., JE filed 3/23/05) The court placed him on community control for three years. The court never advised him of a specific prison sentence should he violate the terms of his community control.

Mr. Goldsberry violated the terms of his community control and was back before the court on November 3, 2005. (App., JE filed 11/3/05) At that probation violation hearing, Mr. Goldsberry admitted the violations and the court “ordered that the Defendant’s probation is continued under the same terms and conditions previously imposed.” (Id) The court did increase community service to one hundred hours. (Id., p. 2) The court repeated the same one hundred twenty months as a potential prison sentence, as it stated in the original sentencing entry, thereby continuing the “up to” sentence. (Id)

Mr. Goldsberry went back before the court on a second probation violation on January 5, 2007. (Entire Transcript of 1/5/07) He admitted the violations. (T. 1/5/07, p. 3) The Court went on to sentence him to six months on each of the ten counts of nonsupport of dependents to be served consecutive to each other. (T. 1/5/07, p. 9) The court ordered the immediate execution of the sentence. (T. 1/5/07, p. 10)

The State acknowledged that the original sentencing entry advised Appellant of an “up to” sentence and not a specific prison sentence. (T. 1/5/07, p. 5) Mr. Goldsberry noted that at the first community control violation hearing the entry indicates that Appellant will receive the

120 months. (T. 1/5/07, p. 5) The State then went on to argue that that amounted to the proper notification of a specific prison sentence and so the court could impose the prison sentence at this hearing. (Id)

However, the court did not impose that sentence. Instead it sentenced Mr. Goldsberry to sixty months in prison, not one hundred and twenty months. (T. 1/5/07, p. 9) It is evident that the court never intended for its declaration of the “up to” sentence of 120 months from the original sentencing hearing and restated at the first probation violation hearing, to be the specific sentence that it would impose if Mr. Goldsberry violated the terms of community control.

The trial court declared a specific prison sentence of sixty months at the second community control violation hearing then turned around and imposed the sentence on those violations. (T. 1/5/07, pp. 9, 10) It was from this decision that Mr. Goldsberry timely filed his appeal to the Union County Court of Appeals to resolve the issue of the “up to” sentence.

The appellate case proceeded with both Mr. Goldsberry and the State filing briefs. On October 15, 2007, the Union County Court of Appeals, sua sponte dismissed Mr. Goldsberry’s appeal, stating it did not have jurisdiction to hear the appeal because it believed the original sentencing entry from March 23, 2005 was not a final appealable order.

When it reviewed the original sentencing entry from March 23, 2005, the appellate court found the trial court placed Mr. Goldsberry on community control but it could not distinguish which of the ten counts the trial used for the basis of the community control or whether the trial court intended to place Mr. Goldsberry on community control for three years on each count to be served concurrent to one another or where they to be served consecutive to each other.

Because of that, the appellate court found there was not a final appealable order and dismissed the case.

However, it did not order the release of Mr. Goldsberry from prison nor did it remand the case back to the trial court to correct the original sentencing entry. Mr. Goldsberry has been serving his prison sentence on what was declared to be a non-final appealable order.

## ARGUMENT

### PROPOSITION OF LAW

**A criminal defendant is deprived of due process of law when an appellate court makes inconsistent rulings on when it accepts jurisdiction in some cases and refuses jurisdiction in other cases based on similar underlying fact patterns, specifically the fact pattern when a trial court places a criminal defendant on community control after the criminal defendant has been found guilty or pled guilty to multiple felony counts. The resulting imprisonment in cases when the court of appeals declines jurisdiction is illegal and a violation of the criminal defendant's due process rights and denies the criminal defendant his right to appeal.**

Ohio Revised Code Section 2929.15(A)(1) grants trial court authority to place criminal defendants on community control in lieu of serving prison terms. However, the statute is very clear that "[T]he duration of *all* community control sanctions imposed on an offender under this section *shall not exceed five years*.

It seems rather clear that the legislature intended that under a single indictment, regardless of the number of counts in the indictment, a criminal defendant could not be placed on community control for more than five years. The use of the word *shall* is mandatory, not directory.

While some appellate courts have ruled that unless a trial court places a criminal defendant on community control for each count in the indictment, there is not a final appealable order, the problem arises when these court rule that a trial court has the authority and discretion to place someone on community control for a term that exceeds five years because it is a

multiple count indictment. See, *State v. Garner*, (Sept. 26, 2003) 11<sup>th</sup> App. Dist. No. 2002-T-0025, 2003 Ohio 5222, P10. That case suggests that a trial court, on a multiple count indictment, could impose consecutive community control “sentences” which could result in a community control sanction greater than five years.

However, the court in *State v. Lehman*, (Feb. 4, 2000) 6<sup>th</sup> App. Dist. No. L-99-1140, found that a court could not impose consecutive placements in a residential facility for multiple counts when the court placed the criminal defendant on community control.

It is clear that Ohio Revised Code Section 2929.15’s use of the phrase “shall not” disposes of the various appellate districts’ arguments that a court can order community control sentences to be served consecutive to each other.

Ohio Revised Code Section 1.42 states “[W]ords and phrases shall be read in context and construed according to the rules of grammar and common usage.” Black’s Law Dictionary defines ‘shall’ “[A]s used in statutes, contracts, or the like, this word is generally imperative or mandatory. \*\*\* in its ordinary signification, the term “shall” is a word of command, and one which has always or must be given a compulsory meaning: as denoting obligation” Fifth Edition.

So, the application of Ohio Revised Code Section 292.15 when sentencing someone to community control, it is clear that the legislature intended that the person could not be on community control for more than five years. It is very plain that trial courts cannot impose a string a community control sanctions on multiple count indictments and order they be served consecutive to one another when that order would exceed five years.

The issue is how to interpret community control and does it encompass a single indictment or, should it only apply to each count of the indictment? And when is there a final appealable order?

Mr. Goldsberry asks this Court to find that any time a trial court finds that community control is imposed, whether it be right out of the gate at the original sentencing or after an application to be released from prison to be placed on community control, the trial court need only place a criminal defendant on community control for a specified period of time per case number, not to exceed five years, rather than to place the criminal defendant on community control for each count of the case, which still should be limited to a maximum period of five years. And either way the criminal defendant is placed on community control, it is a final appealable order.

In the case at bar, the biggest concern is the Union County Court of Appeals is in conflict with itself. The Union County Court of Appeals accepted jurisdiction in cases similar to Mr. Goldsberry's case wherein there was a multiple count indictment, the trial court placed the criminal defendant on a blanket community control sentence, the criminal defendant violated the terms of community control and went back before the judge on the violations. Appeals were taken based on the ultimate prison sentence imposed at the community control violation hearing and the Union County Court of Appeals accepted jurisdiction with identical original sentencing entries. See, *State v. Botkins*, (March 5, 2007) Union County App. Dist. No. 14-06-18.

These conflicting decisions occur within the same appellate district. Additionally, there are conflicting appellate district decisions on how to properly apply community control.

To find that the Union County Court of Appeals is correct in this case, this Court will deprive multiple criminal defendants a right of appeal because they were placed directly on

community control and do not realize that they do not have a “final appealable sentencing entry” until they violate the terms of community control and appeal any errors that may have occurred during that proceeding. Applying the rationale of the Union County Court of Appeals to these types of cases, there is the potential for the deprivation of liberty of many criminal defendants because they are being incarcerated for alleged community control violations, when in fact they were never properly placed on community control because the underlying sentencing entry was not a final appealable order.

Therefore, it is uncertain how many criminal defendants are currently incarcerated or on community control based on what are considered non-final appealable orders based on the Union County Court of Appeals’ flawed interpretation of Ohio Revised Code Section 2929.15(A)(1). Not only is it a flawed interpretation, it is in direct conflict of the same court accepting jurisdiction in *State v. Botkins*, supra.

To permit this interpretation of Ohio Revised Code Section 2929.15 violates’ public policy and creates an enormous class of criminal defendants that are currently serving time in prison illegally, in direct violation of their, and specifically Mr. Goldsberry’s, right to liberty and due process.

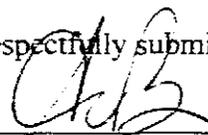
This Court has not yet addressed the misapplication of Ohio Revised Code Section 2929.15 to cases where courts of appeals decline jurisdiction when the trial court does not enunciate a specific community control term for each of the counts that a criminal defendant has been convicted of or pled guilty. The present case presents a question of public and great general importance and involves a substantial constitutional question concerning a fundamental concept of our criminal justice system: that no criminal defendant should lose his liberty without due process of law. By applying Ohio Revised Code Section 2929.15 that way it has been applied in

this case and other jurisdictions, courts are depriving criminal defendants' their first right of appeal while they remain incarcerated on a non-appealable order. There is a problem here and Mr. Goldsberry respectfully requests this Court reverse the decision of the Union County Appellate Court, or, in the alternative, if this Court accepts the appellate court's decision, that he be immediately released from prison, and that this Court release all other prisoners in the same situation as Mr. Goldsberry as they too, are being held on "non-final appealable orders".

### CONCLUSION

For the reasons detailed above, Appellant Michael Goldsberry respectfully requests this Court reverse the decision of the Union County Court of Appeals and permit him to proceed with his appeal.

Respectfully submitted,

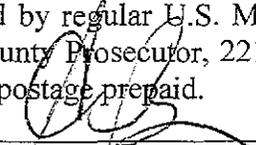


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### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Memorandum in Support of Jurisdiction of Appellant Michael Goldsberry** was forwarded by regular U.S. Mail this 23<sup>rd</sup> day of May, 2008 to the office of David W. Phillips, Union County Prosecutor, 221 West Fifth Street, Suite 333, Marysville, Ohio 43040, by regular US Mail, postage prepaid.



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Counsel of Record  
COUNSEL FOR MICHAEL GOLDSBERRY

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO,	:	
	:	Case No. 07-2182
Plaintiff-Appellee,	:	
	:	On Appeal from the Union
vs.	:	County Court of Appeals
	:	Third Appellate District
MICHAEL GOLDSBERRY,	:	
	:	C.A. Case No. 14-07-06
Defendant-Appellant.	:	

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**APPENDIX TO**  
**MERIT BRIEF**  
**OF APPELLANT MICHAEL GOLDSBERRY**

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

MICHAEL GOLDSBERRY,

Defendant-Appellant.

Case No. 07-2182

On Appeal from the Union  
County Court of Appeals  
Third Appellate District

C.A. Case No. 14-07-06

---

**NOTICE OF APPEAL  
OF APPELLANT MICHAEL GOLDSBERRY**

---

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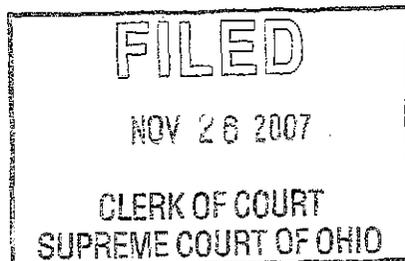
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COUNSEL FOR MICHAEL GOLDSBERRY



COPY

Now comes Michael Goldsberry, through undersigned counsel, and files his Notice of Appeal from the judgment of the Third District Court of Appeals for Union County, Ohio, filed on October 15, 2007. *The case raises a substantial constitutional question and is one of great public interest or great general interest (M)*

Respectfully Submitted,

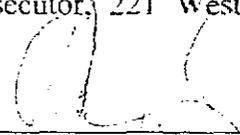


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Counsel for Michael Goldsberry

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Appeal of Appellant Michael Goldsberry** was forwarded by regular U.S. Mail this 26 day of November, 2007 to the office of David W. Phillips, Union County Prosecutor, 221 West Fifth Street, Suite 333, Marysville, Ohio 43040.



Alison Boggs #0055841  
Counsel of Record

IN THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT OF OHIO  
UNION COUNTY

STATE OF OHIO,

CASE NUMBER 14-07-06

PLAINTIFF-APPELLEE,

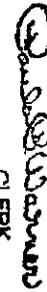
JOURNAL

v.

ENTRY

MICHAEL GOLDSBERRY,

DEFENDANT-APPELLANT.

  
CLERK

2007 OCT 15 AM 10:50

COURT OF APPEALS  
UNION COUNTY

For the reasons stated in the opinion of this Court it is the judgment and order of this Court that the appeal is dismissed for want of jurisdiction at the costs of the appellant for which judgment is rendered, and that the cause be 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 judgment to that court as the mandate prescribed by Appellate Rule 27 or by any other provision of law, and also furnish a copy of the opinion filed concurrently with this entry to the trial judge and parties of record.

  
\_\_\_\_\_  
Vernon Z. Ruston  
  
\_\_\_\_\_  
John B. Williamson  
JUDGES

DATED: October 15, 2007

COURT OF APPEALS  
THIRD APPELLATE DISTRICT  
UNION COUNTY

COURT OF APPEALS  
UNION COUNTY

2007 OCT 15 AM 10:50

*Donald S. Wood*  
CLERK

STATE OF OHIO,

CASE NUMBER 14-07

PLAINTIFF-APPELLEE,

v.

OPINION

MICHAEL GOLDSBERRY,

DEFENDANT-APPELLANT.

---

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court.

JUDGMENT: Appeal dismissed.

DATE OF JUDGMENT ENTRY: October 15, 2007

---

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For Appellee.

Rogers, P.J.,

{¶1} Defendant-Appellant, Michael E. Goldsberry, appeals the judgment of the Union County Court of Common Pleas sentencing him to sixty months in prison. On appeal, Goldsberry argues that the trial court erred when it imposed a prison sentence at his second community control violation hearing. Finding that the trial court failed to sentence Goldsberry on each count of his conviction, we dismiss Goldsberry's appeal for lack of a final appealable order.

{¶2} In January 2005, the Union County Grand Jury indicted Goldsberry for five counts of nonsupport of dependants in violation of R.C. 2919.21(A)(2), felonies of the fifth degree, and five counts of nonsupport of dependants in violation of R.C. 2919.21(B), felonies of the fifth degree. Subsequently, Goldsberry entered a plea of not guilty as to all counts in the indictment.

{¶3} In March 2005, Goldsberry withdrew his plea of not guilty and entered a plea of guilty as to all counts in the indictment. The trial court accepted Goldsberry's guilty plea, convicted him, and sentenced him to three years of community control, stating that:

**The Court finds that [Goldsberry] has been convicted of: Five counts of Nonsupport of Dependants in violation of Ohio Revised Code Section 2919.21(A)(2), and Five counts of Nonsupport of Dependants in violation of ORC 2919.21(B), each a felony of the fifth degree.**

**It is therefore ORDERED: [Goldsberry] be and hereby is placed on 3 years of Community Control[.] \* \* \***

(March 2005 Journal Entry, p. 1).

{¶4} In November 2005, the trial court held a community control violation hearing and found that Goldsberry had violated the terms of his community control. The trial court then ordered Goldsberry to complete an additional one-hundred hours of community service, stating that “[t]he Defendant is advised that if he violates any of the terms or conditions of community control, the Court may impose a more restrictive community control or the Defendant will be sent to prison for one hundred twenty (120) months.” (November 2005 Journal Entry, pp. 1-2).

{¶5} In January 2007, the trial court held a second community control violation hearing and found that Goldsberry had again violated the terms of his community control. The trial court then sentenced Goldsberry to a six month prison term on each conviction of nonsupport of dependants to be served consecutively for a total of sixty months.

{¶6} It is from this judgment that Goldsberry appeals, presenting the following assignment of error for our review.

**THE TRIAL COURT ERRED WHEN IT IMPOSED A PRISON SENTENCE AT APPELLANT'S SECOND PROBATION VIOLATION HEARING WHEN THE COURT FAILED TO NOTIFY APPELLANT OF A SPECIFIC SENTENCE AT BOTH HIS ORIGINAL SENTENCING HEARING AND AT HIS FIRST PROBATION VIOLATION HEARING.**

{¶7} In his sole assignment of error, Goldsberry argues that the trial court erred when it imposed a prison sentence at his second community control violation hearing

because it failed to notify him of a specific sentence at both his original sentencing hearing and at his first community control violation hearing. Specifically, Goldsberry asserts that the trial court could not impose a prison sentence on him if it did not previously advise him of a specific prison term that it would impose upon violation of the terms of community control. Because this Court lacks jurisdiction, we do not address the merits of Goldsberry's argument.

{¶8} Appellate jurisdiction is limited to review of lower courts' final judgments. Section 3(B)(2), Article IV of the Ohio Constitution. To be a final, appealable order, a judgment entry must meet the requirements of R.C. 2505.02 and, if applicable, Crim.R. 32(C). *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 88; *Centex Home Equity Co., L.L.C. v. Williams*, 3d Dist. No. 6-06-07, 2007-Ohio-902, ¶12. Additionally, the issue of whether a judgment is a final appealable order is a jurisdictional question, which an appellate court may raise sua sponte. *Chef Italiano Corp.*, 44 Ohio St.3d at 87. In criminal cases, "[t]he necessity of journalizing an entry in accordance with Crim.R. 32(C) is jurisdictional. Without a properly journalized judgment of conviction, this court has no power to hear this appeal." *State v. Moore*, 3d Dist. No. 14-06-53, 2007-Ohio-4941, ¶7, quoting *State v. Teague*, 3d Dist. No. 9-01-25, 2001-Ohio-2286; see also *Maple Heights v. Pinkney*, 8th Dist. No. 81514, 2003-Ohio-3941, ¶1.

{¶9} In a case factually similar to Goldsberry's, this Court recently addressed the effect of noncompliance with Crim.R. 32(C) on jurisdiction and found "[t]hat a journal entry which did not dispose of the court's rulings as to each charge renders the order merely interlocutory." *Moore*, 2007-Ohio-4941, at ¶10, citing *State v. Hayes* (May 24, 2000), 9th Dist. No. 99CA007416. See also *State v. Pace* (June 5, 1998), 1st Dist. No. C-970546; *State v. Taylor* (May 26, 1995), 4th Dist. No. 94 CA 585; *State v. Huntsman* (March 13, 2000), 5th Dist. No. 1999-CA-00282; *State v. Yingling* (December 30, 1993), 6th Dist. No. L-93-076; *State v. Waters*, 8th Dist. No. 85691, 2005-Ohio-5137, ¶16; *State v. Garner*, 11th Dist. No. 2002-T-0025, 2003-Ohio-5222, ¶7.

{¶10} In *Moore*, supra, a defendant pled guilty to five counts of deception to obtain a dangerous drug and the trial court imposed a lump sentence of three years of community control. However, the journal entry of sentence did not specify to which count or counts the three year community control sentence applied. On appeal, the defendant asserted that she had not been properly notified of a specific prison term that would be imposed upon a community control violation. This Court dismissed the appeal, finding that the journal entry of sentence did not comply with Crim.R. 32(C). *Id.*, at ¶18. See also *State v. Hoelscher*, 9th Dist. No. 05CA0085-M, 2006-Ohio-3531, ¶10.

{¶11} Here, Goldsberry initially pled guilty to and was convicted of five counts of nonsupport of dependants in violation of R.C. 2919.21(A)(2) and five counts of nonsupport of dependants in violation of R.C. 2919.21(B). Instead of sentencing

Case Number 14-07-06

Goldsberry on each count of the conviction, the trial court sentenced Goldsberry to a lump sum of three years of community control. As in *Moore*, the journal entry of sentence did not specify to which count or counts the sentence applied, and, therefore, does not comply with Crim.R. 32(C). Consequently, pursuant to our decision in *Moore*, we must dismiss Goldsberry's appeal for lack of jurisdiction.

*Appeal Dismissed.*

PRESTON and WILLAMOWSKI, JJ., concur.

r

IN THE COURT OF COMMON PLEAS, UNION COUNTY, OHIO

State of Ohio

-vs-

Michael E. Goldsberry,

Defendant

Case No. 05-CR-0008

Judge Richard E. Parrott

JOURNAL ENTRY OF SENTENCE

COURT OF COMMON PLEAS  
UNION COUNTY, OHIO  
2005 MAR 23 2PM  
CLERK

On the 23<sup>rd</sup> day of March, 2005, Defendant's Sentencing hearing was held pursuant to R.C. 2929.19. At the hearing Defendant appeared in open Court represented by Attorney Dorothy Liggett Pelanda and the Union County Asst. Prosecuting Attorney Terry Wood was also present. The Defendant was afforded all rights pursuant to Crim. R. 32. The Court has considered the record, oral statements, the victim impact statement, the pre-sentence report, as well as the principles and purposes of sentencing under R.C. 2929.11 and has balanced the seriousness and recidivism factors under R.C. 2929.12. (See Attached)

The Court finds that the Defendant has been convicted of:

Five counts of Nonsupport of Dependents in violation of Ohio Revised Code Section 2919.21(A)(2), and Five counts of Non-Support of Dependents in violation of ORC 2919.21(B), each a felony of the fifth degree.

It is therefore ORDERED:

The Defendant be and hereby is placed on 3 years of Community Control upon the following terms and conditions:

- 1) Defendant pay the costs of this proceeding within 120 days.
- 2) Defendant is ordered to pay all costs of prosecution, and if applicable, all court appointed counsel costs in the sum of \$500.00 and fees permitted pursuant to R.C. 2929.18 (A) (4).
- 3) Defendant is advised that he/she may appeal the proceedings herein within 30 days of this date.
- 4) Defendant is to obtain and maintain employment.
- 5) Bond released.

- 6) Defendant not to violate any laws of the State of Ohio, the United States, or any municipality, township or village.
- 7) Defendant to participate in drug/alcohol/abuse testing, and counseling and treatment as directed by the Adult Probation Officer, at his/her sole expense. Defendant not to imbibe or ingest or possess alcohol/prescription drugs not prescribed by his/her physician, nor shall Defendant enter any establishment the primary purpose for which is the dispensing of alcoholic beverages.
- 8) Defendant to perform 200 hours of community service and is to report to the Union County Day Reporting officer forthwith for such purpose.
- 9) The Court further finds that the Court has notified the Defendant in writing and orally that if the conditions of community control are violated, 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 Defendant and the Court hereby indicates that in the event the Court does impose a prison sentence on the offender if he/she violates community control, the Court has indicated the Defendant could receive a maximum prison term of up to 120 months.
- 10) Defendant to pay child support of \$ 656.<sup>50</sup> per <sup>month</sup> ~~week~~ as previously ordered, and to pay \$ \_\_\_\_\_ per week plus poundage additionally to and through Union County Department of Human Services until the total arrearage of \$ 24417.<sup>95</sup> is paid in full.
- 11) Defendant to report to his/her Union County Adult Probation Officer forthwith.
- 12) Defendant to abide by all orders, rules and regulations of the Union County Adult Probation Department, as well as those rules and regulations promulgated by this Court.
- 13) Defendant is hereby notified that he/she may be required to reimburse any local correctional facility for the costs of incarceration as authorized by the pay-for-stay program, and failure to pay will result in a certificate of judgment being entered for the unpaid amount of the reimbursement owed. If such judgment is rendered, it automatically becomes part of the sentence being imposed by this court. ORC 2929.37
- 14) Defendant to show proof of high school diploma or GED to Adult Probation Officer or obtain his/her GED

within 180 days.

- 15) Defendant to pay a supervision fee before the 5<sup>th</sup> day of each month through the Clerk of this Court in the sum of \$5.00, beginning April 1, 2005.

Mar. 23, 2005

Date

  
\_\_\_\_\_  
Judge Richard E. Parrott

copies to:

Union County Prosecuting Attorney  
Defendant  
Union County Adult Probation Department  
Karen Haller, Director, Community Service  
Attorney for Defendant  
CSEA

FELONY SENTENCING  
(WORKSHEET)

State of Ohio v. Michael E. Goldsberry Case No. 2005CR00008 Date: 3-23-05

Purpose and principles, R. C. 2929.11(A) and 2929.12(A) - Judge shall punish offenders and protect the public from future crimes by the offender and others. To achieve these purposes, the Court must consider the need to: (a) incapacitate the offender; (b) deter the offender and others; (c) rehabilitate the offender; and, (d) make restitution to the victim.

Sentencing Factors, R.C. 2929.12(B) - (E)

More Serious

- 1. The injury to the victim was worsened because of the physical or mental condition or age of the victim;
- 2. The victim suffered serious physical, psychological, or economic harm;
- 3. The offender held a public office or position of trust and the offense was related to that office or trust;
- 4. The offender's occupation or office required the offender to prevent or prosecute those committing the offense;
- 5. Professional reputation, occupation or office facilitated the offense;
- 6. Offense facilitated by offender's relationship with the victim;
- 7. Committed for hire or as part of organized criminal activity;
- 8. Crime motivated by prejudice based on race, ethnicity, gender, sexual orientation or religion.
- 9. Any other factor:

Less Serious

- 1. The victim induced or facilitated the offense;
- 2. The offender was strongly provoked;
- 3. No physical harm to persons or property expected or caused;
- 4. Substantial grounds for mitigation.
- 5. Any other factor:

Most weight - More Serious      Less Serious  
(Circle one)

Recidivism Likely

- 1. Offender was out on bail before trial or sentencing, or under court sanction or under post release control or parole when offense was committed;
- 2. Prior adjudication of delinquency or history of criminal convictions;
- 3. Failure to respond favorably in the past to probation or parole;
- 4. Failure to acknowledge pattern of drug or alcohol abuse that is related to the offense;
- 5. No genuine remorse.
- 6. Any other factor:

Recidivism Not Likely

- 1. Offender has not been adjudicated delinquent;
- 2. No prior criminal convictions;
- 3. Offender has been law abiding for a significant number of years;
- 4. Offense occurred under circumstances not likely to recur;
- 5. Offender genuinely remorseful.
- 6. Any other factor:

Most weight - Likely      Not Likely  
(Circle one)

Sentencing - F-1's, F-2's, R.C. 2929.13(D)

- 1. Presumption of Prison  
F-1 3, 4, 5, 6, 7, 8, 9, 10  
F-2 2, 3, 4, 5, 6, 7, 8  
(Circle one)

2. Rebut presumption

- a. Less serious outweighs more serious, and
- b. Recidivism not likely outweighs recidivism likely.
- c. A community control sanction would adequately punish the offender and protect the public and would not demean the seriousness of the offense.

Repeat Violent Offender, RVO-R.C. 2929.14(D)(2)

- 1, 2, 3, 4, 5, 6, 7, 8, 9, 10
- Must have received maximum sentence for F-1 or F-2
- Being sentenced for murder, F-1 or F-2 involving violence;
- Previously served prison time for above;
- Basic term inadequate to punish and protect.
- Serious and likely outweigh less serious and not likely.

Sentencing - F-3's, R.C. 2929.13(C)

- 1. No presumption - 1, 2, 3, 4, 5
- 2. Most Weight - More Serious - Less Serious
- 3. Most Weight - Recidivism Likely - Not Likely  
(Circle one)
- 4. Prison (is, is not) consistent with the purposes and principles of sentencing.

Sentencing - F-4's, F-5's, R.C. 2929.13(B)

- 1. The offender caused physical harm to a person;
- 2. The offender attempted to cause, or made an actual threat of, physical harm with a weapon;
- 3. The offender attempted to cause, or made an actual threat of, physical harm to a person, and the offender previously was convicted of an offense that caused such harm;
- 4. The offender held a public office or position of trust and the offense related to the office or position; the offender's position obligated the offender to prevent the offense or bring those committing it to justice; or the offender's reputation or position facilitated the offense or was likely to influence the future conduct of others;
- 5. The offense was committed for hire or as part of an organized criminal activity;
- 6. The crime is a sex offense;
- 7. The offender previously served a prison term;
- 8. The offense was committed while the offender was under a community control sanction.

A. If none of the above are found, the Court shall impose a community control sanction with the purposes and principles of sentencing.

B. Finding one or none of the above, the Court finds that

Weighing the seriousness and recidivism factors, a prison term (15) consistent with the purposes of R.C. 2929.11; and, 15  
 The offender (is, is not) amenable to available community sanctions.

F-4 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 months.

F-5 6, 7, 8, 9, 10, 11, 12 months.

Oral Findings Necessary

- Maximum sentence. Multiple maximum sentence.
- Consecutive sentence if exceeds maximum sentence.
- F-1's and F-2's if no prison
- F-4's and F-5's if 1 - 8 not found.
- Needed to justify a disparate post-conviction or illegal sentence challenge.

Advise and Notify Defendant

- Prison - warn about bad time and post-release control.
- Community Control - warn about tougher sanctions and possible prison term.
- Time of post-release control.

Fines

- Mandatory
- F-1 > \$20,000, F-2 > \$15,000
- F-3 > \$10,000 F-4 > \$5,000
- F-5 > \$2,500

Ability to Pay (Consider ability to borrow)

- Defendant is able to pay the sanction or is likely in the future to be able to pay.
- Defendant can only pay \$\_\_\_\_\_.
- Defendant is unable to pay anything now or in the future.

COURT OF COMMON PLEAS  
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IN THE COURT OF COMMON PLEAS, UNION COUNTY, OHIO

STATE OF OHIO

-VS-

CASE NO. 2005 CR 0008

MICHAEL E. GOLDSBERRY

DEFENDANT

JOURNAL ENTRY

COURT OF COMMON PLEAS UNION COUNTY  
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Clerk

This matter came before the Court on November 3, 2005, for hearing on community control violation charges. Present in Court were the following: Union County Chief Assistant Prosecuting Attorney Terry Hord; Jill R. Brady, Adult Probation Officer, and the Defendant, Michael E. Goldsberry, represented by attorney Dorothy Liggett-Pelanda.

Whereupon, the Defendant admitted the community control violations and/or upon the admissions of the Defendant, the Court finds the Defendant violated his community control in the following particulars:

- 1) Since on or about August 1, 2005 and thereafter, Michael E. Goldsberry has failed to keep his supervising officer informed of his residence;
- 2) Since August 1, 2005 and thereafter, Michael E. Goldsberry has failed to report to the Adult Parole Authority as directed;
- 3) Michael E. Goldsberry has failed to complete his community Service hours as instructed by the Court;
- 4) Michael E. Goldsberry has failed to pay child support as previously ordered by the Union County Common Pleas Court.

Whereupon, the Defendant and/or Defendant's counsel were given an opportunity to make a statement in mitigation.

It is hereby ordered that the Defendant's probation is continued under the same terms and conditions previously imposed.

J0088PE 058

It is further ordered that all of the terms and conditions of the order of community control previously issued by this Court on March 23, 2005 are incorporated herein. The Defendant is ordered to complete an additional 100 hours of community service. The Defendant is further ordered not to violate any laws of the United States, State of Ohio, or any village or municipality. The Defendant is advised that if he violates any of the terms or conditions of community control, the Court may impose a more restrictive community control or the Defendant <sup>will</sup> ~~may~~ be WIT sent to prison for one hundred twenty (120) months.

It is hereby ordered that if a prison sentence is imposed at any time the defendant may/will be subject to a period of post release control imposed by the parole board of up to three (3) years, which would commence upon his actual release from prison.

The Defendant is further advised that if he violates the terms and conditions of post-release control, the Adult Parole Authority may/will impose a more restrictive sanction, increase the term of post-release control up to a maximum term of three (3) years, or impose a prison term upon the defendant not to exceed 50% of the stated prison term originally imposed as part of the sentence. The Defendant is further advised that if he commits a new felony while under post-release control, he may/will receive a prison sentence for both the new felony and any post release control violation which shall be served consecutively.

The Defendant is hereby notified that he <sup>will</sup> ~~may~~ be required to reimburse any local correctional facility for the costs of incarceration as authorized by the pay-for-stay program and failure to pay will result in a certificate of judgment being entered

J008SP6 059

for the unpaid amount of the reimbursement owed. If such judgment is rendered, it automatically becomes part of the sentence being imposed by this court under Ohio Revised Code Section 2929.37.

The Defendant is also directed to pay a probation supervision fee of \$5.00 per month on or before the 5<sup>th</sup> day of each month beginning with his release from incarceration. This fee is to be paid through the Clerk of this Court.

It is further ordered that the Defendant pay all of the fines and costs as directed by the Court, including fines and costs that have previously accumulated (if applicable) in this case as well as the current costs of this proceeding.

IT IS SO ORDERED.



\_\_\_\_\_  
JUDGE

COPIES TO:

Union County Prosecutor's Office  
Defendant  
Attorney for Defendant  
Probation Department  
*Union Co. Sheriff*

J0088PB 060

State of Ohio v. Michael E. Goldsberry Case No. 05CR0008 Date: 11-3-05

Purpose and principles, R. C. 2929.11(A) and 2929.12(A) – Judge shall punish offenders and protect the public from future crimes by the offender and others. To achieve these purposes, the Court must consider the need to: (a) incapacitate the offender; (b) deter the offender and others; (c) rehabilitate the offender; and, (d) make restitution to the victim.

**Sentencing Factors, R.C. 2929.12(B) – (E)**

**More Serious**

- 1. The injury to the victim was worsened because of the physical or mental condition or age of the victim;
- 2. The victim suffered serious physical, psychological, or economic harm;
- 3. The offender held a public office or position of trust and the offense was related to that office or trust;
- 4. The offender's occupation or office required the offender to prevent or prosecute those committing the offense;
- 5. Professional reputation, occupation or office facilitated the offense;
- 6. Offense facilitated by offender's relationship with the victim;
- 7. Committed for hire or as part of organized criminal activity;
- 8. Crime motivated by prejudice based on race, ethnicity, gender, sexual orientation or religion.
- 9. Any other factor;

**Less Serious**

- 1. The victim induced or facilitated the offense;
- 2. The offender was strongly provoked;
- 3. No physical harm to persons or property expected or caused;
- 4. Substantial grounds for mitigation.
- 5. Any other factor;

Most weight – More Serious (Circle one) Less Serious

**Recidivism Likely**

- 1. Offender was out on bail before trial or sentencing, or under court sanction or under post release control or parole when offense was committed;
- 2. Prior adjudication of delinquency or history of criminal convictions;
- 3. Failure to respond favorably in the past to probation or parole;
- 4. Failure to acknowledge pattern of drug or alcohol abuse that is related to the offense;
- 5. No genuine remorse.
- 6. Any other factor;

**Recidivism Not Likely**

- 1. Offender has not been adjudicated delinquent;
- 2. No prior criminal convictions;
- 3. Offender has been law abiding for a significant number of years;
- 4. Offense occurred under circumstances not likely to recur;
- 5. Offender genuinely remorseful.
- 6. Any other factor;

Most weight – Likely (Circle one) Not Likely

**Sentencing – F-1's, F-2's, R.C. 2929.13(D)**

- 1. Presumption of Prison
  - F-1 3, 4, 5, 6, 7, 8, 9, 10
  - F-2 2, 3, 4, 5, 6, 7, 8
  - (Circle one)
- 2. Rebut presumption
  - a. Less serious outweighs more serious, and
  - b. Recidivism not likely outweighs recidivism Likely.
  - c. A community control sanction would adequately punish the offender and protect the public and would not demean the seriousness of the offense.

**Repeat Violent Offender, RVO-R.C. 2929.14(D)(2)**

- 1, 2, 3, 4, 5, 6, 7, 8, 9, 10
- Must have received maximum sentence for F-1 or F-2
- Being sentenced for murder, F-1 or F-2 involving violence;
- Previously served prison time for above;
- Basic term inadequate to punish and protect.
- Serious and likely outweigh less serious and not likely.

**Sentencing – F-3's, R.C. 2929.13(C)**

- 1. No presumption – 1, 2, 3, 4, 5
- 2. Most Weight – More Serious – Less Serious
- 3. Most Weight - Recidivism Likely – Not Likely (Circle one)
- 4. Prison (is, is not) consistent with the purposes and principles of sentencing.

**Sentencing – F-4's, F-5's, R.C. 2929.13(B)**

- 1. The offender caused physical harm to a person;
- 2. The offender attempted to cause, or made an actual threat of physical harm with a weapon;
- 3. The offender attempted to cause, or made an actual threat of physical harm to a person, and the offender previously was convicted of an offense that caused such harm;
- 4. The offender held a public office or position of trust and the offense related to the office or position; the offender's position obligated the offender to prevent the offense or bring those committing it to justice; or the offender's reputation or position facilitated the offense or was likely to influence the future conduct of others;
- 5. The offense was committed for hire or as part of an organized criminal activity;
- 6. The crime is a sex offense;
- 7. The offender previously served a prison term; Yes
- 8. The offense was committed while the offender was under a community control sanction; Yes

A. If none of the above are found, the Court shall impose a community control sanction with the purposes and principles of sentencing.

B. Finding one or none of the above, the Court finds that:

- Weighing the seriousness and recidivism factors, a prison term (is, is not) consistent with the purposes of R.C. 2929.11; and,
- The offender (is, is not) amenable to available community sanctions.

F-4 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 months.

F-5 6, 7, 8, 9, 10, 11, 12 months.

**Oral Findings Necessary**

- Maximum sentence. Multiple maximum sentence.
- Consecutive sentence – exceeds maximum sentence.
- F-1's and F-2's if no prison
- F-4's and F-5's if 1 – 8 not found.
- Needed to justify a disparate post-conviction or illegal sentence challenge.

**Advise and Notify Defendant**

- Prison – warn about bad time and post-release control.
- Community Control – warn about tougher sanctions and possible prison term.
- Time of post – release control.

**Fines**

- Mandatory
- F-1 > \$20,000, F-2 > \$15,000
- F-3 > \$10,000 F-4 > \$5,000
- F-5 > \$2,500

**Ability to Pay (Consider ability to borrow)**

- Defendant is able to pay the sanction or is likely in the future to be able to pay.
- Defendant can only pay \$ \_\_\_\_\_
- Defendant is unable to pay anything now or in the future.

COURT OF COMMON PLEAS UNION COUNTY 2005 NOV - 3 PM

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IN THE COURT OF COMMON PLEAS, UNION COUNTY, OHIO

STATE OF OHIO

-VS-

CASE NO. 2005 CR 0008

MICHAEL E. GOLDSBERRY

DEFENDANT

JOURNAL ENTRY

This matter came before the Court on January 5, 2007 for hearing on community control violation charges. Present in Court were the following: Union County Chief Assistant Prosecuting Attorney Terry L. Hord; Dave Siebeneck, Adult Probation Officer; and the Defendant Michael E. Goldsberry, who was represented by attorney Cliff Valentine.

Whereupon, the Defendant admitted/denied the community control violations and/or upon the admissions of the Defendant, the Court finds the Defendant violated his community control in the following particulars:

- 1) Michael E. Goldsberry has failed to make any monthly payments toward his court costs and has an outstanding balance of \$885.61;
- 2) Michael E. Goldsberry has failed to make his full child support payment due since August of 2006, arrearage as of November 30, 2006 is \$36,156.96;
- 3) ~~Michael E. Goldsberry has failed to report to his probation officer since May 9, 2006;~~
- 4) Michael E. Goldsberry has failed to complete his community service as ordered by the Court.

It is hereby ordered that the attached journal entry is incorporated herein and the Court finds that the shortest prison term will demean the seriousness of the offender's conduct and will not adequately protect the public from future crimes by the offender or others.

Whereupon, the Court has considered the record, the statements of the State, as well as the defense counsel, and has given the Defendant the opportunity to make a statement in

mitigation. The Court has also considered the pre-sentence report as part of the record and has considered the principles and purposes of sentencing under Ohio Revised Code Section 2929.11 and has balanced the seriousness and recidivism factors under Ohio Revised Code Section 2929.12.

The Defendant is ordered confined to the Correctional Reception Center in Orient, Ohio for a term of ~~6~~ <sup>10</sup> months on each of ten (10) counts of Nonsupport of Dependents in violation of Ohio Revised Code Sections 2919.21(A)(2) and 2919.21(B), all felonies of the fifth degree to be served ~~concurrent~~/consecutively to each other.

It is hereby ordered that if a prison sentence is imposed the defendant may/will be subject to a period of post release control imposed by the parole board of up to three (3) years, which would commence upon actual release from prison.

The Defendant is further advised that if he violates the terms and conditions of post-release control, the Adult Parole Authority may/will impose a more restrictive sanction, increase the term of post-release control up to a maximum term of three (3) years, or impose a prison term upon the defendant not to exceed 50% of the stated prison term originally imposed as part of the sentence. The Defendant is further advised that if he commits a new felony while under post-release control, he may/will receive a prison sentence for both the new felony and any post release control violation which shall be served consecutively.

The Defendant is hereby notified that he may be required to reimburse <sup>Union County</sup> ~~any local~~ ~~correctional facility~~ for the costs of incarceration as authorized by the pay-for-stay program and failure to pay will result in a certificate of judgment being entered for the unpaid amount of the reimbursement owed. If such judgment is rendered, it automatically becomes part of the sentence being imposed by this court under Ohio Revised Code Section 2929.37.

1 128FG 018

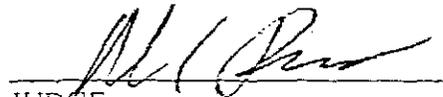
The Defendant is also directed to pay a probation supervision fee of \$5.00 per month on or before the 5<sup>th</sup> day of each month beginning with his release from incarceration. This fee is to be paid through the Clerk of this Court.

The Defendant is granted prior jail time credit of 19 days and current jail time credit of <sup>24</sup>~~23~~ days.

The Defendant is ordered to pay the costs of this action, including \$500 toward costs of indigent counsel being provided, if applicable, for which execution is awarded.

It is further ordered that the Sheriff of Union County convey the Defendant to the Correctional Reception Center in Orient for execution of sentence.

*Defendant has 30 days in which to file an Appeal.*  
IT IS SO ORDERED.

  
JUDGE

COPIES TO:

Union County Prosecuting Attorney  
Defendant  
Attorney for Defendant  
Probation Department  
Designated Correctional Facility

J 128P6 019



### § 2929.15. Community control sanctions

(A) (1) If in sentencing an offender for a felony the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment upon the offender, the court may directly impose a sentence that consists of one or more community control sanctions authorized pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code. If the court is sentencing an offender for a fourth degree felony OVI offense under division (G)(1) of section 2929.13 of the Revised Code, in addition to the mandatory term of local incarceration imposed under that division and the mandatory fine required by division (B)(3) of section 2929.18 of the Revised Code, the court may impose upon the offender a community control sanction or combination of community control sanctions in accordance with sections 2929.16 and 2929.17 of the Revised Code. If the court is sentencing an offender for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, in addition to the mandatory prison term or mandatory prison term and additional prison term imposed under that division, the court also may impose upon the offender a community control sanction or combination of community control sanctions under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

The duration of all community control sanctions imposed upon an offender under this division shall not exceed five years. If the offender absconds or otherwise leaves the jurisdiction of the court in which the offender resides without obtaining permission from the court or the offender's probation officer to leave the jurisdiction of the court, or if the offender is confined in any institution for the commission of any offense while under a community control sanction, the period of the community control sanction ceases to run until the offender is brought before the court for its further action. If the court sentences the offender to one or more nonresidential sanctions under section 2929.17 of the Revised Code, the court shall impose as a condition of the nonresidential sanctions that, during the period of the sanctions, the offender must abide by the law and must not leave the state without the permission of the court or the offender's probation officer. The court may impose any other conditions of release under a community control sanction that the court considers appropriate, including, but not limited to, requiring that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in division (D) of this section to determine whether the offender ingested or was injected with a drug of abuse and requiring that the results of the drug test indicate that the offender did not ingest or was not injected with a drug of abuse.

(2) (a) If a court sentences an offender to any community control sanction or combination of community control sanctions authorized pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, the court shall place the offender under the general control and supervision of a department of probation in the county that serves the court for purposes of reporting 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. Alternatively, if the offender resides in another county and a county department of probation has been established in that county or that county is served by a multicounty probation department established under section 2301.27 of the Revised Code, the court may request the court of common pleas of that county to receive the offender into the general control and supervision of that county or multicounty department of probation for purposes of reporting 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, subject to the jurisdiction of the trial judge over and with respect to the person of the offender, and to the rules governing that department of probation.

If there is no department of probation in the county that serves the court, the court shall place the offender, regardless of the offender's county of residence, under the general control and supervision of the adult parole authority for purposes of reporting to the court a violation of any 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.

(b) If the court imposing sentence upon an offender sentences the offender to any community control sanction or combination of community control sanctions authorized pursuant to section

2929.16, 2929.17, or 2929.18 of the Revised Code, and if the offender violates any condition of the sanctions, any condition of release under a community control sanction imposed by the court, violates any law, or departs the state without the permission of the court or the offender's probation officer, the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction shall report the violation or departure directly to the sentencing court, or shall report the violation or departure to the county or multicounty department of probation with general control and supervision over the offender under division (A)(2)(a) of this section or the officer of that department who supervises the offender, or, if there is no such department with general control and supervision over the offender under that division, to the adult parole authority. If the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction reports the violation or departure to the county or multicounty department of probation or the adult parole authority, the department's or authority's officers may treat the offender as if the offender were on probation and in violation of the probation, and shall report the violation of the condition of the sanction, any condition of release under a community control sanction imposed by the court, the violation of law, or the departure from the state without the required permission to the sentencing court.

(B) If the conditions of a community control sanction are violated or if the offender violates a law or leaves the state without the permission of the court or the offender's probation officer, the sentencing court may impose a longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit specified in division (A) of this section, may impose a more restrictive sanction under section 2929.16, 2929.17, or 2929.18 of the Revised Code, or may impose a prison term on 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 pursuant to division (B)(3) of section 2929.19 of the Revised Code. The court may reduce the longer period of time that the offender is required to spend under the longer sanction, the more restrictive sanction, or a prison term imposed pursuant to this division by the time the offender successfully spent under the sanction that was initially imposed.

(C) If an offender, for a significant period of time, fulfills the conditions of a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code in an exemplary manner, the court may reduce the period of time under the sanction or impose a less restrictive sanction, but the court shall not permit the offender to violate any law or permit the offender to leave the state without the permission of the court or the offender's probation officer.

(D) (1) If a court under division (A)(1) of this section imposes a condition of release under a community control sanction that requires the offender to submit to random drug testing, the department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section may cause the offender to submit to random drug testing performed by a laboratory or entity that has entered into a contract with any of the governmental entities or officers authorized to enter into a contract with that laboratory or entity under section 341.26, 753.33, or 5120.63 of the Revised Code.

(2) If no laboratory or entity described in division (D)(1) of this section has entered into a contract as specified in that division, the department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section shall cause the offender to submit to random drug testing performed by a reputable public laboratory to determine whether the individual who is the subject of the drug test ingested or was injected with a drug of abuse.

(3) A laboratory or entity that has entered into a contract pursuant to section 341.26, 753.33, or 5120.63 of the Revised Code shall perform the random drug tests under division (D)(1) of this section in accordance with the applicable standards that are included in the terms of that contract. A public laboratory shall perform the random drug tests under division (D)(2) of this section in accordance with the standards set forth in the policies and procedures established by the department of rehabilitation and correction pursuant to section 5120.63 of the Revised Code. An offender who is required under division (A)(1) of this section to submit to random drug testing as a condition of release under a community control sanction and whose test results indicate that the offender ingested or was injected with a drug of abuse shall pay the fee for the drug test if the department of probation

or the adult parole authority that has general control and supervision of the offender requires payment of a fee. A laboratory or entity that performs the random drug testing on an offender under division (D)(1) or (2) of this section shall transmit the results of the drug test to the appropriate department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section.

**History:**

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349, Eff 9-22-2000; 149 v S 123, § 1, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04.