

IN THE SUPREME COURT
OF OHIO

IN RE: J.F.,
A MINOR CHILD

Supreme Court Case No. 2007-2239

On Appeal from the Greene County
Court of Appeals, Second District

Court of Appeals Case No. 06-CA-123

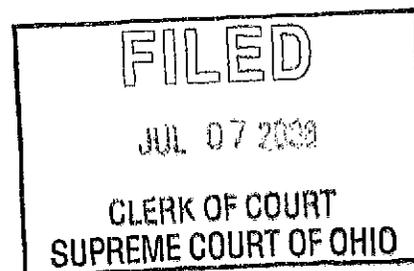
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STATEMENT OF THE CASE AND OF THE FACTS

Jeremiah Frank (“Appellant” hereafter) was originally charged in a complaint dated December 1, 2003. The complaint asserted that Appellant was a delinquent child for committing five counts of theft, each a felony of the fifth degree if committed by an adult, in violation of R.C. 2913.02(A)(1) and 2152.02(F); one count of complicity to theft, a felony of the fourth degree if committed by an adult, in violation of R.C. 2913.02(A)(1), 2923.03(A)(2), and 2152.02(F); one count of resisting a lawful arrest, a misdemeanor of the second degree if committed by an adult, in violation of R.C. 2921.33(A) and 2152.02(F); and domestic violence, a misdemeanor of the first degree if committed by an adult.

The underlying facts of the Complaint were that Appellant, on or about December 1, 2003, was roaming the streets with a co-defendant, Mr. Adams. According to Appellant, he and Mr. Adams were walking down the street breaking into cars. Appellant admitted to stealing credit cards and identification cards from the cars. Appellant and Mr. Adams then stole the vehicle of Mr. Eric Foster. Mr. Adams was the driver and Appellant was the passenger. After noticing his car had been stolen, Mr. Foster called 911 and officers located the vehicle. While the officers were chasing the vehicle, the driver lost control of the vehicle and ran into a tree. Appellant and Mr. Adams got out of the car and began to run. They were both eventually apprehended and charged in Juvenile Court.

At Appellant’s February 18, 2004 adjudication hearing, Appellant, in the presence of his attorney Mr. Kevin Hunt, admitted to the five counts of theft, all felonies of the 5th degree if committed by an adult; one count of complicity to theft, a felony of the

fourth degree if committed by an adult; and one count of resisting arrest, a misdemeanor of the second degree if committed by an adult. In exchange for his admission, the State dismissed the charge of Domestic Violence filed December 1, 2003 with the approval of the victim. The court ordered a pre-disposition investigation to be conducted by the Juvenile Court Probation Department.

At Appellant's March 22, 2004 final disposition hearing, the Court committed Appellant to the Ohio Department of Youth Services ("DYS" hereinafter) for a minimum period of six months for each count of theft and complicity to theft, to be served consecutively, and for a maximum period until his twenty-first birthday. The court suspended the commitments on the following conditions that (1) Appellant not commit any future violations of the law, (2) that he successfully complies with monitored time until the age of 18, (3) that he successfully completes community control, (4) that he complete the felony offenders restitution program, (5) that he complete the stop shoplifting program, (6) that he undergo a psychiatric evaluation, and (7) that he pay fines, court costs, and restitution in a timely manner.

During Appellant's time on probation, over ten complaints were filed stating that Appellant had violated his probation/community control, including a complaint in February of 2005, when Appellant ran away from a residential treatment program. (Tr. 9/20/06, p. 8). In addition to his probation violations, on June 4, 2004, Appellant was adjudicated delinquent of committing theft, a misdemeanor of the first degree, under R.C. 2913.02(A)(1); on May 9, 2005 of committing Falsification a misdemeanor of the first degree, under R.C. 2921.13(A)(3); and on August 30, 2005 of committing Possession of Drug Paraphernalia, a misdemeanor of the fourth degree,

under R.C. 2925.14. Appellant admitted to each of these charges. At the various hearings on the matter, the Appellant repeatedly professed that he would stop this behavior. (Tr. 3/22/04, p. 9; Tr. 12/8/04, p. 9; Tr. 4/27/05, p. 3; Tr. 6/7/05, p. 3-10).

Each time the court tried to work with Appellant in order to aid him in his rehabilitation and avoid him being committed to DYS. *Id.*

Appellant's status on community control was terminated at his March 1, 2006 Probation Termination Hearing. At this time the court also ordered Appellant to pay the balance of his fines and court costs and to complete community service. The court also permitted Appellant to obtain his driver's license, which had previously been suspended indefinitely. The court, however, did not release him from his successful compliance with monitored time until the age of 18 under R.C. 2152.19(A)(3)(i).

On August 30, 2006, only five months after his status on community control was terminated, Appellant was charged with yet another Complaint. The Complaint asserted that Appellant was a delinquent child for possessing a controlled substance, a minor misdemeanor if committed by an adult, in violation of R.C. 2925.11(A); and possession of drug paraphernalia, a minor misdemeanor of the fourth degree if committed by an adult in violation of R.C. 2925.14. Both the child and his mother were present, were advised of his right to counsel, orally waived that right, and signed a waiver of counsel form. (Tr. 8/31/06, p.3-5). Appellant admitted to both possession of a controlled substance and possession of drug paraphernalia at his August 31, 2006 Plea Hearing. *Id.* On September 20, 2006, the court held a dispositional hearing and imposed Appellant's suspended commitment for only one count of theft, a felony of the fifth degree if committed by an adult, for a minimum period of six months. The

court reached this decision after repeated efforts to try and rehabilitate the Appellant and work with him in the community failed. Appellant was committed to the Department of Youth Services for a minimum period of six months and a maximum period until age twenty-one. *Id.*

The Appellant appealed that decision to the Court of Appeals of Ohio, Second Appellate District. The Delinquent Child alleged four assignments of error. On October 19, 2007, the appellate court affirmed the ability of the trial court to retain jurisdiction over the juvenile when the child completes probation but is still retained on monitored time. The appellate court reversed and remanded the matter upon a finding that while the trial court complied with due process and Juv. R. 35(A), it did not comply with the procedural safeguards of Juv. R. 35(B). The court of appeals then refused to consider the third and fourth assignments of error as moot.

The Delinquent Child now appeals to this honorable Court one assignment of error, which was his first assignment of error to the appellate court below. The Delinquent Child complains that his suspended commitment should not be able to be imposed even though the child was still under the trial court's jurisdiction and requirement for compliance with monitored time.

The State submits that the proposition of law as proposed by the Appellant is frankly untenable and bad public policy. In Ohio, juvenile courts are authorized to retain jurisdiction over a delinquent child until the child attains the age of 21. A reversal of the holding of the Second District would not diminish the sanctions that could be imposed against the children, and it would actually punish juvenile offenders

because it would require them to continue to report to their probation officers until their 18th or 21st birthdays. Therefore, the State respectfully requests that this Court adopt the sound reasoning the Second District Court of Appeals, and affirm the decision below.

ARGUMENT

PROPOSITION OF LAW NO. 1:

A TRIAL COURT MAINTAINS JURISDICTION TO IMPOSE A SUSPENDED COMMITMENT WHEN A DELINQUENT CHILD IS STILL ON MONITORED TIME AND THEREFORE STILL UNDER THE JURISDICTION OF THE COURT, EVEN IF INTENSIVE PROBATION IS TERMINATED.

The trial court had jurisdiction over the child when it imposed the alleged delinquent child's suspended commitment, as he was still subject to monitored time by the court. Thus, he was still under the court's jurisdiction, even though his intensive probation was terminated. Therefore, the trial court did not violate any provisions of the Ohio or United States Constitution as alleged by the Appellant.

R.C. 2152.19(A)(4)(i) permits the Juvenile Court to order as disposition for a delinquent child a requirement that the child serve monitored time. R.C. 2929.01(Z) defines "monitored time" as a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life. This appears to be a case of first impression, but the statutory language is clear and unambiguous. Thus, where a juvenile's commitment to the Department of Youth Services(DYS) is suspended upon the condition that he serve monitored time until the age of 18, and the juvenile has not yet completed that requirement, the juvenile court maintains jurisdiction to sentence the child to DYS if the juvenile violates monitored time.

On March 1, 2006, the Court terminated Appellant's community control, ordered him to pay the balance of his fines and court costs, ordered him to complete community

service, and terminated the restrictions on receiving his driver's license, which had previously been suspended indefinitely. The court, however, did not release him from his successful compliance with monitored time until the age of 18 under R.C. 2152.19(A)(4)(i), which was ordered at his March 22, 2004 Final Disposition Hearing. Since the Appellant was still under monitored time, he was still subject to the control of the sentencing court and subject to no conditions other than leading a law-abiding life. R.C. §2929.01(Z). Appellant, however, did not lead a law abiding life. From the time the suspended commitment and monitored time was imposed, he adjudicated delinquent of five additional crimes, including possession of drug paraphernalia and possession of a controlled substance. As a result of these adjudications and Appellant still being on monitored time, Appellant's suspended commitment was still subject to the jurisdiction of the trial court.

Appellant cites *In re Cross* which reads that "a juvenile court does not have jurisdiction to reimpose a suspended commitment to a [DYS] facility after a juvenile has been released from probation." 96 Ohio St.3d 328, 2002-Ohio-4183, 774 N.E.2d 258. *Cross* is distinguishable from the instant case, because the juvenile in *Cross* was not still subject to any sort of other condition other than community control. The Appellant in the case below was clearly still subject to monitored time. As the Second District wrote, "the Ohio Supreme Court has held that 'the completion of probation signals the end of the court's jurisdiction over a delinquent juvenile.' We also believe the opposite to be true - the incompleteness of probation signals the continuation of the court's jurisdiction over a delinquent juvenile." *In re J.F.*, Greene App. No. 06CA0123, 2007-Ohio-5652.

The Second District agreed that this case is distinguishable from *Cross*. “Unlike in *Cross*, where the termination extinguished all of the conditions of the juvenile’s probation, the complete record here demonstrates that the juvenile court intended to retain jurisdiction over J.F.’s initial order.” *Id.* at ¶51. The appellate court indicates two reasons why the juvenile court intended to retain jurisdiction. *Id.* First, by requiring the completion of community service, the juvenile court intended to retain jurisdiction until that condition and all others were satisfied. *Id.* Second, the probation officer recommended that J.F.’s intensive probation be terminated, while continuing that he complete his monitored time requirement. *Id.* By stating throughout the hearing that probation was terminated but not mentioning that the court intended to terminate the monitored time, the juvenile court indicated that it accepted the probation officer’s recommendation. *Id.* “The legal effect of this decision was to terminate the period of intensive probation while maintaining the requirement that J.F. comply with monitored time until he reached the age of 18.” *Id.* at ¶52. Therefore, the Second District held that the juvenile court maintained jurisdiction to impose a suspended sentence to DYS. *Id.*

Indeed, all of the appellate courts that have reviewed the issue have held that a juvenile court’s jurisdiction to reinstate an order of commitment may continue even after the juvenile is released from probation. *See In Re Braun*, 4th Dist. App. No. 01CA42, 2002-Ohio-3021; *In re Bracewell*(1998), 126 Ohio App 3d 133, 137.

The Tenth District Court of Appeals held that because the juvenile’s probation was subject to the condition that he complete sexual offender counseling and such condition was not completed, the juvenile did not have a legitimate expectation that his sentence

was complete at the time the court prosecuted his probation violations. *In re Walker*, Franklin App. No. 02AP-421, 2003-Ohio-2137. Likewise, the delinquent child in the instant case did not have a legitimate expectation that his suspended commitment was terminated when he had not fully completed his requirement of serving monitored time. Further, the child was advised by the trial court at the time he entered his admission to the latest charges that he was still subject to the suspended commitment. (Tr. 8/31/06, p. 4,10).

In addition, the Sixth District has held that the trial court's suspension of a DYS commitment continued despite the juvenile's completion of probation because the suspended sentence was conditioned not only on completion of probation but also on the juvenile's continued compliance with the law. *In the Matter of Ravanna T.* (Aug. 1, 1997), Lucas App. No. L-96-371. The trial court did not abuse its discretion in rescinding its prior dispositional suspended sentences when the juvenile was adjudicated delinquent in violation of its original order. *Id.* The trial court in the case at bar similarly retained the condition of monitored time in which the juvenile was required to lead a law-abiding life when it terminated community control. The conditions that the juvenile not commit any future violations of the law and that he successfully comply with monitored time until the age of 18 were not terminated. Community control was simply another condition of the suspended sentence, in addition to several other conditions. Only the community control condition was terminated, not the juvenile's successful compliance with the law and monitored time.

Furthermore, the Ninth District expressed a similar holding in *In re Proctor* (Dec.24,1997), Summit App. No. 18257. In that case, the court explained that the juvenile's probation and his suspended sentence are different. *Id.* Though the juvenile's probationary period ended before he engaged in the delinquent conduct, the juvenile court's order requiring good behavior had not expired. *Id.* The court order meant that the juvenile had his freedom from commitment as long as he behaved well. *Id.* Because the juvenile did not behave well, the juvenile court was permitted to order reinstatement of a suspended sentence. *Id.* In the instant case, after the termination of his community control, the Appellant was still subject to monitored time where he was subject to no conditions other than leading a law-abiding life and that he must not commit any violations of the law. Contrary to the assertion of the Appellant, the juvenile court did not "extend" its jurisdiction over the child after terminating his intensive probation. It had never expired because it expressed its intent to retain jurisdiction over the child until he turned 18 in its initial order. The Appellant also had freedom from commitment as long as he complied with monitored time, but he chose not to abide by those conditions still in effect. Therefore, the trial court had jurisdiction to impose his suspended sentence.

The State submits that the interpretation submitted by the Second District in the instant case is not only legally sound, it is also good public policy. To hold otherwise would not reduce the length of time a juvenile court is authorized to retain jurisdiction over a child, rather it would effectively require that a juvenile court must keep all children adjudicated delinquent of felonies on probation. After all, there is no requirement that the child be terminated from probation at any particular time. So a child who commits an offense that would be a felony of the first degree at age eleven would likely be required

to report until his 18th birthday. This would be untenable for juvenile courts and unfair for juvenile delinquents. Monitored Time is essentially non-reporting probation. This sanction, as authorized under R.C.2152.19(A)(4)(i) , allows the court to monitor the behavior of a juvenile without imposing additional sanctions on the child and without exhausting the limited resources of Ohio's juvenile courts. Using monitored time allows the court to best ensure the rehabilitation of the child without burdening the family with the reporting requirement.

Furthermore, as Appellant correctly notes, a trial court speaks through its entries and judgment entries must be accepted as a correct and unambiguous expression of the trial court's resolution of the case. *Norton v. Liapis* (Sept. 27, 1997), Butler App. No. CA 99-03-068. As such, where a trial court never extinguishes an order for compliance with monitored time, and the order reads that the child must comply until his 18th birthday, the order remains in effect until his 18th birthday.

Clearly, the case at bar is distinguishable from *Cross*, and the Appellant's sole assignment of error is without merit. Accordingly, the decision of the Second District Court of Appeals must be affirmed.

CONCLUSION

The Appellant has failed to demonstrate that the trial court and appellate court committed error. Based upon all of the foregoing reasons, the trial court had jurisdiction in this case, and acted appropriately in making disposition in this case. Therefore, the decisions of the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by regular U. S. Mail the date same as filed of record above to David Bodiker and Angela Miller, State Public Defender, 8 East Long St., 11th Floor, Columbus, Ohio 43215 and Katherine Hunt Federle, The Justice for Children Project, The Ohio State University College of Law, 55 W. 12th Ave, Columbus, Ohio 43210.