



court will be affirmed.

### **Facts and Course of Proceedings**

{¶ 2} On January 5, 2023, Tolle pled guilty to one fifth-degree-felony count of aggravated possession of drugs and one third-degree-felony count of aggravated trafficking in drugs. After accepting Tolle's guilty plea, on February 2, 2023, the trial court sentenced Tolle to community control sanctions for three years with various conditions of supervision. One of those conditions was that Tolle successfully gain admission to and complete the West Central Community Based Correctional Facility residential program ("West Central program").

{¶ 3} During Tolle's sentencing hearing, the trial court advised Tolle that if he violated his community control sanctions, "the court may impose a longer period of community control not to exceed five years, a more restrictive sanction like placement in jail, or a term of imprisonment." Sentencing Tr. (Feb. 2, 2023), p. 26. The trial court also advised Tolle that if his community control sanctions were ever revoked, the court would impose "between 6 to 12 months" in prison on the count for aggravated possession of drugs and "9, 12, 18, 24, 30, or 36 months" in prison on the count for aggravated trafficking in drugs. *Id.* The trial court further advised Tolle that it could order those prison terms to be served either consecutively or concurrently.

{¶ 4} Ten months after Tolle was sentenced to community control sanctions, Tolle's probation officer filed a notice of supervision violation alleging that Tolle had violated the condition of his community control requiring him to complete the West Central

program. Specifically, the notice alleged that Tolle had been “unsuccessfully discharged” from the program on December 12, 2023. On December 18, 2023, Tolle appeared at a probable cause hearing where he contested the existence of probable cause to hold a hearing on the merits of the alleged violation. Following the probable cause hearing, the trial court disagreed with Tolle and found that probable cause existed to believe that the alleged violation had occurred. Accordingly, the trial court scheduled the matter for a merits hearing on December 27, 2023.

{¶ 5} During the merits hearing, Tolle admitted to the alleged community control violation, i.e., that he had failed to complete the West Central program. Following that admission, the trial court reminded Tolle of the prison sentences he could receive if his community control sanctions were revoked as a result of the violation. After ensuring that Tolle understood the consequences of his admission, the trial court accepted Tolle’s admission and found him guilty of violating his community control sanctions by virtue of his unsuccessful discharge from the West Central program. Thereafter, the matter proceeded to sentencing.

{¶ 6} During the sentencing phase of the proceedings, the trial court heard statements from the parties’ counsel as well as Tolle. Tolle and his counsel cited a longstanding back injury for which Tolle had received surgery, issues with Tolle’s right leg, and seizures as affecting Tolle’s ability to complete the West Central program. Tolle’s counsel advised that Tolle “must not have known the extent of the physical requirements while at West Central” and explained that “[t]he standing in line and other issues . . . ma[d]e it hard on him because of his leg and his back.” Sentencing Tr. (Dec.

27, 2023), p. 23. Tolle also indicated that he was in excruciating pain, which caused him to say things that he did not mean. Tolle and his counsel further indicated that Tolle's behavior was affected by his sister's passing away while he was in the West Central program. Tolle explained that he had "lost it" after he found out his sister died, and that he "couldn't control [his] seizures." *Id.* at 28.

{¶ 7} Prior to imposing a sentence, the trial court indicated that it had reviewed and considered the pleadings, presentence investigation report, community control violation report, and the West Central discharge summary. The trial court found that while awaiting admission to the West Central program, Tolle had expressed a desire not to attend outpatient substance abuse treatment, had repeatedly failed to report to his probation officer, had tested positive for tetrahydrocannabinol<sup>1</sup> ("THC"), and had admitted to consuming cannabidiol<sup>2</sup> ("CBD") gummies. The trial court also found that Tolle had tested positive for THC during his intake at West Central. In addition, the trial court found that Tolle had employed manipulative tactics to delay his admission into West Central by making misleading claims of having a serious heart condition.

{¶ 8} The record indicates that once Tolle had been medically cleared for admission into the West Central program, less than a week later, he was unsuccessfully discharged from the program due to repeated rule violations and his unwillingness to

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<sup>1</sup> Tetrahydrocannabinol is the main psychoactive compound found in marijuana. *In re B.T.*, 2023-Ohio-2082, ¶ 3, fn. 1 (2d Dist.), citing *State v. Reeder*, 2021-Ohio-4558, ¶ 32 (3d Dist.) and *State v. Graves*, 2022-Ohio-4130, ¶ 5 (5th Dist.).

<sup>2</sup> Cannabidiol is a chemical from the cannabis plant that is different from and does not contain tetrahydrocannabinol. 1 David Evans, *Drug Testing Law Tech. & Prac.* § 4:230 (2024).

participate. Specifically, the trial court found that Tolle had had prohibited contact with his co-defendant, had refused orders to stand in line, had displayed confrontational aggression with program officials, had displayed drug-seeking behavior, and had tested positive for THC, nicotine, and oxycodone after being hospitalized for an injury. The trial court found that, while in the hospital, Tolle had not notified hospital staff that he was in a drug treatment facility and had not refused the oxycodone provided to him. The trial court also found that Tolle had expressed to West Central staff that he no longer wanted to participate in the program. In addition to those findings, the trial court considered that Tolle had previously been deceptive with pretrial services with regard to the validity of his medical marijuana card, which had expired at the time he tested positive for THC.

{¶ 9} With these considerations, and after applying the purposes and principles of felony sentencing in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12, the trial court revoked Tolle's community control sanctions and sentenced him to a total of 18 months in prison for the community control violation. In doing so, the trial court imposed an 18-month prison term in relation to the aggravated trafficking in drugs charge and a concurrent 10-month prison term in relation to the aggravated possession of drugs charge.

{¶ 10} Tolle now appeals from his sentence for the community control violation, raising a single assignment of error for review.

#### **Assignment of Error**

{¶ 11} Under his sole assignment of error, Tolle claims that the 18-month prison

sentence he received for his community control violation should be reversed because it is contrary to law. Tolle claims that the 18-month prison sentence is contrary to law because his community control violation was based solely on his failure to complete the West Central program—a failure that Tolle claims resulted from his medical issues. Although not explicitly stated in his brief, it appears as though Tolle is arguing that, given the nature of his violation, an 18-month prison sentence was unwarranted. Upon review, we find that Tolle’s claims lack merit.

{¶ 12} “When a defendant violates the conditions of his community control, ‘R.C. 2929.15(B) provides the trial court [with] a great deal of latitude in sentencing the offender.’ ” *State v. Hampton*, 2023-Ohio-1591, ¶ 17 (2d Dist.), quoting *State v. Brooks*, 2004-Ohio-4746, ¶ 20. “A trial court has the option of imposing ‘a longer period of community control, a more restrictive community-control sanction, or a prison term of any length within the range of that available for the original offense, up to the maximum that the trial court specified at the first sentencing hearing.’ ” *Id.*, quoting *Brooks* at ¶ 20, citing R.C. 2929.15(B).

{¶ 13} Appellate review of prison sentences imposed for violations of felony community control sanctions is governed by the standard set forth in R.C. 2953.08(G)(2). *State v. Gibson*, 2017-Ohio-691, ¶ 14 (2d Dist.), citing *State v. Marcum*, 2016-Ohio-1002. Pursuant to R.C. 2953.08(G)(2), this court may vacate or modify Tolle’s sentence only if we “determine[ ] by clear and convincing evidence that the record does not support the trial court’s findings under relevant statutes or that the sentence is otherwise contrary to law.” *Marcum* at ¶ 1. In this case, none of the relevant statutes mentioned in R.C.

2953.08(G)(2) apply to this case; accordingly, we must simply determine whether Tolle's sentence is otherwise contrary to law.

{¶ 14} “ ‘[O]therwise contrary to law’ means ‘in violation of statute or legal regulations at a given time.’ ” *State v. Bryant*, 2022-Ohio-1878, ¶ 22, quoting *State v. Jones*, 2020-Ohio-6729, ¶ 34, quoting *Black’s Law Dictionary* (6th Ed.1990). This court has also defined “contrary to law” as “ ‘a sentencing decision [that] manifestly ignores an issue or factor which a statute requires a court to consider.’ ” *State v. Morgan*, 2023-Ohio-3913, ¶ 7 (2d Dist.), quoting *State v. Lofton*, 2004-Ohio-169, ¶ 11 (2d Dist.). “For example, ‘[a] sentence is contrary to law when it does not fall within the statutory range for the offense or if the trial court fails to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12.’ ” *Id.*, quoting *State v. Brown*, 2017-Ohio-8416, ¶ 74 (2d Dist.). (Other citation omitted.) “For all revocations, the prison term must be within the range of prison terms available for the offense for which community control had been imposed and the term may not exceed the prison term specified in the notice provided to the offender at the original sentencing hearing.” *State v. Monroe*, 2020-Ohio-597, ¶ 41 (2d Dist.), citing R.C. 2929.15(B)(3).

{¶ 15} In this case, Tolle's 18-month prison sentence was within the statutory range of prison terms available for the third-degree-felony aggravated trafficking in drugs offense for which Tolle's community control was imposed. See R.C. 2929.14(A)(3)(b). Tolle's concurrent 10-month prison sentence was also within the statutory range of prison terms available for Tolle's fifth-degree-felony aggravated possession of drugs offense.

See R.C. 2929.14(A)(5). In addition, those prison terms did not exceed the prison terms specified in the notice given by the trial court at the original sentencing hearing. As previously discussed, the trial court notified Tolle at the original sentencing hearing that if his community control sanctions were ever revoked, the court would impose “between 6 to 12 months” in prison on the count for aggravated possession of drugs, and “9, 12, 18, 24, 30, or 36 months” in prison on the count for aggravated trafficking in drugs. Sentencing Tr. (Feb. 2, 2023), p. 26.

{¶ 16} Moreover, the record establishes that when imposing the 18-month prison sentence, the trial court considered the principles and purposes of felony sentencing in R.C. 2929.11 and the sentencing factors in R.C. 2929.12. See *id.* at 21 and Judgment Entry of Community Control (Dec. 27, 2023), p. 6-7. We note that “[n]othing in R.C. 2953.08(G)(2) permits an appellate court to independently weigh the evidence in the record and substitute its judgment for that of the trial court concerning the sentence that best reflects compliance with R.C. 2929.11 and 2929.12.” *Jones*, 2020-Ohio-6729, at ¶ 42. “[W]hen reviewing felony sentences that are imposed solely after considering the factors in R.C. 2929.11 and 2929.12, this court does not analyze whether those sentences are unsupported by the record, but only whether they are contrary to law.” *State v. McCoy*, 2024-Ohio-98, ¶ 27 (2d Dist.), citing *State v. Dorsey*, 2021-Ohio-76, ¶ 18 (2d Dist.).

{¶ 17} Here, Tolle’s 18-month prison sentence was not contrary to law because it was within the authorized statutory range and did not exceed the notice given at the original sentencing hearing and because the trial court considered the principles and



purposes of felony sentencing in R.C. 2929.11 and the sentencing factors in R.C. 2929.12. Tolle's apparent argument that the nature of his community control violation did not warrant an 18-month prison sentence is essentially a claim that the sentence was unsupported by the record. Such an inquiry is inappropriate in this case given that the trial court imposed Tolle's sentence based solely on its consideration of the factors in R.C. 2929.11 and R.C. 2929.12. As previously discussed, this court will not substitute its judgment for that of the trial court with regard to the trial court's application of R.C. 2929.11 and R.C. 2929.12. Rather, in cases such as this one, we only determine whether the sentence was contrary to law.

{¶ 18} Because we do not clearly and convincingly find that Tolle's 18-month prison sentence was contrary to law, his sole assignment of error is overruled.

**Conclusion**

{¶ 19} The judgment of the trial court is affirmed.

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TUCKER, J. and HUFFMAN, J., concur.