

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

State of Ohio	:	
	:	
Plaintiff-Appellee,	:	
	:	Case No. 09CA4
v.	:	
	:	
Robert A. Parsons	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
Defendant-Appellant.	:	File-stamped date: 12-30-09

APPEARANCES:

Robert A. Parsons, Athens, Ohio, pro se Appellant.

C. David Warren, Athens County Prosecuting Attorney, and George Reitmeier, Athens County Assistant Prosecuting Attorney, Athens, Ohio, for Appellee.

Kline, P.J.:

{¶1} Robert A. Parsons (hereinafter “Parsons”) appeals the judgment of the Athens County Court of Common Pleas. The trial court imposed additional community control sanctions upon Parsons after he admitted to being in violation of community control. On appeal, Parsons argues that the additional sanctions are inappropriate. However, we will not address the merits of Parsons’s arguments because his plea agreement precludes this appeal. Additionally, in his reply brief, Parsons contends that the trial court did not comply with Crim.R. 11(C)(2). However, this argument has no merit because Crim.R. 11(C)(2) does not apply to a community-control-violation hearing. Accordingly, we overrule Parsons’s assignments of error and affirm the judgment of the trial court.

I.

{¶2} In 2006, Parsons was convicted of a third-degree felony. See, generally, *State v. Parsons*, Athens App. No. 07CA2, 2007-Ohio-4812 (affirming Parsons's conviction "for Unlawful Sexual Conduct With a Minor, in violation of R.C. 2907.04(B)(4), a felony of the third degree"). As part of his sentence, Parsons received six months in jail and five years of community control.

{¶3} Parsons was released from jail in September 2008. On or about October 15, 2008, a probation officer saw Parsons in a bar in Parkersburg, West Virginia. The state alleged that Parsons violated his community control for the following reasons: Parsons was (1) "in the State of West Virginia without permission from his supervising officer"; (2) "in [a] bar in the State of West Virginia"; and (3) "not at his residence during his curfew." Notice of Violation of Community Control at 1-2. As a result, the state requested that Parsons "be found to have violated his community control and ask[ed] that his underlying sentence of incarceration be imposed." *Id.* at 2.

{¶4} On January 22, 2009, the trial court held a first stage hearing. At this hearing, the assistant prosecutor said, "[A]fter discussing this with the APA, the APA would like him, if he will admit to the first stage, return him to community control, * * * no bars, no alcohol, curfew 10:00 p.m. to 6:00 a.m., and all of the other terms and conditions of community control that had existed." Transcript of First Stage Hearing at 3. Soon thereafter, Parsons voluntarily waived his right to counsel, accepted the agreement, and admitted to the community control

violations. Later, the trial court judge said, “I’m going to * * * adopt the agreement that you have entered into with the State of Ohio.” Id. at 17-18.

{¶15} On January 27, 2009, the trial court entered judgment. In relevant part, the Judgment Entry provides: “The Court sentences Defendant to continue on his community control for the remainder of the previously ordered five (5) years of community control subject to the general supervision and control of the Adult Parole Authority under any terms and conditions that they deem appropriate[.] * * * Defendant shall not consume alcohol nor enter establishments which serve alcohol by the drink; * * * Defendant shall be subject to a curfew from 11:00 p.m. to 5:00 a.m.”

{¶16} Parsons appeals, asserting the following two assignments of error: I. “DID TRIAL COURT ERRED WHEN IT IMPOSED UPON DEFENDANT CONDITION THAT DEFENDANT-APPELLANT SHALL NOT CONSUME ALCOHOL NOR ENTER ESTABLISHMENTS WHICH SERVE ALCOHOL BY THE DRINK[.] [sic]” And, II. “DID TRIAL COURT ERRED IN IMPOSING AS A CONDITION OF PROBATION THAT DEFENDANT-APPELLANT BE SUBJECT TO AN 11:00PM CURFEW. [sic]”

II.

{¶17} In his two assignments of error, Parsons contends that the trial court abused its discretion by imposing additional community control sanctions related to alcohol and curfew time. However, we will not address the merits of Parsons’s arguments because his agreement with the state precludes this appeal.

{¶8} Here, Parsons's agreement with the state represents a specific type of plea bargain. According to Black's Law Dictionary, a "sentence bargain" is a "plea bargain in which a prosecutor agrees to recommend a lighter sentence in exchange for a plea of either guilty or no contest from the defendant." Black's Law Dictionary (8th ed.2004). Thus, a plea bargain occurred in the present case when, in exchange for a favorable sentence, Parsons admitted to the community control violations.

{¶9} Further, "[w]hen the complained of sentence is central to the plea agreement, the defendant may not appeal from a sentence which he agreed to as part of the agreement." *State v. Bray*, Lorain App. No. 03CA008241, 2004-Ohio-1067, at ¶24, citing *State v. Charles* (Oct. 22, 1999), Ashtabula App. No. 98-A-0043. See, also, *State v. Mangus*, Summit App. No. 23666, 2007-Ohio-5033, at ¶11; *State v. Dodak*, Cuyahoga App. No. 79868, 2002-Ohio-1269. Namely, "a defendant may waive his right to challenge his sentence when he receives a sentence for which he asked[.]" *Mangus* at ¶11 (citations omitted). See, also, *Bray* at ¶24-25; *Charles*.

{¶10} Here, because of his plea agreement, we find that Parsons has "waived the right he now asserts." *State v. Coleman* (1986), 30 Ohio App.3d 256, 258, citing *State v. Hughes* (Dec. 30, 1982), Franklin App. No. 82AP-695. If the agreement was not acceptable to Parsons, the option was a hearing pursuant to Crim.R. 32.3. Cf. *Mangus* at ¶11 (stating that the option was trial); *Bray* at ¶25 (same); *Coleman* at 258 (same). The trial court asked Parsons the following question: "the disposition agreement, is this acceptable to you as stated here by

[the Assistant Prosecutor]?” Transcript of First Stage Hearing at 7. Parsons replied, “[y]es your honor.” Id. at 8. Thus, Parsons received the sentence for which he asked. As a result, Parsons has waived the right to appeal his sentence.¹

{¶11} Finally, although we may decline to address it, we find it necessary to comment briefly upon an argument that Parsons has raised for the first time in his reply brief. See, e.g., *Midwest Curtainwalls, Inc. v. Pinnacle 701, L.L.C.*, Cuyahoga App. No. 92269, 2009-Ohio-3740, at ¶77 (stating that “an appellant may not use a reply brief to raise new issues or assignments of error”); *Hallowell v. County of Athens*, Athens App. No. 03CA29, 2004-Ohio-4257, at ¶20. That is, Parsons contends that the trial court did not comply with Crim.R. 11(C)(2) at the hearing below. This argument has no merit. “A community control revocation hearing is not a criminal trial[.]” *State v. Belcher*, Lawrence App. No. 06CA32, 2007-Ohio-4256, at ¶12. For that reason, a “defendant faced with revocation of probation or parole is not afforded the full panoply of rights given to a defendant in a criminal prosecution.” *State v. Alexander*, Hamilton App. No. C-070021, 2007-Ohio-5457, at ¶7; *State v. Orr*, Geauga App. No. 2008-G-2861, 2009-Ohio-5515, at ¶21; *State v. Malone*, Lucas App. No. L-03-1299, 2004-Ohio-5246, at ¶13-14. More specifically, “the requirements of Crim.R. 11(C)(2) do not apply to

¹ We note that the 11:00 p.m. to 5:00 a.m. curfew in the Judgment Entry differs from the 10:00 p.m. to 6:00 a.m. curfew mentioned at the First Stage hearing. However, this apparent discrepancy does not affect our analysis because the terms of the curfew are more favorable for Parsons than the terms to which he agreed.

a community-control-violation hearing.” *Alexander* at ¶7; *Orr* at ¶21. Therefore, Parsons’s reliance on Crim.R. 11(C) is misplaced.

{¶12} Accordingly, we overrule Parsons’s two assignments of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and Appellant pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Court of Common Pleas to carry this judgment into execution.

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

Harsha, J. and McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.