

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

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 24CA1186
	:	
v.	:	
	:	
ROY STRICKLETT, JR.,	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
	:	
Defendant-Appellant.	:	

APPEARANCES:

Brian T. Goldberg, Cincinnati, Ohio, for Appellant.

Aaron Haslam, Adams County Prosecutor, West Union, Ohio, for Appellee.

Smith, P.J.

{¶1} Roy Stricklett, Jr., “Stricklett,” appeals the January 19, 2024 Sentencing Entry on Revocation of Community Control of the Adams County Court of Common Pleas. On appeal, Stricklett contends that the trial court did not rely upon the factors contained in R.C. 2929.11, principles and purposes of felony sentencing, and R.C. 2929.12, seriousness and recidivism factors, but instead relied on improper past conduct when determining Stricklett’s prison sentence. Thus, Stricklett concludes that the trial court imposed a sentence contrary to law. However, upon review of the record,

we find that the trial court properly imposed a prison term within the sentencing range for the underlying offense at issue after properly considering R.C. 2929.11 and R.C. 2929.12. Therefore, Stricklett's 18-month prison sentence is not contrary to law. Accordingly, we affirm the trial court's judgment entry revoking Stricklett's community control.

FACTUAL AND PROCEDURAL BACKGROUND

{¶2} The State of Ohio agrees with the factual and procedural background as set forth in Stricklett's brief. In August 2022, Stricklett was indicted on two counts of felony domestic violence against J.A., Stricklett's girlfriend, who was also pregnant at the time. Stricklett eventually entered a guilty plea to Count One, a violation of R.C. 2919.25(A). Count Two was dismissed. At sentencing on December 19, 2022, Stricklett was placed on a two-year period of community control. Stricklett was advised that he would face a potential prison term of 18 months in the Ohio Department of Rehabilitation and Corrections (ODRC) if he were to violate the terms of his community control.

{¶3} On October 31, 2023, Mercedes Hanes of the Adams County Probation Department filed a Notice of Alleged Sanction Violations. The notice alleged that Stricklett had violated the conditions of community control for the following reasons:

- (1) being in possession of firearms;
- (2) testing positive for drugs and alcohol;
- (3) failure to pay supervision fees;
- (4) failure to attend AA/NA meetings;
- (5) failure to maintain verifiable employment; and,
- (6) failure to complete community service.

On November 6, 2023, the trial court found probable cause that Stricklett had violated the conditions of community control. The matter was scheduled for a full revocation hearing.

{¶4} On December 5, 2023, at the revocation hearing, the State of Ohio dismissed the allegation of possession of firearms. Stricklett admitted to the remaining violations. Stricklett's community control was revoked and the matter continued to January 18, 2024 for sentencing.

{¶5} Stricklett was subsequently sentenced to 18 months in prison. This timely appeal followed.

{¶6} The ODRC website, accessed December 13, 2024, demonstrates that Stricklett's sentence expires on April 17, 2024, but it also appears that his eligibility for transitional control has been reviewed and recommended. The website also indicates an “**Expected Release Date/Parole Eligibility Date**” of 11/14/2024, “**Supervision Start Date**” of 11/14/2024, and

“Period of Supervision” of six months. Thus, it appears that Stricklett has been granted transitional control.¹

ASSIGNMENT OF ERROR

- I. THE TRIAL COURT ERRED TO THE PREJUDICE OF MR. STRICKLETT BY IMPOSING A SENTENCE THAT WAS CONTRARY TO LAW.

STANDARD OF REVIEW

{¶7} Community control sanctions are governed by R.C. 2929.15.

R.C. 2929.15(B)(1)(c) provides that a trial court may impose a prison term for a violation of community control. The proper standard when reviewing decisions revoking community control is an abuse of discretion. *See State v. Mehl*, 2022-Ohio-1154, ¶ 7 (4th Dist.)

{¶ 8} In this case, Mr. Stricklett admitted several of the violations of community control as set forth above. His sole assignment of error challenges the lawfulness of his prison sentence, not the trial court’s decision to revoke community control. Once a court determines that community control should be revoked and a prison term imposed, the trial court’s sentencing decision is reviewed under the standard set forth in R.C.

¹ A violation of transitional control could result in Stricklett’s return to prison to serve the balance of his felony sentence. Because he has not completed his sentence, his appeal would not be considered moot. *See State v. Brown*, 2019-Ohio-3288, ¶ 7 (2d Dist.)

2953.08(G)(2). *See Mehl, supra*, at ¶ 15. *See also State v. Marcum*, 2016-Ohio-1992, ¶10.

{¶9} R.C. 2953.08 provides that an appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either of the following:

- (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;
- (b) That the sentence is otherwise contrary to law.

See Marcum, supra; State v. Smith, 2021-Ohio-2866, ¶ 103 (4th Dist.).

“[C]lear and convincing evidence is that measure or degree of proof which is more than a mere ‘preponderance of the evidence,’ but not to the extent of such certainty as is required ‘beyond a reasonable doubt’ in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469, paragraph three of the syllabus (1954). Thus, an appellate court may vacate or modify a sentence if the court concludes, by clear and convincing evidence, the record does not support the sentence. *See Mehl, supra; State v. Bowling*, 2020-Ohio-813, ¶ 6 (4th Dist.)

LEGAL ANALYSIS

{¶10} Stricklett was convicted of R.C. 2919.25(A), domestic violence, a felony of the fourth degree. Under R.C. 2929.14(A), a felony of the fourth degree is punishable by 6 to 18 months in prison. Stricklett argues that the 18-month prison sentence imposed was contrary to law because the trial court did not consider the purposes and principles of sentencing under R.C. 2929.11 and 2929.12, but instead relied on improper past acts in determining Stricklett’s prison sentence.

{¶11} Stricklett points to several factors militating in his favor, and against imposition of a prison term, as follows: 1) that he admitted the violations; 2) that he obtained employment with a trash removal service; (3) that he completed 94 of 140 hours of community service and paid some money on his probation fees; 4) that while admitting to using drugs and a positive drug screen, he was tested weekly and presumably “most” of those tests were negative; and, 5) that he completed anger management classes.

{¶12} Stricklett argues that despite reciting the relevant statutes in open court and in the sentencing entry, the record demonstrates that the trial judge improperly relied upon his “own history” with Stricklett, asserting in his brief:

The trial court mentioned prior occasions when Mr. Stricklett was working with his father and went into a McDonald's restroom to conduct a drug transaction. This alleged prior incident does not appear to be connected to this case. Consideration of it was not relevant....

Stricklett concludes that the court relied on factors outside of those contained in R.C. 2911. and R.C. 29212. Thus, his sentence is unlawful. Stricklett requests that this court remand the matter for a new sentencing hearing.

{¶13} “ “[A] sentence is generally not contrary to law if the trial court considered the R.C. 2929.11 purposes and principles of sentencing as well as the R.C. 2929.12 seriousness and recidivism factors, properly applied postrelease control, and imposed a sentence within the statutory range.” ’ ’ *State v. Allen*, 2021-Ohio-648, ¶ 14 (4th Dist.), quoting *State v. Perry*, 2017-Ohio-69, ¶ 21 (4th Dist.), in turn quoting *State v. Brewer*, 2014-Ohio-1903, 11 N.E.3d 317, ¶ 38 (4th Dist.). Furthermore, a trial court is required only to “carefully consider” the factors in R.C. 2929.11 and R.C. 2929.12 when imposing sentence and is not required to make any “findings” or state “reasons” regarding those considerations. *See Allen, supra*, at ¶ 13; *State v. Mathis*, 2006-Ohio-855, ¶ 38; (citation omitted.) “And on review, ‘R.C. 2953.08(G)(2)(b) * * * does not provide a basis for an appellate court to modify or vacate a sentence based on its view that the sentence is not

supported by the record under R.C. 2929.11 and 2929.12.’ ” *Allen, supra*, quoting *State v. Jones*, 2020-Ohio-6729, ¶ 39. See *Mehl*, ¶¶ 15-16;

{¶14} R.C. 2929.15 (B)(1) provides that a trial court may impose a prison term for a violation of community control. R.C. 2929.15(B)(1)(c)(ii) contains special provisions related to imposing prison terms for violations of community control associated with convictions for fourth degree felonies.

R.C. 2929.15 provides:

(B)(1) If the conditions of a community control sanction imposed for a felony are violated...,the sentencing court may impose on the violator one or more of the following penalties:

* * *

(c) A prison term on the offender pursuant to section 2929.14 of the Revised Code and division (B)(3) of this section, provided that a prison term imposed under this division is subject to the following limitations and rules, as applicable:

* * *

(ii) If the prison term is imposed for any *technical* violation of the conditions of a community control sanction imposed for a felony of the *fourth* degree that is not an offense of violence and is not a sexually oriented offense, the prison term shall not exceed one hundred eighty days, provided that if the remaining period of the community control at the time of the violation or the remaining period of the reserved prison sentence at that time is less than one hundred eighty days, the prison term shall not exceed the length of the remaining period of community control or the remaining period of the reserved

prison sentence. If the court imposes a prison term as described in this division, division (B)(2)(b) of this section applies.

{¶15} R.C. 2929.15(B)(3) provides instruction regarding the length of prison terms that may be imposed for community control violations that are nontechnical, or *substantive*:

(3) The prison term, if any, imposed on a violator pursuant to this division and division (B)(1) of this section shall be within the range of prison terms described in this division and shall not exceed a prison term from the range of terms specified in the notice provided to the offender at the sentencing hearing pursuant to division (B)(4) 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 division (B)(1) of this section by the time the offender successfully spent under the sanction that was initially imposed. Except as otherwise specified in this division, the prison term imposed under this division and division (B)(1) of this section shall be within the range of prison terms available as a definite term for the offense for which the sanction that was violated was imposed. * * *

See Mehl, at ¶ 10.

{¶16} In *State v. Castner*, 2020-Ohio-4950, the Supreme Court of Ohio discussed the difference between technical and substantive violations of community control, explaining that when a violation “concerns a condition of community control that was ‘specifically tailored to address’ matters related to the defendant's misconduct or if it can be deemed a

‘substantive rehabilitative requirement which addressed a significant factor contributing to’ the defendant’s misconduct,” the violation does not amount to a technical violation.” *Castner*, ¶ 14, quoting *State v. Nelson*, 2020-Ohio-3690, ¶ 26, in turn quoting *State v. Davis*, 2018-Ohio-2672, ¶ 18 (12th Dist.); *See Mehl, supra*, at ¶ 11.²

{¶17} We explained in *Mehl*, as the Supreme Court did in *Castner*, that although R.C. 2929.15 limits the discretion of the trial court in imposing a prison sentence for a technical violation of community control, the statute “gives the court greater discretion in sentencing an offender for violating a more serious community-control violation, even if the violation did not rise to the level of a crime.” *Castner* at ¶ 15, citing *Nelson* at ¶ 22. *See Mehl*, at ¶ 12. The Supreme Court of Ohio stated:

[A] trial court should “engage in a practical assessment of the case before it” by considering “the nature of the community-control condition at issue and the manner in which it was violated, as well as any other relevant circumstances in the case.”

(Emphasis added.) *Castner* at ¶ 15, quoting *Nelson* at ¶ 26; *See Mehl, supra*.

{¶18} The *Castner* court determined that the conditions at issue (i.e., the completion of two drug treatment programs), “were plainly substantive

² In this court’s decision in *Mehl*, we noted that when *Castner* was decided, R.C. 2929.15 did not define the term “technical.” We further noted that the definition now provided in the statute is not inconsistent with the reasoning contained in *Castner*. *See Mehl, supra*, at fn.7.

rehabilitative requirements that were specifically tailored to address Castner's drug use and were aimed at reducing his likelihood of recidivism.” *Castner* at ¶ 16. As such, the Court held that “the trial court had the discretion to sentence Castner to a 12-month prison term[,]” which was the prison term specified on the record during Castner's original sentencing hearing. *Id.* at ¶ 18. In *State v. Duckett*, 2021-Ohio-3110, this Court noted:

Maintaining sobriety from drug and alcohol use [had] been one of the corner stone conditions in Duckett’s community control sanction. Thus, the three conditions that Duckett violated not only were tailored to address his substance abuse issues but were also a “substantive rehabilitative requirement which addressed a significant factor contributing” to Duckett’s misconduct.

Id. at ¶ 20. We found that Duckett’s violations were nontechnical and his prison sentence of 24 months was authorized by law. In *Mehl*, (involving two separate cases and multiple violations), the defendant was convicted of one count of burglary, a second-degree felony, and one count of aggravated possession of drugs. On appeal of his revocation of community control and imposition of prison sentence, Mehl argued that the trial court inappropriately relied on alleged past conduct instead of focusing on the reason for his most recent violation. Relying upon analysis provided in the *Castner* decision, this Court noted that Mehl admitted failing to complete drug rehabilitation programs and that “each and every one of these programs

constituted a substantive rehabilitative requirement that was specifically tailored to Mehl’s conditions of community control.” *Id.* at ¶ 24. We further noted that “violation of any one of these conditions justified the trial court’s revocation of his community control and imposition of [Mehl’s] underlying prison sentences.” *Id.*

{¶19} As Stricklett concedes, the trial court referenced its consideration of the principles and purposes of sentencing under R.C. 2929.11 and its balancing of the seriousness and recidivism factors of R.C. 2929.12 at both the sentencing hearing on January 18, 2024, and in the January 19, 2024 Sentencing Entry on Revocation of Community Control. On both occasions, the trial court also referenced its review of Stricklett’s presentence investigation report (PSI). At the time of his sentencing on revocation, Mr. Stricklett was 35 years old. According to the PSI, Stricklett had one prior felony conviction for nonsupport. Stricklett scored “High” on the Ohio Risk Assessment System, indicating a high risk of reoffending. The report also indicated Stricklett showed “no remorse.” The victim of his underlying domestic violence conviction was pregnant with his ninth child at the time of the incident.

{¶20} The trial court inquired why Mr. Stricklett declined to attend AA/NA and Stricklett replied, “Just didn’t go.” Stricklett explained he

attempted to find employment but “nobody was hiring” at the time.

Stricklett completed anger management but then admitted that he continued to use methamphetamine. While the court did reference an incident where Mr. Stricklett left work to sell drugs in a McDonald’s bathroom, the court also commented:

Every time the court has invited you with an opportunity, you seem to have declined...Uh, it seems like you have great family support...No matter what we’ve tried, no matter what we’ve done, no matter how we’ve encouraged, no matter how many opportunities we’ve given or assistance we’ve offered, Mr. Stricklett just hasn’t been interested...You know he gets a job two days before he comes in for sentencing...None of this makes sense.

{¶21} The trial court was permitted to consider the nature of Stricklett’s admitted nontechnical violations. Admirably, Stricklett did complete anger management. However, Stricklett also violated the conditions of abstaining from drugs and alcohol, attendance at AA/NA meetings, and maintaining verifiable employment. These violations are nontechnical in that they appear to be substantive rehabilitative requirements specifically tailored to address Stricklett’s substance abuse problems as discussed in the PSI. No doubt abstaining from drugs and alcohol and attending AA/NA meetings would positively contribute to reducing Stricklett’s likelihood of recidivism, as would maintaining employment.

{¶22} Under R.C. 2929.11, principles and purposes of felony sentencing, the trial court is charged with fashioning a sentence for protecting the public from future crime. Under R.C. 2929.12(E)(3), seriousness and recidivism factors to consider in felony sentencing, the trial court is permitted to consider “any other factor[s]” indicating that “the offender had led a law-abiding life for a significant number of years.” While Stricklett’s prior uncharged conduct of selling drugs in a McDonald’s bathroom is not related to his felony domestic violence conviction, we are not convinced that the trial court’s reference to the unrelated prior conduct was the trial court’s sole reason for imposing a prison sentence, especially in light of the evidence of Stricklett’s apparently half-hearted attempts to comply with the conditions of community control, high risk of reoffending, and lack of remorse.

{¶23} Here, the trial court properly imposed the underlying prison term of 18 months, which was within the sentencing range for the offense of domestic violence of the fourth degree, after properly considering the principles and purposes of felony sentencing and balancing the seriousness and recidivism factors. There is no dispute that Stricklett was informed at his initial sentencing that an 18-month prison term could be imposed. Based upon the foregoing, we find there was no error in the trial court’s decision to

impose the 18-month prison term. Accordingly, Stricklett's sole assignment of error is without merit and is overruled. The judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

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

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Abele, J. and Hess, J. concur in Judgment and Opinion.

For the Court,

Jason P. Smith
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.