

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Julie A. Edwards, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
TERRI J. RICOSKY	:	Case No. 2010CA00169
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 2009CR1568

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: January 18, 2011

APPEARANCES:

For Plaintiff-Appellee

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Stark County Prosecutor

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Farmer, J.

{¶1} On November 13, 2009, appellant, Terri Ricosky, pled guilty to one count of robbery in violation of R.C. 2911.02 and one count of grand theft of a motor vehicle in violation of R.C. 2913.02. By judgment entry filed January 7, 2010, the trial court sentenced appellant to five years of community control. The trial court reserved a five year prison sentence in the event appellant violated any of the terms and conditions of her community control.

{¶2} On May 7, 2010, appellant's probation officer filed a motion to revoke appellant's probation for violating the rules. A hearing was held on May 21, 2010. By journal entry filed May 27, 2010, the trial court revoked appellant's community control and sentenced her to an aggregate term of five years in prison.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶4} "THE TRIAL COURT ABUSED ITS DISCRETION IN FINDING THAT APPELLANT VIOLATED THE TERMS OF HER COMMUNITY CONTROL SANCTIONS."

I

{¶5} Appellant claims the trial court erred in finding she violated her community control sanctions as no evidence that she had violated a rule of probation was presented at the hearing. We disagree.

{¶6} In *State v. Gullet*, Muskingum App. No. CT2006-0010, 2006-Ohio-6564, ¶¶22-23, this court explained the following:

{¶7} "In a probation revocation proceeding, the prosecution need not produce evidence establishing a probation violation beyond a reasonable doubt. Rather, the prosecution must present substantial proof that a defendant violated the terms of his or her probation. *State v. Hylton* (1991), 75 Ohio App.3d 778, 600 N.E.2d 821; *State v. Mingua* (1974), 42 Ohio App.2d 35, 327 N.E.2d 791; *State v. Umphries* (June 30, 1998), Pickaway App. No. 97CA45, unreported. Accordingly, in order to determine whether a defendant's probation revocation is supported by the evidence, a reviewing court should apply the 'some competent, credible evidence' standard set forth in *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578. See *State v. Umphries* (July 9, 1998), Pickaway App. No. 97CA45; *State v. Puckett* (Nov. 12, 1996), Athens App. No. 96CA1712. This highly deferential standard is akin to a preponderance of evidence burden of proof. See *State v. Kehoe* (May 18, 1994), Medina App. No. 2284-M. We see no difference in the standard of review between a probation violation and a violation of community control sanctions.

{¶8} "Once a court finds that a defendant violated the terms of probation, the decision whether to revoke probation lies within the court's sound discretion. See *State v. Scott* (1982), 6 Ohio App.3d 39, 452 N.E.2d 517; *Umphries*, supra; *State v. Conti* (1989), 57 Ohio App.3d 36, 565 N.E.2d 1286; *State v. Daque* (Aug. 11, 1997), Ross App. No. 96CA2256. Thus, a reviewing court will not reverse a trial court's decision absent an abuse of discretion. *State v. Sheets* (1996), 112 Ohio App.3d 1, 677 N.E.2d 818."

{¶9} Within the motion to revoke are three alleged violations of the rules of probation:

{¶10} "The Defendant violated Rule #5 of his/her probation by not following all orders verbal or written given by the supervising officer or other authorized representatives of the Court or the Department of Rehabilitation and Correction.

{¶11} "The Defendant violated Rule #14 of his/her probation by not following all rules and regulations of treatment facilities or programs of any type in which he or she is placed or ordered to attend while under the jurisdiction of the Court, and/or the Department of Rehabilitation and Correction.

{¶12} "The Defendant violated Rule # 16n. of his/her probation by either failing to be evaluated by Stark Regional Community Correction Center and/or failing to successfully complete any program recommended, including aftercare, if accepted.

{¶13} "On May 7, 2010 offender was terminated from Stark Regional Community Correction Center for ongoing rule violations. Offender accumulated a total of eight violations to include threatening other clients with violence and initiating contact with offender Merle Henderson, violating no contact condition (#25) for case number 2006-CR-1864, where she is victim in case."

{¶14} At the conclusion of the hearing, the trial court stated the following findings:

{¶15} "The Court does find by a preponderance of the evidence that it has been proven that Ms. Rickosky did violate the terms and conditions of her probation.

{¶16} "One of the terms and conditions of her probation was that she was quote 'evaluated by Stark County Regional Community corrections Center,' and if accepted, shall successfully complete any program recommended including Aftercare.

{¶17} "Court does find as set forth in the Motion to Revoke that Ms. Ricosky has been unsuccessfully terminated from SRCCC.

{¶18} "Therefore, the Court does find that the Defendant did, in fact, violate the terms and conditions of her probation.

{¶19} "The Court finds that the appropriate sentence or remedy in regard to this is to revoke Ms. Ricosky's probation." May 21, 2010 T. at 48-49.

{¶20} It is appellant's position that she only made Class II minor violations that resulted in her termination from the Stark Regional Community Correction Center (hereinafter "SRCCC").

{¶21} Appellant's probation officer, Arlune Culler, and Dennis Evans, in-house probation officer at SRCCC, both testified that during "team meetings," appellant had been cautioned about her behavioral problems and threatening manner to other clients. T. at 13-14, 26-27. The staff at SRCCC made a determination based upon appellant's aggressive and threatening behavior, one of which was classified as intimidation, that she was not successfully completing the program. T. at 30-32. Further, she had missed one required session of "Thinking for a Change Class." T. at 25-26.

{¶22} It is undisputed that appellant's own actions precipitated her termination from the program. Unsuccessful completion was a violation of Rule #16 of her rules of probation. T. at 15; December 30, 2009 T. at 8.

{¶23} Upon review, we find no error by the trial court in finding appellant violated Rule #16 and as such, it was not an abuse of discretion to terminate her community control.

{¶24} The sole assignment of error is denied.

{¶25} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, J.

Edwards, P.J. and

Wise, J. concur.

s/ Sheila G. Farmer

s/ Julie A. Edwards

s/ John W. Wise

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