[Cite as *State v. Morrow*, 2015-Ohio-2627.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

STATE OF OHIO Appellee v. JUROD MORROW GARY MANNING Appellants	C.A. Nos. 14CA010552 14CA010553 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE Nos. 11CR083736 12CR084701

DECISION AND JOURNAL ENTRY

Dated: June 30, 2015

WHITMORE, Presiding Judge.

{¶1} Appellants in this consolidated appeal, Jurod Morrow and Gary Manning, appeal from sentencing orders of the Lorain County Court of Common Pleas. We affirm.

I

{¶2} Mr. Morrow and Mr. Manning both pled guilty to, and were found guilty of, one count of nonsupport of dependents under R.C. 2919.21(B), a felony of the fifth degree. Mr. Morrow was convicted of failing to make child support payments for a 104-week period between August 1, 2009 to August 1, 2011. Mr. Manning was convicted of failing to make child support payments for a 104-week period between January 1, 2010 and January 1, 2012.

{¶3} The trial court sentenced both Mr. Morrow and Mr. Manning to community control. Under the heading "Sanctions," the court's judgment entries ordered payment of "[r]estitution and past court ordered child support arrearage * * * to be paid in monthly

installments during the community control period, in addition to current monthly child support order; monthly amount to be determined by the Adult Parole Authority." (Emphasis deleted.). The court calculated this amount for Mr. Morrow to be $16,942.24, and for Mr. Manning to be $29,447.80. These amounts included administrative fees that were charged by the Lorain County Child Support Enforcement Agency ("CSEA").

{¶4} The trial court further ordered Appellants to reimburse the court for the cost of court-appointed defense attorney fees. Appellants also were ordered to pay the cost of prosecution.

{¶5} Appellants now raise four assignments of error for our review.

II

Assignment of Error Number One

> THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT ORDERED RESTITUTION IN EXCESS OF THE ARREARS THAT ACCRUED DURING THE PERIOD IN THE INDICTMENT.

{¶6} In their first assignment of error, Mr. Morrow and Mr. Manning claim that the trial court's order to pay all court-ordered child support in arrears, and not just the arrearage that accrued during the 104-week indictment periods, is in error because it exceeds the scope of restitution authorized by R.C. 2929.18. We disagree.

{¶7} Restitution is a financial sanction authorized by R.C. 2929.18. The statute authorizes "[r]estitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss." Thus, if a trial court requires a defendant to pay restitution as a part of a felony sentence, the court's specific award of restitution is limited to the amount of arrearage that accrued within the time period covered by the indictment. *State v. Henderson*, 2d Dist. Montgomery No. 24849, 2012-Ohio-3499, ¶ 13.

{¶8} However, this limitation on restitution in criminal sentencing in no way relieves the offender of his duty to pay child support arrearage in the court that issued the underlying child support orders. *Id*., citing *State v. Hubbell*, 2d Dist. Darke No. 1617, 2004-Ohio-398, ¶ 12. Thus, in addition to ordering restitution either as an unconditional part of a sentence or a condition of community control, a trial court may also order the payment of all child support arrearages so long as such payment is ordered as a reasonable condition of community control.[1] *Henderson* at ¶ 15 (recognizing a difference between restitution ordered unconditionally as part of a criminal sanction, and conditions of community control sanctions requiring the payment of court-ordered support); *Hubbell* at ¶ 29 (remanding for the trial court to confine restitution to arrearage accrued during the indictment period if restitution was ordered unconditionally as part of a sentence, or to resentence defendant making payment of restitution plus other arrearages a condition of community control sanctions); *State v. Stewart*, 10th Dist. Franklin No. 04AP-761, 2005-Ohio-987, ¶ 10 (holding that the trial court did not abuse its discretion in requiring defendant to pay total accumulated support arrearages as condition of his community control); *State v. McCants*, 12th Dist. Butler No. CA2009-08-214, 2010-Ohio-854, ¶ 13 (trial court could require defendant to pay entire arrearage as a condition of community control); *State v. Latimore*¸ 8th Dist. Cuyahoga No. 101321, 2015-Ohio-522, ¶ 12 (the trial court has the discretion to order the payment of the total support arrearage as a condition of community control).

[1] "R.C. 2929.15(A)(1) governs the authority of the trial court to impose conditions of community control. That section provides that when sentencing an offender for a felony, the trial court may impose one or more community sanctions, including residential, nonresidential, and financial sanctions, and any other conditions that it considers 'appropriate.' The General Assembly has thus granted broad discretion to trial courts in imposing community-control sanctions." *State v. Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888, ¶ 10. Community control is the functional equivalent of probation. *Id.* at ¶ 16.

{¶9} Mr. Morrow and Mr. Manning both were sentenced to community control. We review the trial court's imposition of community-control sanctions under an abuse-of-discretion standard. *Talty* at ¶ 10. An abuse of discretion indicates that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶10} A court may impose community control sanctions that relate to the interest of doing justice, rehabilitate the offender, and insure his good behavior. *State v. Jones*, 49 Ohio St.3d 51, 52 (1990). The reasonableness test set forth in *Jones* governs whether a community control sanction is appropriate. *See Talty* at ¶ 12-16. Courts must consider whether the condition of community control: "(1) is reasonably related to rehabilitating the offender; (2) has some relationship to the crime of which the offender was convicted; and (3) relates to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation." *Jones* at 53.

{¶11} Here, the trial court's orders that Appellants pay all child support arrearages in addition to restitution amounts satisfy the *Jones* factors. The payment of past court-ordered child support is reasonably related to rehabilitating Appellants from the charged offense of nonpayment of child support, bears a close relationship to that offense, and relates to the criminal conduct underlying that offense. Thus, the sanction satisfies the aims of community control to do justice, rehabilitate the offender, and insure good behavior. *See Jones* at 52.

{¶12} The trial court's judgment entries imposing Appellants' community control sentences recognized that orders to pay restitution, and past court-ordered child support arrearage outside of the indictment periods, are distinct sanctions. The judgment entries ordered payment of "[r]estitution and past court ordered child support arrearage." Appellants thus have failed to

provide a basis for this Court to hold that the trial court abused its discretion in awarding both restitution, and payment of all additional child support arrearages, as reasonable community control sanctions.

{¶13} The trial court had the discretion to order the payment of the total support arrearage as a condition of community control. Appellants' first assignment of error is overruled.

Assignment of Error Number Two

> THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT ORDERED RESTITUTION AND THE REPAYMENT OF COURT APPOINTED ATTORNEY FEES.

{¶14} In their second assignment of error, Appellants argue that the trial court erred in ordering restitution and court-appointed attorney's fees without determining Appellants' ability to pay. We disagree.

{¶15} Appellants rely in significant part on *State v. Williams*, 9th Dist. Summit No. 26014, 2012-Ohio-5873. In *Williams*¸ which was not a felony nonsupport case, we reversed as plain error a restitution award because there was no evidence that the trial court addressed the defendant's present and future ability to pay as required under R.C. 2929.19(B)(5).[2] *Id.* at ¶ 17-20. This case is distinguishable from *Williams*, because the trial court here did consider Appellants' ability to pay. The sentencing hearing transcripts reveal that the court discussed in detail with Mr. Morrow and Mr. Manning their employment status, income, and ability to secure additional work. The court was not required to consider any particular factors in determining

[2] "Before imposing a financial sanction under [R.C. 2929.18] or a fine under [R.C. 2929.32], the court shall consider the offender's present and future ability to pay the amount of the sanction or fine." R.C. 2929.19(B)(5).

ability to pay. *Id.* at ¶ 17 (requiring only that the record reflect that that court actually considered ability to pay). Thus, *Williams* does not support Appellants' argument.

{¶16} Mr. Morrow told the court that he was employed, could find additional work, and could find a job that paid more. Under these facts, the court did not abuse its discretion in determining that Mr. Morrow had a present and future ability to pay.

{¶17} Mr. Manning had not held a job for at least two years. In the past year he had only applied for three jobs during the summer, and none during the winter. He admitted that he was physically fit and capable of holding a job. Mr. Manning's counsel argued that he was turned down for the only three jobs he applied for due to his criminal record, thus establishing that Mr. Manning could not find future employment. However, there was no evidence presented to substantiate that Mr. Manning's criminal record was considered by employers who did not hire him. Nor was there any evidence to show that the reason Mr. Manning was unemployed was due to anything other than his lack of diligence in applying for jobs. The court therefore did not abuse its discretion when it found that Mr. Manning's lack of effort in seeking employment was an insufficient basis for the court to find inability to pay.

{¶18} It should be noted that the sentencing court did not unilaterally determine that Appellants should pay child support, or the amount of the support to be paid. By ordering payment of all child support arrearages as a condition of community control, the sentencing court essentially ordered Appellants to comply with the underlying court orders that established Appellants' child support obligations in the first instance. The sentencing court was not required to reconsider, in any more depth than the appellate record reflects, another court's determination of ability to pay when that court originally ordered child support. *See State v. Fuller*, 8th Dist. Cuyahoga No. 101325, 2015-Ohio-523, ¶ 22 (trial court in prosecution for felony nonsupport

had no duty to consider defendant's ability to pay his court-ordered child support when it ordered him to pay the support as a condition of his community control sanctions). Appellants' second assignment of error is overruled.

Assignment of Error Number Three

THE TRIAL COURT ERRED WHEN IT ORDERED THE REPAYMENT OF THE COSTS OF PROSECUTION IN VIOLATION OF R.C. 2919.21(G)(2).

{¶19} In their third assignment of error, Appellants argue that the trial court violated R.C. 2919.21(G)(2) when it ordered Appellants to pay costs of prosecution. We disagree.

{¶20} R.C. 2919.21(G)(2) provides that, if an offender is guilty of nonsupport of dependents, "the court, in addition to any other sentence imposed, shall assess all court costs arising out of the charge against the person and require the person to pay any reasonable attorney's fees of any adverse party other than the state, as determined by the court, that arose in relation to the charge." Thus, R.C. 2919.21(G)(2) requires the sentencing court to assess costs against the defendant guilty of nonsupport, but does not permit an award of attorney's fees to the State.

{¶21} Similarly, R.C. 2947.23(A)(1)(a) mandates that the costs of prosecution be awarded to the State. This section states, "In all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the costs of prosecution * * * and render a judgment against the defendant for such costs." R.C. 2947.23(A)(1)(a).

{¶22} Thus, the court in this case was required to order Appellants to pay costs of prosecution. These costs are expenses incurred that are directly related to the prosecution of the case. *See Middleburg Hts. v. Quinones*, 120 Ohio St.3d 534, 2008-Ohio-6811, ¶ 8-9. These expenses are precisely what the court ordered when it ordered Appellants to pay "internal [c]ourt costs that the clerk charges on every case." The court did not, and could not under R.C.

2919.21(G)(2), order Appellants to pay any attorney's fees to reimburse the prosecutors for their time and expertise. Nor did the court in this case order reimbursement to the State for expenses that originated in the prosecutor's office apart from expenses charged by the clerk's office. Accordingly, there is no question that the court complied with R.C. 2919.21(G)(2) and R.C. 2947.23(A)(1)(a) in every regard. Appellants' third assignment of error is overruled.

Assignment of Error Number Four

THE TRIAL COURT ERRED WHEN IT INCLUDED ADMINISTRATIVE FEES IN THE RESTITUTION AWARD.

{¶23} In their fourth assignment of error, Appellants contend that the trial court erred when it ordered Appellants to pay processing fees to the CSEA for arrearages to be paid as a condition of community control. We disagree.

{¶24} R.C. 3119.27(A) requires that a "court that issues or modifies a court support order * * * shall impose on the obligor under the support order a processing charge that is the greater of two per cent of the support payment to be collected under a support order or one dollar per month." R.C. 3119.28(B) mandates that the obligor under a child support order pay the amount imposed pursuant to R.C. 3119.27 with every current support payment, and also with every payment on arrearages. The sentencing court therefore was obligated by statute to impose a processing fee on arrearages which it ordered paid as a condition of community control. This Court has held that such a fee is required, and that an administrative agency is entitled to compensation for assuming the risks associated with the handling and disbursement of funds in proportion to the amount of funds. *Curran v. Kelly*, 9th Dist. Medina No. 10CA0139-M, 2012-Ohio-218, ¶ 13. The trial court did not err in imposing a processing fee under R.C. 3119.27(A). Appellants' fourth assignment of error is overruled.

III

{¶25} Appellants' assignments of error are overruled. The sentencing orders of the Lorain County Court of Common Please are affirmed.

Judgments affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

BETH WHITMORE
FOR THE COURT

MOORE, J.
SCHAFER, J.
CONCUR.

APPEARANCES:

ZACHARY B. SIMONOFF, Attorney at Law, for Appellants.

DENNIS P. WILL, Prosecuting Attorney, and GREG PELTZ, Assistant Prosecuting Attorney, for Appellee.