

[Cite as *State v. Overmyer*, 2010-Ohio-2072.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 09AP-945
v.	:	(C.P.C. No. 09CR03-1668)
	:	
Matthew Overmyer,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on May 11, 2010

Ron O'Brien, Prosecuting Attorney, and *Sarah W. Creedon*,
for appellant.

Yeura R. Venters, Public Defender, and *Paul Skendelas*, for
appellee.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Plaintiff-appellant, the State of Ohio, appeals from a judgment entered by the Franklin County Court of Common Pleas placing defendant-appellee, Matthew Overmyer, on community control. Because the trial court failed to make the necessary findings required to impose such a sentence, we reverse that judgment and remand the matter for resentencing.

{¶2} On March 20, 2009, a Franklin County Grand Jury indicted appellee with one count of burglary in violation of R.C. 2911.12. Appellee initially entered a not guilty

plea to the charge. Before trial, however, he withdrew his not guilty plea and entered a guilty plea to one count of burglary, a felony of the second degree. The trial court accepted appellee's guilty plea, found him guilty, and placed him on community control for a period of two and one-half years and ordered him to pay restitution.

{¶3} The state appeals and assigns the following errors:

[I.] THE TRIAL COURT ERRED IN IMPOSING COMMUNITY CONTROL WHEN IT FAILED TO MAKE THE REQUIRED FINDINGS AND FAILED TO GIVE ADEQUATE REASONS FOR OVERCOMING THE PRESUMPTION IN FAVOR OF A PRISON TERM.

[II.] THE TRIAL COURT'S IMPOSITION OF COMMUNITY CONTROL IS CONTRARY TO LAW, AS DEFENDANT CANNOT OVERCOME THE PRESUMPTION IN FAVOR OF A PRISON TERM.

{¶4} In its first assignment of error, the State contends the trial court erroneously sentenced appellee to community control without making the required statutory findings and providing the supporting reasons. We agree.

{¶5} The trial court placed appellee on community control after finding him guilty of a felony of the second degree. Under R.C. 2929.13(D)(2), it is presumed that a prison term is the appropriate sentence for a felony of the first or second degree. Notwithstanding that presumption, community control may be imposed if the trial court makes both of the following findings:

(a) A community control sanction or a combination of community control sanctions would adequately punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a lesser likelihood of recidivism outweigh the applicable factors under that section indicating a greater likelihood of recidivism.

(b) A community control sanction or a combination of community control sanctions would not demean the seriousness of the offense, because one or more factors under section 2929.12 of the Revised Code that indicate that the offender's conduct was less serious than conduct normally constituting the offense are applicable, and they outweigh the applicable factors under that section that indicate that the offender's conduct was more serious than conduct normally constituting the offense.

{¶6} The sentencing court must make both of these findings before it may deviate from the presumption that a prison term should be imposed. *State v. Atkinson*, 10th Dist. No. 06AP-497, 2007-Ohio-3789, ¶5 (citing *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, paragraph one of the syllabus). The court must also state its reasons for making these findings. R.C. 2929.19(B)(2)(b); *State v. Martin*, 10th Dist. No. 08AP-1103, 2009-Ohio-3485, ¶6.

{¶7} In this case, the trial court failed to make the findings required by R.C. 2929.13(D) or provide reasons for those findings pursuant to R.C. 2929.19(B)(2)(b) to impose community control on appellee. Although the trial court seemed to acknowledge that it needed to make certain findings to overcome the presumption of imprisonment, it never made the necessary findings. We recognize that the mandatory sentencing guidelines do not require talismanic words from the sentencing court. Nevertheless, it must be clear from the record that the trial court engaged in the appropriate analysis. Here, it is not clear that the trial court completed the required analysis.

{¶8} Arguably, the trial court's comments indicate that it found that community control would adequately protect the public from future crime and would not demean the seriousness of the offense. However, the trial court failed to find that community control would adequately punish the offender as required by R.C. 2929.13(D)(2)(a).

{¶9} Accordingly, we sustain the State's first assignment of error.

{¶10} In its second assignment of error, the State contends that any imposition of community control sanctions in this case would be contrary to law and that this court should remand the case to the trial court with instruction to impose a prison term. We disagree and remand the matter to the trial court to make whatever findings it deems appropriate and to enter a sentence based on those findings. *Martin* at ¶8 (citing R.C. 2953.08(G)(1) and *Mathis* at ¶35-36) (rejecting same argument); *State v. Wooden*, 10th Dist. No. 05AP-330, 2006-Ohio-212, ¶7 (rejecting same argument). The State's second assignment of error is overruled.

{¶11} The State's first assignment of error is sustained, and the second assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas is reversed and this matter is remanded to the trial court for resentencing in compliance with the applicable statutory sentencing guidelines.

*Judgment reversed and cause remanded
with instructions.*

BRYANT and CONNOR, JJ., concur.
