[Cite as *State v. Barnes*, 2009-Ohio-3684.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-10-090
	:	O P I N I O N
- vs -		7/27/2009
	:	
CLARENCE W. BARNES,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case Nos. 07-CR-00327 and 07-CR-00417

Donald W. White, Clermont County Prosecuting Attorney, David H. Hoffmann, 123 N. Third Street, Batavia, OH 45103-3033, for plaintiff-appellee

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YOUNG, J.

{¶1} Defendant-appellant, Clarence W. Barnes, appeals his conviction and sentence from the Clermont County Court of Common Pleas following his guilty plea to ten counts of sexual imposition. We affirm in part, reverse in part, and remand for further proceedings.

{¶2} On April 18, 2007, the Clermont County Grand Jury returned an indictment against appellant charging him with nine counts of gross sexual imposition in violation of R.C.

2907.05(A)(4), a third-degree felony, alleging that he had sexual contact with two of his minor grandchildren. On May 16, 2007, the Clermont County Grand Jury returned another indictment charging appellant with an additional count of gross sexual imposition. On August 8, 2008, after entering into a plea agreement, appellant pled guilty to ten third-degree misdemeanor counts of sexual imposition in violation of R.C. 2907.06(A)(1).

{¶3} On September 30, 2008, following a presentence investigation, the trial court sentenced appellant to an aggregate term of 20 months in jail; 60 days for each count, with 45 days suspended, to be served consecutively. The court also sentenced appellant to four years of community control, ordered him to pay fines totaling $2,500, and classified him as a Tier I Sex Offender/Child Victim Offender Registrant. The sentence was stayed pending this appeal, in which appellant raises three assignments of error.

{¶4} Assignment of Error No. 1:

{¶5} "[APPELLANT] WAS DENIED DUE PROCESS OF LAW BECAUSE, UNDER THE TOTALITY OF THE CIRCUMSTANCES, [APPELLANT'S] PLEA WAS NOT ENTERED KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY."

{¶6} In his first assignment of error, appellant argues that his guilty plea was not entered voluntarily "because several decisions by the trial court rendered [him] completely unable to prepare a defense to the charged offenses," and therefore, he was left with "no choice but to plead guilty to ten misdemeanor counts of sexual imposition." However, while appellant attempts to challenge his guilty plea by claiming it was not entered voluntarily, his argument essentially challenges the trial court's decision denying his motion for a more specific bill of particulars, as well as its decision denying his motion in limine. By entering a plea of guilty, appellant waived any alleged error in the prior proceedings as it relates to those decisions. *State v. Neeley*, Clinton App. No. CA2008-08-034, 2009-Ohio-2337, ¶12; *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, ¶105; see, e.g., *State v. Richards*,

Stark App. No. 2002CA00057, 2002-Ohio-6847, ¶17; *State v. Shaniuk* (July 30, 1992), Cuyahoga App. No. 60872, 1992 WL 181706 at *5. Therefore, appellant's first assignment of error is overruled.

{¶7} Assignment of Error No. 2:

{¶8} "THE TRIAL COURT ERRED IN SENTENCING [APPELLANT] TO CONSECUTIVE SENTENCES EXCEEDING THE MAXIMUM AGGREGATE."

{¶9} In his second assignment of error, appellant argues that the trial court erred by sentencing him to serve ten consecutive 60-day sentences, with 45 days suspended, or an approximate aggregate of 20 months in jail, because the sentence "clearly exceeded the eighteen-month maximum * * *."

{¶10} Pursuant to R.C. 2929.41(B)(1), "[w]hen consecutive sentences of imprisonment are imposed for misdemeanor * * * the term to be served is the aggregate of the consecutive terms imposed, except that the aggregate term to be served shall not exceed eighteen months." As this court previously noted, the language of R.C. 2929.41(B)(1) limits the total term of imprisonment for all misdemeanors to eighteen months, including cases where the sentences are imposed at different times or by different courts. *State v. Miller* (Aug. 13, 2001), Butler App. No. CA2000-11-225, at 3-4.

{¶11} While we may find appellant's argument regarding his sentence has merit, there is no reversible error because the sentencing statute is self-executing and operates automatically to reduce the aggregate term to be served to the statutory maximum 18 months. *Miller* at 3-4; see *State v. Kesterson* (1993), 91 Ohio App.3d 263, 265; see, also, *State v. White* (1985), 18 Ohio St.3d 340. As a result, even where an aggregate sentence exceeds the statutory maximum, such as the case here, there is no need to modify the consecutive sentences imposed or remand the case for resentencing because "the statute automatically places a duty on the incarcerating authority to limit aggregate terms." *Miller* at

4, citing *Columbus v. Riley* (Apr. 12, 1994), Franklin App. No. 93APC10-1474, 1994 WL 129891 at *1. Therefore, as there is no reversible error, appellant's second assignment of error is overruled.

{¶12} Assignment of Error No. 3:

{¶13} "THE TRIAL COURT ERRED BY IMPOSING CONDITIONS OF COMMUNITY CONTROL THAT WERE UNRELATED TO THE OFFENDER'S REHABILITATION OR THE OFFENSE OF SEXUAL IMPOSITION."

{¶14} In his third assignment of error, appellant argues that a number of the conditions imposed by the trial court as part of his community control sanctions were improper and unreasonable.

{¶15} When sentencing an offender to community control sanctions following a misdemeanor conviction, the trial court may impose community residential sanctions, nonresidential sanctions, financial sanctions, and "other conditions" that it deems "appropriate." R.C. 2929.25(A)(1). The trial court has broad discretion to impose "other conditions" on an offender as part of his community control sanctions, and its decision to impose such conditions will not be reversed absent an abuse of discretion. *State v. Hause*, Warren App. No. CA2008-05-063, 2009-Ohio-548, ¶7; *State v. Talty,* 103 Ohio St.3d 177, 2004-Ohio-4888, ¶10. However, although a trial court has broad discretion to impose community control conditions, like probation conditions previously, the conditions imposed must not be overbroad so as to impinge upon the offender's liberty, and must reasonably relate to the goals of community control; namely, rehabilitation, administering justice, and ensuring good behavior. *Talty* at ¶13; *State v. Jones* (1990), 49 Ohio St.3d 51, 52.

{¶16} In determining whether a community control condition is appropriate and valid, the Ohio Supreme Court has stated that a court should consider "whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime

convicted, and (3) relates to the conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation." *Hause* at ¶5, quoting *Jones* at 53.

{¶17} Appellant lists a number of bases to support his claim that a variety of the conditions imposed were unreasonable, all of which we have considered. After reviewing the record, we find the trial court's decision ordering him to "remain verifiably employed for a minimum of 40 hours a week" unreasonable and an abuse of discretion. At the time of sentencing, appellant was approximately 70 years old and had been retired for over 13 years. As a result, in light of appellant's advancing age and retirement status, his current ability to obtain gainful employment, if any, is severely limited. Accordingly, on this basis only, and without expressing an opinion as to the other community control sanctions, appellant's third assignment of error is sustained and this cause is remanded to the trial court with instructions to reconsider the remaining community control sanctions imposed and to sentence appellant accordingly.

{¶18} Judgment affirmed in part, reversed in part, and remanded for further proceedings.

BRESSLER, P.J., and RINGLAND, J., concur.

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