

[Cite as *State v. Ross*, 2009-Ohio-4720.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 92461**

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**STATE OF OHIO**

PLAINTIFF-APPELLANT

vs.

**ERIC ROSS**

DEFENDANT-APPELLEE

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**JUDGMENT:**  
**VACATED AND REMANDED**

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-515149

**BEFORE:** Sweeney, J., Kilbane, P.J., and Jones, J.

**RELEASED:**

September 10, 2009

**JOURNALIZED:  
ATTORNEYS FOR APPELLANT**

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

JAMES J. SWEENEY, J.:

{¶ 1} The appellant, the State of Ohio, appeals the trial court's imposing a sentence of community control without ordering or considering the required presentence investigation report (PSI). For the reasons that follow, we vacate the sentence of appellee Eric Ross and remand the matter for resentencing.

{¶ 2} On November 6, 2008, Ross pled guilty to one count of attempted theft in office, a felony of the fifth degree. Ross requested that a PSI report be prepared prior to sentencing. The trial court, however, after finding it had a history of Ross's prior convictions, concluded that it could proceed directly to sentencing without waiting for a PSI report. The State objected to the trial court sentencing Ross without a PSI report. The trial court overruled the State's objection and sentenced Ross to one day in jail, credit for one day served, with \$100 court costs, and a \$150 fine.

**“I. The trial court erred in imposing community control sanctions without ordering a pre-sentence investigation report in violation of Crim.R. 32.2 and R.C. 2951.03.”**

{¶ 3} In its first assignment of error, the State maintains that the trial court erred by sentencing Ross to a combination of a community control sanction and credit for time served in local jail, without ordering and considering a PSI report, in strict contravention of Crim.R. 32.2 and R.C. 2951.03. We agree.

{¶ 4} Crim.R. 32.2 states “[i]n felony cases the court shall, and in misdemeanor cases the court may, order a presentence investigation and report before imposing community control sanctions or granting probation.” Likewise, R.C. 2951.03(A)(1) provides in part “[n]o person who has been convicted of or pleaded guilty to a felony shall be placed under a community control sanction until a written presentence investigation report has been considered by the court. \* \* \*.”

{¶ 5} In the instant case, the record demonstrates the court failed to prescribe to the mandates of Crim.R. 32.2 and R.C. 2951.03(A)(1). Ross pled guilty to one count of attempted theft in office in violation of R.C. 2923.02 and 2921.41(A)(1). This offense is a felony of the fifth degree punishable by six to twelve months in prison. R.C. 2929.14(A)(5). Thus, the trial court was required to order and consider a presentence investigation report before imposing community control sanctions. See *State v. Pickett*, Cuyahoga App. No. 91343, 2009-Ohio-2127; *State v. Walker*, Cuyahoga App. No. 90692, 2008-Ohio-5123; *State v. Mitchell* (2001), 141 Ohio App.3d 770, discretionary appeal not allowed by 92 Ohio St.3d 1443; see, also, *State v. Preston*, 155 Ohio App.3d 367. The record demonstrates, however, that the court failed to do so.

{¶ 6} Because Ross pled guilty to a felony and because the trial court failed to comply with the mandates of Crim.R. 32.2 and R.C. 2951.03(A)(1),

we must vacate Ross's sentence and remand the matter for resentencing. Prior to resentencing, the trial court must order the preparation of a presentence investigation report if it intends to impose community control sanctions. Accordingly, the State's assignment of error is sustained. Ross's sentence is vacated, and the matter remanded for resentencing.

{¶ 7} Since the first assignment of error is dispositive, we find moot the second assignment of error, in which the State challenges the termination of community control sanctions before Ross had ever been supervised. App.R.12(A)(1)(c). Judgment vacated; matter remanded to the lower court for further proceedings consistent with this opinion.

It is, therefore, considered that said appellant recover of said appellee its costs herin.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

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JAMES J. SWEENEY, JUDGE

MARY EILEEN KILBANE, P.J., and  
LARRY A. JONES, J., CONCUR

