

[Cite as *State v. Peck*, 2009-Ohio-5845.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92374

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

RICKY PECK

DEFENDANT-APPELLEE

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-511394

BEFORE: Stewart, J., Rocco, P.J., and Blackmon, J.

RELEASED: November 5, 2009

JOURNALIZED: November 5, 2009

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ON RECONSIDERATION¹

¹The original announcement of decision, *State v. Peck*, Cuyahoga App. No. 92374, 2009-Ohio-4718, released September 10, 2009, is hereby vacated. This opinion, issued upon reconsideration, is the court's journalized decision in this appeal. See App.R. 22(C); see, also, S.Ct.Prac.R. II, Section 2(A)(1).

MELODY J. STEWART, J.:

{¶ 1} Defendant-appellee, Ricky Peck, pleaded guilty to one count of receiving stolen property, a fifth degree felony. The court sentenced Peck to a residential sanction of 45 days in the county jail and ordered him to make restitution to the victim in the amount of \$1,500. The state of Ohio appeals from this sentence pursuant to R.C. 2953.08(B)(2), arguing that the court 1) did not consider the appropriate statutory factors when imposing sentence, 2) should not have imposed a community control sanction without first obtaining a presentence investigation report, and 3) terminated community control sanctions before a “significant period of time” elapsed. We agree that the court had no authority to impose a community control sanction without first obtaining a presentence investigation report, so we reverse and remand for resentencing.

{¶ 2} 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.” Likewise, 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.”

{¶ 3} There is nothing in the record to show that a presentence investigation report had been prepared prior to sentencing, nor did the court make any reference to having considered a presentence investigation report during sentencing. The terms of R.C. 2951.03(A)(1) and Crim.R. 32.2 are mandatory, so the court had no authority to order a community control sanction absent compliance with the statute and rule. See *State v. Disanza*, Cuyahoga App. No. 92375, 2009-Ohio-5364, at ¶8; *State v. Pickett*, Cuyahoga App. No. 91343, 2009-Ohio-2127; *State v. Walker*, Cuyahoga App. No. 90692, 2008-Ohio-5123. We therefore sustain the state's second assignment of error and remand for resentencing. The remaining assignments of error are moot. See App.R. 12(A)(1)(c).

{¶ 4} This cause is reversed and remanded for proceedings consistent with this opinion.

It is ordered that the parties bear their own costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

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

MELODY J. STEWART, JUDGE

KENNETH A. ROCCO, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR