

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 108938
 v. :
 :
 CHRISTOPHER LENHART, :
 :
 Defendant-Appellant. :
 :

JOURNAL ENTRY AND OPINION

JUDGMENT: VACATED AND REMANDED
RELEASED AND JOURNALIZED: April 30, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-18-633531-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Yasmine M. Hasan, Assistant Prosecuting
Attorney, *for appellee*.

Christopher Lenhart, *pro se*.

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant Christopher Lenhart brings the instant appeal challenging the trial court's judgment finding him in violation of the terms of community control, terminating community-control sanctions, and imposing a three-year prison term. Appellant argues that the trial court failed to notify him of

the consequences of violating community control, imposed a void sentence that is contrary to law, and his due process rights were violated because the state failed to notify him of a change in law that affected his registration obligations. After a thorough review of the record and law, this court vacates appellant's sentence and remands the matter for further proceedings consistent with this opinion.

I. Factual and Procedural History

{¶ 2} In Cuyahoga C.P. No. CR-97-356977-ZA, appellant was convicted in February 1998 of rape, in violation of R.C. 2907.02, and sentenced to a prison term of seven years. On March 10, 1998, the trial court held a hearing pursuant to R.C. 2950.09(B), and classified appellant as a sexually oriented offender and advised appellant of his registration and verification requirements pursuant to R.C. 2950.03. The trial court ordered appellant to register annually for ten years. Appellant's convictions and sentence were affirmed on direct appeal. *State v. Lenhart*, 8th Dist. Cuyahoga No. 74332, 1999 Ohio App. LEXIS 3379 (July 22, 1999).

{¶ 3} After completing his seven-year sentence, appellant registered as a sexually oriented offender with the Cuyahoga County Sheriff's Office in October 2005.

{¶ 4} In Cuyahoga C.P. No. CR-12-558615-A, appellant pled guilty in March 2012 to violating R.C. 2950.05, governing notice of change of address. Appellant was sentenced to three years in prison.

{¶ 5} On August 19, 2018, appellant completed service of his aggregate five-year prison sentence in Cuyahoga C.P. Nos. CR-12-558148-A, CR-12-559178-A, and CR-12-558615-A. Appellant was on postrelease control with the Ohio Adult Parole Authority (“APA”). He requested a transfer from the APA’s Lorain office to the Cleveland office on August 27, 2018. During a meeting with his parole officer on September 7, 2018, appellant was advised to register with the Cuyahoga County Sheriff’s Office. He failed to do so, and was no longer reporting to the APA.

{¶ 6} Based on appellant’s failure to register with the Cuyahoga County Sheriff’s Office, appellant was arrested on October 10, 2018. On October 18, 2018, a Cuyahoga County Grand Jury returned an indictment charging appellant with failure to register, a third-degree felony in violation of R.C. 2950.04(E), with a furthermore clause that alleged that appellant had a prior conviction for violating the terms set forth in R.C. 2950.04, 2950.041, 2950.05, or 2950.06. Appellant pled not guilty during his December 7, 2018 arraignment.

{¶ 7} The parties reached a plea agreement. On March 4, 2019, appellant pled guilty to the failure to register count, and the state deleted the furthermore clause. The trial court ordered a presentence investigation report and set the matter for sentencing.

{¶ 8} On March 27, 2019, the trial court imposed a suspended three-year prison sentence, and sentenced appellant to community-control sanctions for a term of two years. The trial court’s sentencing journal entry provides, in relevant part, “violation of the terms and conditions [of community control] may result in more

restrictive sanctions, or a prison term of 36 month(s) as approved by law.” The trial court’s sentencing journal entry was filed on April 3, 2019.

{¶ 9} A *capias* was issued for appellant on June 7, 2019, and he was taken into custody on July 18, 2019, on an alleged community-control violation. On July 24, 2019, the trial court held a hearing on appellant’s alleged community-control violation. Defense counsel waived probable cause and admitted that appellant violated the terms of community control by failing to report to the probation department after April 19, 2019.

{¶ 10} The trial court found appellant to be in violation of the terms of his community-control sanctions and terminated community control. The trial court sentenced appellant to a prison term of three years. The trial court’s judgment entry was journalized on July 29, 2019.

{¶ 11} On August 28, 2019, appellant filed the instant appeal challenging the trial court’s July 29, 2019 judgment. He assigns three errors for review:

I. The trial court committed plain error by failing to statutorily comply with R.C. 2929.19(B)(4) and R.C. 2929.15(B) by not notifying [appellant] of the consequences for violating community control sanction[s]. [The Fourteenth Amendment to the United States Constitution], Denied [appellant] due process.

II. The trial court abused its discretion when it entered [appellant] into a void sentence, which is contrary to law which denied [appellant] due process. [The Fourteenth Amendment to the United States Constitution].

III. The trial court lacked jurisdiction in the above case because the state of Ohio failed to put [appellant] on notice as to a[n] amendment of law to his registration duties which denied [appellant] due process. [The Fourteenth Amendment to the United States Constitution].

II. Law and Analysis

A. R.C. 2929.19 and 2929.15

{¶ 12} In his first assignment of error, appellant argues that the trial court failed to comply with R.C. 2929.19(B)(4) and 2929.15(B) in informing him of the consequences of violating community-control sanctions.

{¶ 13} R.C. 2929.19(B)(4) provides,

If the sentencing court determines at the sentencing hearing that a community control sanction should be imposed and the court is not prohibited from imposing a community control sanction, the court shall impose a community control sanction. The court shall notify the offender that, if the conditions of the sanction are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to section 2929.14 of the Revised Code.

{¶ 14} In *State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837, the Ohio Supreme Court addressed a trial court's obligations under R.C. 2929.19(B)(4):¹

[P]ursuant to R.C. 2929.19(B)([4]) and 2929.15(B), a trial court sentencing an offender to a community control sanction must, at the time of the sentencing, notify the offender of the specific prison term that may be imposed for a violation of the conditions of the sanction, as a prerequisite to imposing a prison term on the offender for a subsequent violation.

¹ The *Brooks* court interpreted former analogous R.C. 2929.19(B)(5).

Id. at ¶ 29. In addition to notifying the offender at the time of sentencing, such “[n]otification must also be contained in the accompanying sentencing journal entry.” *State v. Goforth*, 8th Dist. Cuyahoga No. 90653, 2008-Ohio-5596, ¶ 20, quoting *State v. McWilliams*, 9th Dist. Summit No. 22359, 2005-Ohio-2148.

{¶ 15} In the instant matter, appellant argues that the trial court failed to comply with R.C. 2929.19(B)(4) because the court did not notify appellant of the specific prison term that may be imposed for a violation of community control. In support of his argument, appellant directs this court to *State v. Brown*, 8th Dist. Cuyahoga Nos. 105211 and 106278, 2018-Ohio-88.

{¶ 16} In *Brown*, the trial court imposed a suspended prison term of 30 months and placed Brown on community control for five years. *Id.* at ¶ 4. Brown violated the terms of his community control, and the trial court imposed the previously suspended 30-month prison term. On appeal, Brown argued, and the state conceded, that the trial court failed to properly notify Brown of the potential prison term he faced for violating the terms of community control — either during the sentencing hearing or in the sentencing journal entry. As a result, this court held that the trial court erred in imposing a term of imprisonment for Brown’s violation of community control. *Id.* at ¶ 11.

{¶ 17} In the instant matter, in imposing appellant’s sentence, the trial court provided the following advisement to appellant:

THE COURT: Failure to register is a felony of the third degree. The sentence of the Court is [\$]250 and costs, 36 months at the Lorain

Correctional Institution. For today that sentence will be suspended. You'll be placed on probation for two years.

Sir, upon your release from — okay. If you decide to commit a violation of these terms, you can be sentenced to prison. Do you understand?

(Tr. 11.) Appellant answered affirmatively, confirming the he understood the trial court's advisement.

{¶ 18} Here, like *Brown*, 8th Dist. Cuyahoga Nos. 105211 and 106278, 2018-Ohio-88, the trial court imposed a suspended three-year prison term during the March 27, 2019 sentencing hearing. Subsequently, the trial court advised appellant that he “can be sentenced to prison” if he violates the terms of the community-control sanctions.

{¶ 19} Like *Brown*, the trial court did not specify the prison term that may be imposed in the event that appellant violates community control. Nor did the trial court specify that the suspended three-year prison term would be ordered into execution if appellant violated community control.

{¶ 20} The trial court did specify the prison term that may be imposed in its April 3, 2019 judgment entry. The judgment entry provides, in relevant part, “defendant is sentenced to 2 year(s) of community control/probation * * * violation of the terms and conditions may result in more restrictive sanctions, or a prison term of 36 month(s) as approved by law.” However, R.C. 2929.19(B)(4) requires notification at the sentencing hearing and in the corresponding sentencing journal entry. *Goforth*, 8th Dist. Cuyahoga No. 90653, 2008-Ohio-5596, at ¶ 20, citing *McWilliams*, 9th Dist. Summit No. 22359, 2005-Ohio-2148.

{¶ 21} In *State v. Duncan*, 2016-Ohio-5559, 61 N.E.3d 61 (12th Dist.), the Twelfth District explained the distinction between a suspended prison sentence and the notification required by R.C. 2929.19(B)(4):

the purpose of the community control statute is not to sentence a defendant to a specific prison term and then suspend or reserve that prison term. [*State v. Berry*, 2012-Ohio-4660, 980 N.E.2d 1087, ¶ 25 (3d Dist.)]. Rather, the purpose of the statute is to *notify* the defendant of a specific prison term that *may be imposed* if the defendant violates community control. *Brooks*, [103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837,] at ¶ 23 (R.C. 2929.19[(B)(4)] notification puts the defendant on notice of the specific prison term he [or she] faces if he [or she] violates community control); *Berry* at ¶ 25. In other words, when a defendant is sentenced to community control on a count of conviction and notified at that time of the specific prison term he faces should he violate his community control, the defendant is only sentenced to community control sanctions and is not sentenced to that prison term. *Id.*; *Brooks* at ¶ 21 (while R.C. 2929.19[(B)(4)] requires the judge to state the specific prison term the offender faces in the event of a community control violation, that term is not necessarily what the offender will receive if a violation occurs).

(Emphasis sic.) *Duncan* at ¶ 21.

{¶ 22} In this case, the trial court imposed the three-year prison term and then suspended the sentence. The trial court did not notify appellant of the specific prison term that may be imposed if he violates community control.

{¶ 23} As noted above, when a trial court imposes a community-control sanction, the trial court must notify the defendant at the sentencing hearing “of *the specific prison term* that may be imposed *for a violation of the conditions of the sanction*[.]” (Emphasis added.) *Brooks* at ¶ 29. The *Brooks* court explained, “R.C. 2929.19(B)([4])’s ‘specific term’ requirement is clear on its face, and the General Assembly’s direction that, at the time of the initial sentencing to community control,

the offender should be informed of *the definite prison term that awaits if community control is violated* is totally consistent with the overall scheme of R.C. Chapter 2929.” (Emphasis added.) *Id.* at ¶ 25. The purpose behind the R.C. 2929.19(B)(4) notification is “to make the offender aware before a violation of the specific prison term that he or she will face for a violation.” (Emphasis deleted.) *Id.* at ¶ 33. The R.C. 2929.19(B)(4) notification should be reviewed for strict compliance rather than substantial compliance.² *Id.* at ¶ 24.

{¶ 24} In this case, the trial court failed to strictly comply with R.C. 2929.19(B)(4). The trial court imposed and suspended the three-year prison term *for the third-degree felony failure to register offense*. The trial court did not reference the suspended three-year sentence in notifying appellant of the specific prison term he could face if he violated community control. The trial court notified appellant that he may be sentenced to prison *for violating community control*, but did not specify the definite prison term that he will face *for a violation of community control*. Accordingly, the record reflects that the trial court did not comply with R.C. 2929.19(B)(4)’s “specific term” requirement by notifying appellant during the sentencing hearing of the specific prison term he could face if he violated community control.

² The court explained that there are certain situations where strict compliance with R.C. 2929.19(B)(4) would not necessarily be required. *Id.* at ¶ 32. For instance, strict compliance would not be required if a trial court notifies a defendant during a change-of-plea hearing of the maximum prison term he or she is facing, and then the trial court notifies the defendant at the sentencing hearing that it will impose the maximum prison term if the defendant violates community control. This exception to requiring strict compliance is inapplicable in this case.

{¶ 25} As noted above, the trial court’s sentencing journal entry, filed on April 3, 2019, identified the specific prison term that appellant may face if he violates community control. The judgment entry provided, in relevant part, “violation of the terms and conditions [of community control] may result in more restrictive sanctions, or a prison term of 36 month(s) as approved by law.” In *Brooks*, the Ohio Supreme Court held that the trial court must comply with the statute and provide the R.C. 2929.19(B)(4) notification during the sentencing hearing, and that notification set forth in a judgment entry issued after the sentencing hearing does not comply with R.C. 2929.19(B)(4). *Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837, at ¶ 17-18.

{¶ 26} Based on the foregoing analysis, we find that the trial court erred in imposing a term of imprisonment for appellant’s community-control violation based on its failure to make the necessary advisements under R.C. 2929.19(B)(4) during the sentencing hearing.

{¶ 27} If a defendant violates the terms of community-control sanctions, “R.C. 2929.15(B) provides the trial court a great deal of latitude in sentencing the offender.” *Brooks* at ¶ 20. R.C. 2929.15(B) authorizes a trial court to (1) lengthen the term of the community-control sanction; (2) impose a more restrictive community-control sanction; or (3) impose a prison term on the offender, provided that the prison term is within the range of prison terms available for the offense for which community control had been imposed and the term does not exceed the

prison term specified in the notice provided to the offender at the original sentencing hearing. *See Brooks* at paragraph two of the syllabus.

{¶ 28} However, “when a trial court judge gives no notice whatsoever * * * to an offender being sentenced to community control of any prison term that may be imposed if the conditions of community control are violated, a prison term may not be imposed for violation of the conditions.” *Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837, at ¶ 8. The court explained,

When a trial court makes an error in sentencing a defendant, the usual procedure is for an appellate court to remand to the trial court for resentencing. In community control sentencing cases in which the trial court failed to comply with R.C. 2929.19(B)([4]), however, a straight remand can cause problems. Due to the particular nature of community control, any error in notification cannot be rectified by “renotifying” the offender. When an offender violates community control conditions and that offender was not properly notified of the specific term that would be imposed, an after-the-fact reimposition of community control would totally frustrate the purpose behind R.C. 2929.19(B)([4]) notification, which is to make the offender aware before a violation of the specific prison term that he or she will face for a violation. Consequently, where no such notification was supplied, and the offender then appeals after a prison term is imposed under R.C. 2929.15(B), the matter must be remanded to the trial court for a resentencing under that provision with a prison term not an option.

(Emphasis deleted.) *Id.* at ¶ 33.

{¶ 29} In the instant matter, appellant’s direct appeal from the imposition of a prison term pursuant to R.C. 2929.15(B), we find that the trial court is prohibited from imposing a prison term for appellant’s violation based on the trial court’s failure to give the requisite notification under R.C. 2929.19(B)(4) during the original sentencing hearing. *See Brown*, 8th Dist. Cuyahoga Nos. 105211 and 106278, 2018-

Ohio-88, at ¶ 13. Accordingly, we vacate appellant's three-year prison term imposed for the community-control violation and remand the matter for resentencing.

{¶ 30} On remand, as noted above, the trial court is prohibited from imposing a prison term for the violation. The trial court must choose between the remaining options under R.C. 2929.15(B): (1) imposing a longer term of community-control sanctions if the total time under community-control sanctions does not exceed the five-year limit specified in R.C. 2929.15(A), or (2) imposing a more restrictive sanction. *Brown* at ¶ 13, citing *Brooks* at ¶ 33, fn. 2, *State v. Harper*, 8th Dist. Cuyahoga No. 95718, 2011-Ohio-2041, ¶ 6, and *State v. Hayes*, 8th Dist. Cuyahoga No. 87642, 2006-Ohio-5924, ¶ 7.

{¶ 31} Appellant's first assignment of error is sustained. Our resolution of appellant's first assignment of error renders his second assignment of error, challenging the trial court's three-year prison term, moot.

B. Sexually Oriented Offender Classification

{¶ 32} In his third assignment of error, appellant appears to argue that the trial court lacked jurisdiction over the proceedings because his sexually oriented offender classification was invalid based on the state's failure to notify appellant of the enactment of the Adam Walsh Child Protection and Safety Act that was intended to supplant Megan's Law.

{¶ 33} After reviewing the record, we find that appellant's third assignment of error is untimely and barred by res judicata.

{¶ 34} Generally, “a party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal * * * within 30 days of that entry.” App.R. 4(A)(1); *see Wells Fargo Bank, N.A. v. Fields*, 2015-Ohio-4580, 48 N.E.3d 971, ¶ 14 (8th Dist.). The trial court’s April 3, 2019 sentencing journal entry was a final appealable order. Pursuant to App.R. 4(A)(1), appellant should have raised his argument, that he was misled about a change in law regarding reporting or classification, in an appeal from the trial court’s April 3, 2019 sentencing journal entry. Appellant did not file his notice of appeal until August 28, 2019. Accordingly, appellant’s third assignment of error is untimely.

{¶ 35} Furthermore, appellant’s third assignment of error is barred by res judicata. Appellant has repeatedly challenged the validity of his classification, filing petitions in CR-97-356977-ZA in August 2009, March 2010, and August 2015. Appellant filed a federal habeas corpus petition in November 2015 challenging the constitutionality of the Adam Walsh Act and asserting equal protection and due process violations. *Lenhart v. Erdos*, N.D. Ohio No. 1:15 CV 2440, 2017 U.S. Dist. LEXIS 27035 (Feb. 6, 2017).

{¶ 36} Appellant recently attacked the validity of his sexually oriented offender classification, filing an application to reopen his direct appeal in 1999. *State v. Lenhart*, 8th Dist. Cuyahoga No. 74332, 2019-Ohio-1113. This court denied appellant’s application to reopen, concluding that appellant failed to demonstrate good cause for his untimely filing, filed nearly 20 years after his convictions and

sentence were affirmed on direct appeal in *Lenhart*, 8th Dist. Cuyahoga No. 74332, 1999 Ohio App. LEXIS 3379.

{¶ 37} For all of the foregoing reasons, appellant's third assignment of error is overruled.

III. Conclusion

{¶ 38} After thoroughly reviewing the record, we find that the trial court failed to notify appellant during the March 27, 2019 sentencing hearing of the specific prison term that would be imposed if he violated the conditions of his community-control sanctions. Accordingly, the trial court erred in imposing a term of imprisonment for the community-control violation based on its failure to make the necessary advisements under R.C. 2929.19(B)(4). Appellant's three-year prison sentence is vacated, and the matter is remanded to the trial court for resentencing consistent with this opinion.

{¶ 39} Judgment vacated and remanded for resentencing.

It is ordered that appellant recover of said appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. Case remanded to the trial court for resentencing.

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

FRANK D. CELEBREZZE, JR., JUDGE

MICHELLE J. SHEEHAN, J., CONCURS;
SEAN C. GALLAGHER, P.J., CONCURS WITH SEPARATE CONCURRING
OPINION

SEAN C. GALLAGHER, P.J., CONCURRING:

{¶ 40} I fully concur with the majority opinion in this case. I write separately to further address the trial court’s failure to inform appellant of the consequences of violating community-control sanctions at the time the sentence was imposed in March 2019.

{¶ 41} At the sentencing hearing, the trial court indicated that it was imposing a three-year suspended prison term and placed appellant on a two-year term of community control. The trial court then informed appellant that “[i]f you decide to commit a violation of these terms, you can be sentenced to prison.” The trial court’s journal entry differed from what was stated on the record and imposed a two-year term of community control with notification that “violation of the terms and conditions may result in more restrictive sanctions, or a prison term of 36 month(s) as approved by law.”

{¶ 42} First, insofar as the trial court stated on the record that it was imposing a suspended prison term, it is well settled that “current felony sentencing

statutes * * * require trial courts to impose either a prison term or community control sanction on each count.” *Duncan*, 2016-Ohio-5559, 61 N.E.3d 61, at ¶ 26, quoting *State v. Anderson*, 143 Ohio St.3d 173, 2015-Ohio-2089, 35 N.E.3d 512, ¶ 23. Moreover, “[s]plit sentences are prohibited in Ohio” and a court generally cannot impose both a prison term and a community-control sanction for a particular felony offense. *State v. Paige*, 153 Ohio St.3d 214, 2018-Ohio-813, 103 N.E.3d 800, ¶ 6. Although the trial court’s sentencing entry differed from what was stated in open court, no direct appeal was taken.

{¶ 43} Next, a trial court must provide the defendant notice at the sentencing hearing of the specific prison term that may be imposed for violating a community-control sanction. *Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837, at ¶ 29. To the extent the state argues that the suspended prison term constituted notice of the term that could be imposed for a violation of community control, this is simply not the case. At the sentencing hearing, the trial court imposed the three-year suspended sentence on the underlying offense. It is well established that any penalty imposed for violating community control is a punishment for that violation, as opposed to punishment for the original underlying offense. *Duncan* at ¶ 22, citing *State v. Richter*, 12th Dist. Clermont No. CA2014-06-040, 2014-Ohio-5396, ¶ 8.

{¶ 44} As the Supreme Court of Ohio held in *Brooks*, “a trial court sentencing an offender to a community control sanction must, at the time of the sentencing, notify the offender of the specific prison term that may be imposed for a violation of the conditions of the sanction[.]” *Id.* at ¶ 29. Here, the trial court simply informed

appellant that “[i]f you decide to commit a violation of these terms, you can be sentenced to prison.” Appellant was never notified of the specific prison term that could be imposed if he violated community control.

{¶ 45} I agree with the majority that this case is similar to *Brown*, 8th Dist. Cuyahoga Nos. 105211 and 106278, 2018-Ohio-88, in which the trial court attempted to impose a suspended sentence after the defendant violated community control but had failed to advise the defendant of the term of imprisonment that could be imposed for violating community control at the sentencing hearing. In *Brown*, this court determined that the trial court’s failure to give the proper notification prohibited it from sentencing the defendant to a prison term as a result of his community-control sanction violations. *Id.* at ¶ 13. The result reached by the majority is consistent with *Brown*.

{¶ 46} Accordingly, I concur with the majority decision on the first assignment of error. I also concur with the remainder of the majority decision.