

[Cite as *State v. Nagel*, 2009-Ohio-5249.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
CHRISTOPHER D. NAGEL	:	Case No. 09CAA030025
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 05CRI100536

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: September 30, 2009

APPEARANCES:

For Plaintiff-Appellee

MARIANNE T. HEMMETER
140 North Sandusky Street
Delaware, OH 43015

For Defendant-Appellant

DAVID H. BIRCH
286 South Liberty Street
Powell, OH 43065

Farmer, P.J.

{¶1} On October 28, 2005, the Delaware County Grand Jury indicted appellant, Christopher Nagel, on two counts of aggravated vehicular assault in violation of R.C. 2903.08(A)(1)(a), second degree felonies, and two counts of vehicular assault in violation of R.C. 2903.08(A)(2)(b), third degree felonies. On April 6, 2006, appellant pled no contest to the two vehicular assault counts (Counts 3 and 4). The two remaining counts, Counts 1 and 2, were dismissed.

{¶2} By judgment entry filed May 15, 2006, the trial court sentenced appellant to two years on Count 3 and five years of community control on Count 4.

{¶3} On January 20, 2009, appellee, the state of Ohio, filed a motion to suspend community control sanctions, as appellant had violated numerous conditions. A hearing was held on February 23, 2009. By judgment entry filed February 26, 2009, the trial court found appellant was indeed in violation, revoked his community control, and sentenced appellant to four years in prison on Count 4.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶5} "THE TRIAL COURT ERRED BY SENTENCING THE APPELLANT TO A SENTENCE OF FOUR YEARS ON THE COMMUNITY CONTROL VIOLATION PORTION OF A SPLIT SENTENCE."

I

{¶6} Appellant claims the trial court erred in sentencing him to four years on the community control portion of his split sentence. We disagree.

{¶7} Following the Supreme Court of Ohio's ruling in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, appellate courts must apply a two-step approach in reviewing trial court sentencing decisions. "First, they must examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court's decision shall be reviewed under an abuse-of-discretion standard." *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶4. In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983) 5 Ohio St.3d 217.

{¶8} By judgment entry on sentence filed May 15, 2006, appellant was granted community control as part of a plea agreement for a split sentence:

{¶9} "****Since the Defendant has ties to the Central Ohio area and will be returning upon his release from the Ohio Department of Rehabilitation and Corrections and because the Court feels that both the Defendant and the public will benefit and be best protected if the Court imposes Community Control Sanctions to commence after the Defendant has been punished by an appropriate prison sentence, the Court ORDERS a SPLIT SENTENCE with Community Control Sanctions as to Count Four of the Indictment, to commence upon the Defendant's completion of the prison sentence imposed in Count Three.

{¶10} "It was ORDERED and ADJUDGED by the Court that the Defendant, Christopher D. Nagel, as to the crime of Vehicular Assault, as set forth in Count Three of the Indictment herein filed, the same being in violation of 2903.08(A)(2)(b) of the Ohio

Revised Code and being a Felony of the Third Degree, be imprisoned and confined at the Correctional Reception Center at Orient, Ohio, for a stated prison term of Two (2) years and pay the costs of the prosecution of this case, for which execution was awarded. Said sentence to be served consecutive to any other sentences currently being served.

{¶11} ****

{¶12} "It was further ORDERED and ADJUDGED by the Court that the Defendant, Christopher D. Nagel, as to the crime of Vehicular Assault as set forth in Count Four of the Indictment herein, filed, the same being in violation of Section 2903.08(A)(2)(b) of the Ohio Revised Code and being in a Felony of the Third Degree, be sentenced to the following Community Control Sanctions, as authorized by Sections 2929.17 and 2929.18 of the Ohio Revised Code, and under the general control and supervision of the Delaware County Adult Court Services, as authorized by Section 2929.15(A)(2)(a) of the Ohio Revised Code, for a period not to exceed Five (5) years commencing upon his release from the Ohio Department of Rehabilitation and Corrections after he has served the sentence imposed in Count Three[.]"

{¶13} ****

{¶14} "It was further ORDERED that a violation of this Sentence will lead to a longer and more restrictive Sanction or Sanctions, and a prison term of Five (5) years at the Correction Reception Center."

{¶15} Clearly the trial court complied with the dictates of *State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, wherein the Supreme Court of Ohio held the following at paragraph two of the syllabus:

{¶16} "Pursuant to R.C. 2929.19(B)(5) 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."

{¶17} Appellant started serving his community control sentence on Count 4 following his release from prison on Count 3. On January 20, 2009, appellee filed a motion to suspend community control sanctions, as appellant had violated at least eight conditions. A hearing was held on February 23, 2009. During the hearing, appellant freely admitted to violating his community control. T. at 7-8. These violations included consuming alcoholic beverages, having an arrearage on child support, and violating curfew. T. at 5-8. By judgment entry filed February 26, 2009, the trial court found appellant had indeed violated his community control sentence:

{¶18} "**At this hearing** the Defendant admitted, and the Court found, that the Defendant was in violation of Sanction Nos. 7 and 14 and Special Condition of Probation No. 6 as earlier entered by this Court on May 10, 2006. The State of Ohio withdrew the alleged violations in Sanction Nos. 3, 8, 15 and 16 and General Terms of Probation No. 4."

{¶19} The trial court revoked appellant's community control sentence and sentenced him to four years in prison on Count 4:

{¶20} "It was then ORDERED and ADJUDGED by the Court that the Defendant, CHRISTOPHER D. NAGEL, as to the crime of Aggravated Vehicular Assault, as set forth in Court Four of the indictment, herein filed and being in violation of Section

2903.08(A)(2)(b) of the Ohio Revised Code, said crime being a Felony of the Third Degree, be imprisoned and confined at the Correctional Reception Center at Orient, Ohio, for a definite term of four (4) years and to pay the costs of the prosecution of this case, for which execution was awarded. The Defendant shall receive jail-time credit of twenty-five (25) days as of February 23, 2009."

{¶21} Count 4 was a felony in the third degree. Pursuant to 2929.14(A)(3), felonies in the third degree are punishable by "one, two, three, four, or five years." Clearly a four year prison term was not contrary to law.

{¶22} Appellant not only got the benefit of his plea agreement, but the trial court sentenced him to one less year than had originally been stated in the May 15, 2006 judgment entry on sentence. Appellant admitted to violating his community control.

{¶23} Upon review, we do not find any abuse of discretion by the trial court.

{¶24} The sole assignment of error is denied.

{¶25} The judgment of the Court of Common Pleas of Delaware County, Ohio is hereby affirmed.

By Farmer, P.J.

Hoffman, J. and

Wise, J. concur.

S/ Sheila G. Farmer_____

s/ William B. Hoffman_____

s/ John W. Wise_____

JUDGES

SGF/sg 0918

IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
CHRISTOPHER D. NAGEL	:	
	:	
Defendant-Appellant	:	CASE NO. 09CAA030025

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Delaware County, Ohio is affirmed. Costs to appellant.

S/ Sheila G. Farmer_____

s/ William B. Hoffman_____

s/ John W. Wise_____

JUDGES