[Cite as *State v. Croskey*, 2014-Ohio-4663.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellant	:	Hon. Patricia A. Delaney, J.
	:	Hon. Craig R. Baldwin, J.
	:	
-vs-	:	
	:	
ANTONIO CROSKEY	:	Case No. 14CA41
	:	
	:	
Defendant - Appellee	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Richland County Court of Common Pleas, Case Nos. 2007-CR-841H and 2008-CR-117H
JUDGMENT:	Reversed and Remanded
DATE OF JUDGMENT:	October 15, 2014

APPEARANCES:

For Plaintiff-Appellant	For Defendant-Appellee
JAMES J. MAYER, JR. Prosecuting Attorney	DALE MUSILLI 105 Sturges Avenue Mansfield, OH 44903
By: JILL M. COCHRAN Assistant Prosecuting Attorney 38 South Park Street Mansfield, OH 44902	

Baldwin, J.

{¶1} Plaintiff-appellant State of Ohio appeals from the April 23, 2014 Judgment of the Richland County Court of Common Pleas. Defendant-appellee is Antonio Croskey.

STATEMENT OF THE FACTS AND CASE

{¶2} On November 7, 2007, the Richland County Grand Jury indicted appellee on one count of possession of drugs in violation of R.C. 2925.11, a felony of the second degree, in Case No. 2007 CR 0841H. At his arraignment on December 4, 2007, appellee entered a plea of not guilty to the charge.

{¶3} On May 14, 2008, appellee withdrew his former not guilty plea and entered a plea of guilty to possession of drugs. Pursuant to a Sentencing Entry filed on May 19, 2008, appellee was sentenced to two (2) years in prison. The trial court, in its Entry, ordered that appellee's sentence be served consecutively to the two (2) year sentence that was imposed in 2008 CR 0117H for drug possession, for an aggregate sentence of four (4) years. The trial court also fined appellee $7,500.00 and ordered that his driver's license be suspended of a period of 12 months. The trial court later suspended the fine.

{¶4} On the same date, the trial court, as memorialized in a Sentencing Entry filed in Case No. 2008 CR 0117H, sentenced appellee to two (2) years on Count 1 (possession of drugs) and suspended appellee's two (2) year sentence on Count 2 (failure to comply with order or signal of police officer). Appellee was sentenced to three (3) years of community control sanctions on the failure to comply charge, to be served after his release from prison. The trial court ordered that appellee's sentences in

such case be served consecutively "with Count 2 being suspended and consecutive to 07-CR-234 and 07-CR-841H." Thereafter, on December 5, 2012, the trial court issued an Amended Sentencing Entry in Case No. 2008 CR 117H. The trial court, in such Entry, amended appellee's sentence to add a stated prison term of two (2) years for violation of the community control sanctions.

{¶5} After appellee violated the conditions of his community control in Case No. 2008 CR 0117H, the trial court, as memorialized in a Journal Entry filed on October 24, 2013, sentenced appellee to two (2) years in prison on Count 2 and ordered that the sentence be served consecutively to appellee's two (2) year sentence on Count 1, which the trial court indicated appellee had previously served.

{¶6} Thereafter, on January 30, 2014, appellant filed a Motion to Enforce Judgment in Case Nos. 2007 CR 841H and 2008 CR 117H. Appellant, in its motion, asserted that it had contacted the Ohio Department of Corrections and learned that appellee had entered prison on May 20, 2008 under Case No. 2007 CR 0234 and was incarcerated only on that case and that the"prison system had no record of appellee ever serving the time that was ordered in case number 07-CR-841 or Count 1 of case number 08-CR-117H, two years mandatory for each case consecutive." Appellant argued that appellee was to serve at least four years mandatory in prison and had served only two years. Appellant requested that the sentences in Case Nos. 2007 CR 841H and 2008 CR 117H be executed.

{¶7} The trial court, as memorialized in a Judgment Entry filed in Case Nos. 2007 CR 0841H and 2008 CR 0117H on January 30, 2014, ordered the Ohio

Department of Corrections to execute against appellee the previously ordered prison terms as sentenced in both cases.

{¶8} Subsequently, the trial court, as memorialized in a Judgment of Execution of Sentence filed on April 23, 2014 in the same cases, stated as follows:

> It has been brought to this Court's attention that the Defendant, Antonio Croskey, was sentenced to two years mandatory minimum in case number 2008-CR-117 and two years mandatory minimum in case number 2007-CR-841, to run consecutively, for a total sentence of four years. This sentence shall run concurrent to any other prison term the defendant is to serve.

{¶9} Appellee filed an appeal from the trial court 's October 24, 2013 Journal Entry in Case No. 2008 CR 0117H. Pursuant to an Opinion filed on June 16, 2014 in *State v. Croskey*, 5th Dist. Richland No. 13CA102, 2014-Ohio-2608, this Court vacated the trial court's imposition of the two year prison sentence in its October 24, 2013 Journal Entry. The trial court had imposed such sentence after appellee violated his community control.

{¶10} Appellant now appeals from the trial court's April 23, 2014 Judgment, raising the following assignment of error on appeal:

{¶11} THE TRIAL COURT ERRED WHEN IT SUA SPONTE ORDERED THAT THE FOUR YEAR MANDATORY SENTENCES IN CASES NUMBERED 2007-CR-841 AND 2008-CR-117 BE SERVED CONCURRENT TO THE TWO YEAR SENTENCE THAT THE APPELLEE WAS SERVING AT THE TIME OF THE ORDER IN THIS

CASE AS THE TRIAL COURT DID NOT HAVE THE AUTHORITY TO RECONSIDER ITS OWN VALID JUDGMENT.

I

{¶12} Appellant, in its sole assignment of error, argues that the trial court lacked authority to sua sponte issue its April 23, 2014 Judgment of Execution of Sentence.

{¶13} Appellant specifically contends that the trial court erred when it ordered that appellee's unserved two year mandatory minimum sentence in 2007 CR 841H and the two year mandatory minimum sentence in 2008 CR 117H, Count 1, be served concurrently to the time that appellee was serving at the time. Appellant contends that, at the time, appellee was serving time on Count 2 in Case No. 2008 CR 117H. Appellant argues that the trial court, in sentencing appellee on May 14, 2008, previously had ordered that Counts 1 and 2 in Case No. 2008 CR 117H were to run consecutively to each other and to Case No. 2007 CR 841H and that the trial court did not have authority to change its prior valid judgment.

{¶14} We find that the trial court violated the parties' due process rights when it, sua sponte, issued its April 23, 2014 Judgment. At its core, due process demands notice and an opportunity to be heard. *See Cleveland Bd. of Edn. v. Loudermill,* 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.E.2d 494 (1985). The parties were not given notice or an opportunity to be heard. There is no indication in the record as to what precipitated the issuance of the trial court's April 23, 2014 Judgment. We further note that the trial court's April 23, 2014 Judgment modified its earlier January 30, 2014, which was never appealed, by adding language to the effect that "[t]his sentence shall

run concurrent to any other prison term the defendant is to serve." The parties differ as to their interpretation of such language.

{¶15} Based on the foregoing, we find it necessary to sustain appellant's assignment of error and to reverse and remand this matter for further proceedings.

{¶16} Accordingly, the judgment of the Richland County Court of Common Pleas is reversed and this matter is remanded for further proceedings.

By: Baldwin, J.

Gwin, P.J. and

Delaney, J. concur.