

Delaney, J.

{¶1} Defendant-Appellant Charles T. Meade appeals the November 14, 2019 judgment entry of the Delaware County Court of Common Pleas. Plaintiff-Appellee is the State of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} On February 28, 2019, the Delaware County Grand Jury indicted Defendant-Appellant Charles T. Meade on 26 counts:

1. Engaging in a Pattern of Corrupt Activity, a first-degree felony in violation of R.C. 2923.32(A)(1);
2. Additional Prohibited Activities, a third-degree felony in violation of R.C. 1315.55(A)(1);
3. Receiving Stolen Property, a fourth-degree felony in violation of R.C. 2913.51(A); and
4. through 26. Theft, a fifth-degree felony in violation of R.C. 2913.02(A)(1).

The charges were based on the activities of Meade and accomplices in Licking County. Meade entered various home improvement stores such as Lowe's and stole merchandise. An accomplice waited in a vehicle outside the store to transport Meade and the stolen merchandise. Meade and the accomplices sold the stolen merchandise to local pawnshops and to others where the proceeds were used to purchase drugs. Meade entered a not guilty plea to the charges and the matter was set for a jury trial.

{¶3} On June 11, 2019, Meade withdrew his pleas of not guilty and entered a plea of guilty to 15 amended charges of Receiving Stolen Property, fifth-degree felonies in violation of R.C. 2913.51(A). The remaining charges were dismissed. The trial court

accepted Meade's guilty pleas, found him guilty of the charges, and set the matter for a sentencing hearing on June 14, 2019.

{¶4} The sentencing hearing proceeded on June 14, 2019. The trial court sentenced Meade to three years of community control. The community control sanctions included the following:

1. The Court imposes the Residential Community Control Sanctions of 90 days in the Delaware County Jail starting in four months. The Defendant must report no later than 12:00 P.M. on October 14, 2019 to being serving that 90-day sanction. However, the Defendant may file a motion no later than October 1, 2019 to let the Court know how he is doing. The Court may suspend some or even all of the 90 days if the Defendant has complied with the requirements of his community-control sentence.
2. The Defendant will be subject to a term of Intensive Supervision * * *. The term of Supervision must not be limited to, but may include, at the direction of the Officer assigned to the Defendant, a term of electronically monitored house arrest, a term of electronic monitoring without house arrest, a term of house arrest without electronic monitoring, abiding by a curfew and Voice Track Supervision. **The Defendant will be subject to GPS monitoring for the first 90 days after he completes his Licking County sentence. After those 90 days, the Defendant's supervising officer has the discretion to require the Defendant to wear a GPS monitor for as long as the officer chooses.**

3. The Defendant must refrain from any misconduct or violation of law. Specifically, he must commit no further felony or misdemeanor offenses, including minor misdemeanors and moving traffic violations.

* * *

6. The Defendant must not leave the State of Ohio without first securing the written consent of Adult Court Services.

7. The Defendant must not consume or possess any alcoholic beverages or enter any public or private business establishments where alcoholic beverages are sold or consumed, with the exception of grocery stores or restaurants.

* * *

12. The Defendant will have a curfew and must be home between the hours of 11:00 P.M. through 5:00 A.M.

* * *

16. The Defendant must not be near or enter into any Lowe's, Home Depot, or Menards stores.

* * *

18. Pursuant to Section 2929.18 of the Ohio Revised Code, the Defendant must pay restitution in full sum of \$41,600.52. Restitution must be paid to the office of the Clerk of Courts and disbursed to Lowe's (\$23,747.83) and Home Depot (\$17,852.69).

(June 14, 2019 Sentencing Entry).

{¶5} The trial court next imposed a reserved sentence of 12 months on each of the 15 counts, with Counts Four, Six, Eight, and Nine to run consecutive for a total sentence of 60 months.

{¶6} On July 16, 2019, the State filed a motion to suspend Meade's community control sanctions. The State alleged Meade was in violation the following community control sanctions:

1. General Terms of Community Control 4: "You are to report to the Delaware County Adult Court Services as instructed by any Adult Probation personnel."
2. Conditions and Terms of House Arrest/GPS 2: "The Defendant shall not attempt to tamper with the monitoring unit."
3. Conditions and Terms of House Arrest/GPS 3: "The Defendant shall acknowledge that it is his/her responsibility to charge the unit for a minimum of 3 hours per day. Failure to charge the unit will be considered a violation of the program."
4. Special Conditions of Community Control 1: "You are not to consume, have in your possession or in your residence or automobile any type of alcoholic beverage."

A warrant was issued for Meade's arrest.

{¶7} The trial court held a community control violation hearing on November 14, 2019. Luke Leatherman, Meade's probation officer with Adult Court Services, testified at the hearing as to the basis for filing the motion to suspend Meade's community control. On July 15, 2019, Leatherman received a phone call from the GPS monitoring center

notifying him that Meade's GPS monitor had a strapped tamper alarm that did not clear, which indicated that the GPS monitoring unit was cut off Meade's ankle. (T. 13). Leatherman received a phone call later that day from the Postmaster in Edna, Ohio. The Postmaster said a man named Charles Meade was in the post office, cut the GPS monitoring unit off his ankle, asked that the unit be mailed to Delaware, and stated that he was moving to Florida. (T. 13). Leatherman received an anonymous tip from one of Meade's family members stating that Meade was staying at his mother's residence in Florida. (T. 13). Meade was picked up in Lee County, Florida by the Fort Myers Police Department in response to new theft reports filed in Lee County. (T. 14). Meade was suspected in multiple thefts from Lowe's stores during the months of August and September 2019. There was a pending indictment for a grand jury investigation, but Meade had not been formally charged. (T. 14). After Meade was extradited from Florida and returned to Ohio, Leatherman conducted a computerized criminal history and found that Meade was charged in Ashland, Kentucky on July 13, 2019 for public intoxication. (T. 15).

{¶8} After being advised of his rights and possible consequences of an admission, Meade admitted he was in violation of his conditions of community control imposed by the trial court on June 14, 2019. He requested that he be restored back to probation. The State argued Meade's offenses were nontechnical violations of his community control sanctions. In support of its argument, the State cited this Court's decision in *State v. Mannah*, 5th Dist. Fairfield No. 17-CA-54, 2018-Ohio-4219.

{¶9} The trial court found that Meade was no longer amenable to community control supervision. It also found that the violation of absconding from supervision and

leaving the State of Ohio without approval just one month after being placed under supervision were not mere technical violations of community control. (T. 19). Via judgment entry filed on November 14, 2019, the trial court revoked Meade's community control and imposed an aggregate prison term of 60 months.

{¶10} It is from this judgment entry Meade now appeals.

ASSIGNMENT OF ERROR

{¶11} Meade raises one Assignment of Error:

{¶12} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR AND PLAIN ERROR IN SENTENCING APPELLANT TO MORE THAN NINETY (90) DAYS IMPRISONMENT FOR A VIOLATION OF COMMUNITY CONTROL SANCTIONS IMPOSED FOR A COMBINATION OF FIFTH-DEGREE FELONIES IN VIOLATION OF R.C. §2929.15(B)(1)(c)(i) WHICH PREJUDICED APPELLANT'S SUBSTANTIVE RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND OHIO CONSTITUTION ARTICLE I SECTION 16."

ANALYSIS

{¶13} In his sole Assignment of Error, Meade contends the trial court's sentence of 60 months in prison for violating the conditions of his community control was in contravention of R.C. 2929.15(B)(1)(c)(i). He argues his violations of community control were technical violations for which the sanction would be a 90-day prison sentence. Based on the record before us, we find the trial court did not err when it determined Meade's violations of community control were nontechnical in nature.

R.C. 2929.15(B)(1)(c)

{¶14} R.C. 2929.15 addresses community-control sentences. The statute reads:

(B)(1) If the conditions of a community control sanction are violated or if the offender violates a law or leaves the state without the permission of the court or the offender's probation officer, the sentencing court may impose upon the violator one or more of the following penalties:

* * *

(c) A prison term on the offender pursuant to section 2929.14 of the Revised Code and division (B)(3) of this section, provided that a prison term imposed under this division is subject to the following limitations, as applicable:

(i) If the prison term is imposed for any technical violation of the conditions of a community control sanction imposed for a felony of the fifth degree or for any violation of law committed while under a community control sanction imposed for such a felony that consists of a new criminal offense and that is not a felony, the prison term shall not exceed ninety days.

(ii) If the prison term is imposed for any technical violation of the conditions of a community control sanction imposed for a felony of the fourth degree that is not an offense of violence and is not a sexually oriented offense or for any violation of law committed while under a community control sanction imposed for such a felony that consists of a new criminal offense and that is not a felony, the prison term shall not exceed one hundred eighty days.

{¶15} “Subsection (B)(1) sets out the sanctions that may be imposed on an offender who violates the terms of his community control, and subsections (B)(1)(c)(i) and

(ii) place caps on the length of sentences for community-control violations when the underlying crime was a fourth-or fifth-degree felony.” *State v. Nelson*, 2020-Ohio-3690, - - N.E.3d --, ¶ 21. The caps apply in two circumstances: one, when the violation conduct was a “technical violation” and two, when the conduct was “any violation of law committed while under a community control sanction imposed for [a fourth- or fifth-degree] felony that consists of a new criminal offense and that is not a felony.” *Id.* citing R.C. 2929.15(B)(1)(c)(i) and (ii).

Technical vs. Nontechnical Violations of Community Control

{¶16} On July 15, 2020, the Supreme Court of Ohio addressed the distinction between technical and nontechnical violations of community control in *State v. Nelson*, 2020-Ohio-3690, -- N.E.3d --. The Court held a violation is “nontechnical” if, after considering the totality of the circumstances, the violation concerns “a condition of community control that was ‘specifically tailored to address’ matters related to the defendant's misconduct or if it can be deemed a ‘substantive rehabilitative requirement which addressed a significant factor contributing to’ the defendant's misconduct.” *Id.* at ¶ 26, quoting *State v. Davis*, 12th Dist. Warren No. CA2017-11-156, 2018-Ohio-2672, ¶ 17, 18. On the other hand, a violation of community control is considered technical in nature “when the condition violated is akin to ‘an administrative requirement facilitating community control supervision.’ ” *Id.*, quoting *Davis* at ¶ 18.

{¶17} In making the determination whether the violation was technical or nontechnical, the Court held the trial court was to consider the totality of the circumstances because there was no one single factor that determined whether a violation was technical or nontechnical. *Id.* at ¶ 26. Further, the determination of whether

a violation was a “technical violation” under R.C. 2929.15(B)(1)(c) did not depend upon whether the conduct at issue is criminal. *Id.* at ¶ 26; *State v. Mannah*, 5th Dist. Fairfield No. 17-CA-54, 2019-Ohio-4219, ¶ 14. The statute allowed the trial court to use its discretion and “engage in a practical assessment of the case before it, i.e., to consider the nature of the community control condition at issue and the manner in which it was violated, as well as other relevant circumstances in the case.” *Id.* at ¶ 26; *See also State v. Whitacker*, 6th Dist. Wood Nos. WD-19-038, WD-19-039, WD-19-040, 2020-Ohio-4249, ¶ 17; *State v. Calhoun*, 6th Dist. Wood No. WD-17-067, 2019-Ohio-228, ¶ 30.

Whether Meade’s Violations were “Technical Violations”

{¶18} We now consider whether Meade’s conduct while on community control constituted a technical violation under R.C. 2929.15(B)(1)(c)(i). Meade was convicted and sentenced for 15 counts of Receiving Stolen Property, all fifth-degree felonies. The trial court placed Meade on community control and ordered him to report to Adult Court Services, wear a GPS monitoring unit, charge the GPS monitoring unit, abstain from alcohol, and remain in the State of Ohio.

{¶19} Meade admitted to multiple violations of his community control including failure to report to Adult Court Services, cutting off his GPS monitoring unit, leaving the State of Ohio without permission, and consuming alcohol. He was arrested in Florida where he was under investigation for multiple thefts from Lowe’s. He was arrested in Kentucky for an alcohol-related crime. The State argued at the hearing that Meade’s acts were akin to absconding, but he was not charged with that crime. Meade’s violations of his community control were arguably non-criminal in nature.

{¶20} The State contends the orders were substantive rehabilitative requirements, which addressed significant factors contributing to Meade's past misconduct. The purpose of reporting to Adult Court Services and the GPS monitoring unit was to supervise Meade and to prevent him from leaving the jurisdiction so that he could repay his victims and guard against future financial crimes. Within one month of being placed on community control, Meade cut off the GPS unit, left the State of Ohio, and was suspected of engaging in the same crimes in Florida as those he committed in Ohio. Considering the totality of the circumstances including the nature of the community control condition at issue and the manner in which it was violated, we agree with the trial court's judgment that Meade's violations were not "technical violations" of the terms of his community control.

{¶21} R.C. 2929.15(B)(1)(c)(i) did not apply and the trial court made no error in sentencing Meade to 60 months in prison. Therefore, Meade's sole Assignment of Error is overruled.

CONCLUSION

{¶22} The judgment of the Delaware County Court of Common Pleas is affirmed.

By: Delaney, J.,

Hoffman, P.J. and

Wise, Earle, J., concur.