[Cite as *State v. Breedlove*, 2020-Ohio-5286.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- MATTHEW RYAN BREEDLOVE Defendant-Appellant	JUDGES: Hon. William B. Hoffman, P.J. Hon. W. Scott Gwin, J. Hon. John W. Wise, J. Case No. 2020 CA 0037 O P I N IO N
CHARACTER OF PROCEEDINGS:	Appeal from the Richland County Court of Common Pleas, Case No. 2013-CR-0702
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	November 12, 2020

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
GARY BISHOP PROSECUTING ATTORNEY Richland County, Ohio JOSEPH C. SNYDER Assistant Prosecuting Attorney 38 South Park Street Mansfield, Ohio 44902	CHARLES T. ROBINSON 3 N. Main Street, Suite #400 Mansfield, Ohio 44902

Hoffman, P.J.

{¶1} Defendant-Appellant Matthew Breedlove appeals the judgment entered by the Richland County Common Pleas Court revoking his community control for burglary (R. C. 2911.12 (A)(3)), tampering with evidence (R.C. 2921.12 (A)(1)), and safecracking (R. C. 2911.31 (A)), and sentencing him to an aggregate term of incarceration of 36 months. Appellee is the state of Ohio.

STATEMENT OF THE CASE[1]

{¶2} On April 24, 2014, Appellant was convicted following his pleas of guilty to burglary, a third degree felony; aggravated burglary, a second degree felony; tampering with evidence, a third degree felony; and safecracking, a fourth degree felony. He was sentenced to a prison term of four years for aggravated burglary and placed on community control for three years for the remaining convictions, to begin upon his release from prison.

{¶3} On January 16, 2020, Appellant was charged with four violations of his community control. The violations alleged on or about January 14, 2020, Appellant possessed a drug abuse instrument (hypodermic needle); on or about January 14, 2020, Appellant possessed drug paraphernalia (burnt spoon); on or about January 14, 2020, Appellant admitted the use of fentanyl to his supervising officer; and beginning January 7, 2020, Appellant failed to call the drug testing hotline as required by his supervising officer.

{¶4} The case proceeded to hearing in the Richland County Common Pleas Court on February 10, 2020. Appellant admitted to all four violations of his community

[1] A rendition of the facts is not necessary to our resolution of the issues raised on appeal.

control. The trial court sentenced Appellant to 36 months incarceration for burglary, 12 months incarceration for tampering with evidence, and 12 months incarceration for safecracking, to be served concurrently with each other, but consecutively with the sentence imposed for the same community control violations filed in case number 2018 CR 671(appellate number 2020 CA 0036).

{¶5} It is from the February 13, 2020 judgment of the trial court Appellant prosecutes this appeal, assigning as error:

I. THE COURT ERRED IN SENTENCING DEFENDANT TO A PRISON TERM MORE THAN 180 DAYS FOR AN F4 AND MORE THAN 90 DAYS FOR AN F5 WHERE THE VIOLATION DOES NOT CONSTITUTE A FELONY LEVEL CRIME.

II. THE COURT ERRED IN SENTENCING DEFENDANT IN EXCESS TO THE PROVISIONS OF ORC 2929.15(B)(1(c)(i) AND (ii) WHERE THERE WAS NO FINDING THAT DEFENDANT'S CONDUCT WAS IN VIOLATION OF COMMUNITY CONTROL WAS MORE THAN TECHNICAL (SIC).

I., II.

{¶6} In his first assignment of error, Appellant argues he could not be sentenced to more than 180days for his community control violation for safecracking, a fourth degree felony, pursuant to R.C. 2929.15(B), which provides in pertinent part:

(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:

(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.

{¶7} In his second assignment of error, Appellant argues the trial court could not sentence him to a term of incarceration of longer than 180 days for violation of his community control on his safecracking conviction without making a specific finding the violations were non-technical in nature.

{¶8} The trial court ordered Appellant's term of twelve months incarceration for revocation of community control related to his conviction of safecracking to run concurrently with his 36 month term of incarceration related to his burglary conviction and

to his 12 month term of incarceration for tampering with evidence. Both the burglary and tampering with evidence convictions are third degree felonies, and thus R.C. 2929.15(B)(1)(c) does not apply. We therefore find his aggregate sentence served for violation of community control on all three convictions in the instant case would remain 36 months, even if Appellant was correct concerning his sentence for safecracking. Therefore, Appellant has demonstrated no prejudice from the sentence of 12 months incarceration on his safecracking conviction.

{¶9} The first and second assignments of error are overruled.

{¶10} The judgment of the Richland County Common Pleas Court is affirmed.

By: Hoffman, P.J.
Gwin, J. and
Wise, John, J. concur