[Cite as *State v. Hood*, 2020-Ohio-4161.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- WILMA HOOD Defendant-Appellant	JUDGES: Hon. William B. Hoffman, P. J. Hon. John W. Wise, J. Hon. Craig R. Baldwin, J. Case No. CT2019-0085 O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal from the Court of Common Pleas, Case No. CR2019-0434
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	August 12, 2020

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
D. MICHAEL HADDOX PROSECUTING ATTORNEY TAYLOR P. BENNINGTON ASSISTANT PROSECUTOR 27 North Fifth Street P.O. Box 189 Zanesville, Ohio 43701	TODD W. BARSTOW 538 South Yearling Road Suite 202 Columbus, Ohio 43213

Wise, J.

{¶1} Appellant, Wilma Hood, appeals the judgment entered by the Muskingum County Court of Common Pleas terminating her community control by having contact with a non-law-abiding person and ignoring the directives of her probation officer imposing the previously suspended prison term of one year. Appellee is the State of Ohio. The relevant facts leading to this appeal are as follows.

STATEMENT OF THE FACTS AND CASE

{¶2} In May of 2019, a male accompanying two children solicited the victim, Miss S., to purchase pepperoni rolls as part of a school fund raiser for Meadowbrook Boosters. Miss S., wrote a check for the fundraiser for $8 payable to "Brooks Boosters." When the rolls did not show up, Miss S. checked per bank account and discovered the check had been cashed for $80. A copy of her check showed the order line had been changed to "Brooks Boosters – Wilma Hood," a zero had been added after the "$8" and a "Y" added after "eight" was written out.

{¶3} The investigation showed that Appellant went to Zane Food Mart and gave her driver's license while cashing the check on May 4, 2019.

{¶4} Appellant was subsequently arrested.

{¶5} On August 7, 2019, the Muskingum County grand jury indicted Appellant on one count of Forgery and one count of Theft, both felonies of the fifth degree, relating to the incident in May of 2019.

{¶6} On September 12, 2019, Appellant plead guilty to both charges, and the trial court ordered a presentence investigation.

{¶7} On October 16, 2019, the trial court sentenced Appellant to a reserved 1-year prison sentence and imposed a community control sanction.

{¶8} On October 24, 2019, the State filed a motion requesting that Appellant's community control be terminated.

{¶9} On October 28, 2019, the trial court held a hearing on the motion alleging that Appellant had violated her community control by having contact with a non-law-abiding person and ignoring the directives of her supervising officer, Jason Haser. At the conclusion of the hearing, the trial court revoked Appellant's community control status and imposed the previously suspended prison term of one year.

ASSIGNMENTS OF ERROR

{¶10} On December 4, 2019, Appellant filed a notice of appeal. He herein raises the following Assignment of Error:

{¶11} "I. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY IMPROPERLY SENTENCING HER TO ONE YEAR OF PRISON IN CONTRAVENTION OF OHIO'S SENTENCING STATUTES."

I.

{¶12} In Appellant's sole Assignment of Error, Appellant argues the trial court erred in sentencing Appellant to one year of prison contrary to R.C. 2929.15(B)(1)(c)(i), as Appellant's violation of community control by having contact with her boyfriend, Dusty Wilson, an unindicted co-conspirator, was a technical violation. We disagree.

{¶13} "The interpretation of a statute is a question of law, and accordingly, we will review the matter de novo." *State v. Vanzandt*, 142 Ohio St.3d 223, 2015-Ohio-236.

{¶14} R.C. 2929.15(B)(1)(c)(i) provides:

> (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.

{¶15} The trial court specifically found the violation in the case sub judice was not a technical violation, rendering the statute quoted above inapplicable. Appellant argues the violation was a technical violation because the violation was not criminal in nature and did not constitute a wholesale failure to engage in the terms of her community control.

{¶16} In July of 2020, the Supreme Court of Ohio addressed R.C. 2929.15(B) in a case where the defendant contacted an acquaintance in violation of the terms and conditions of his community control. *State v. Nelson*, 2020-Ohio-3690. The defendant argued his community control violation was technical in nature, and therefore, the maximum prison sentence which could be imposed was 180 days. *Id*. The Supreme Court

notes the term "technical violation" is not defined in the statute. "In the absence of a definition of a word or phrase used in a statute, words are to be given their common, ordinary, and accepted meaning." *State v. Black*, 142 Ohio St.3d 332, 2015-Ohio-513. The Supreme Court defines "technical" as immaterial and not substantive. *Nelson* at ¶18. In *Nelson*, the Supreme Court held a violation is nontechnical under R.C. 2929.15(B)(1)(c) if, "considering a 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.

{¶17} In *Nelson*, the trial court ordered that the defendant follow the orders given to him by his supervising officer or other authorized representatives of the court or the Department of Rehabilitation and Correction. *Id*. at ¶28. The defendant was ordered by his supervising officer not to have any contact with his acquaintance, Jamie Elliot. *Id*. The supervising officer gave this order because the supervising officer believed Elliot to be a bad influence who would cause the defendant to be at risk for violating his community control. *Id*. at ¶31. The defendant acknowledged that alcohol was a gateway to his misconduct, and that socializing with Elliot is a contributing factor to his drinking. *Id*. at 32. The Supreme Court made clear that the supervisor's no contact order was a substantive rehabilitation requirement. *Id*.

{¶18} In this case, Officer Haser testified that he instructed Appellant not to have contact with Mr. Wilson because of his involvement as an unindicted co-conspirator who had warrants out for his arrest in Guernsey County and in Muskingum County. He testified

that she resided in prison while awaiting a determination on her treatment. During her time in prison, Appellant made a telephone call to Mr. Wilson, which was recorded. During the nine-minute call, which she initiated, she stated that she would still be with him, and that they would get enough money together to flee the jurisdiction. As Mr. Wilson is a known non-law-abiding citizen who was an unindicted co-conspirator in this case, the trial court ruled the contact violated a substantive rehabilitative requirement ordered by her supervising officer. We agree with the trial court and hold that Appellant's violation of her conditions of community control was not a "technical violation" under R.C. 2929.15(B)(1)(c)(i). As a result, we hold that the trial court was not limited to sentencing Appellant to a maximum of 90 days in prison.

{¶19} For the foregoing reasons, the judgment of the Court of Common Pleas of Muskingum County, Ohio, is hereby affirmed.

By: Wise, J.

Hoffman, P. J., and

Baldwin, J., concur.

JWW/br