[Cite as *State v. Alexander*, 2007-Ohio-5457.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-070021 TRIAL NO. B-0606669
Plaintiff-Appellee,	:	*D E C I S I O N.*
vs.	:	
DEBORRAH ALEXANDER,[1]	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: October 12, 2007

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Paula E. Adams*, Assistant Prosecuting Attorney, for Appellee,

Timothy J. McKenna, for Appellant.

[1] We note that there is an inconsistency in the spelling of Alexander's first name. We adopt the spelling contained in the indictment.

SYLVIA SIEVE HENDON, Judge.

{¶1} In September 2006, Deborrah Alexander pled guilty to cocaine possession, a felony of the fifth degree, and was placed on three years' intensive-supervision community control. In October 2006, Alexander was charged with community-control violations for (1) failing to submit a DNA sample, (2) failing to notify her probation officer of a change in residence, and (3) failing to report to her probation officer. In January 2007, Alexander pled no contest to the violations and was sentenced to a one-year prison term. Alexander now appeals.

Community-Control Revocation

{¶2} In her first assignment of error, Alexander argues that the trial court violated her rights to due process when it revoked her community-control sanction. Alexander directs us to *Gagnon v. Scarpelli*, a case in which the United States Supreme Court set forth certain minimum requirements of due process for probation-revocation proceedings.[2] In *Gagnon*, the Court applied the same procedural requirements to probation-revocation proceedings that it had earlier imposed for parole-revocation proceedings in *Morrissey v. Brewer*.[3]

{¶3} Under *Gagnon*, two important stages occur in a typical revocation of probation, or what Ohio now calls community control.[4] The first stage, often in the nature of a preliminary hearing, involves an inquiry to determine whether there is probable cause to believe that the defendant has violated the community-control

[2] (1973), 411 U.S. 778, 93 S.Ct. 1756.
[3] (1972), 408 U.S. 471, 92 S.Ct. 2593.
[4] *Gagnon*, supra, at 782, citing *Morrissey*, supra; *Columbus v. Lacy* (1988), 46 Ohio App.3d 161, 162, 546 N.E.2d 445.

sanction.[5] Then, "[t]here must also be an opportunity for a hearing, *if it is desired by the* [defendant], prior to the final decision on revocation * * *."[6] At this stage, one of the requirements of due process is the right to confront and cross-examine adverse witnesses.[7] At either stage, if the defendant opts to enter a guilty or a no-contest plea to the community-control violation, the need for an evidentiary hearing is obviated.

{¶4} In this case, Alexander argues that the trial court failed to comply with the due-process requirements set forth in *Gagnon* by failing to hold a preliminary hearing and by not allowing her to confront and cross-examine her probation officer. Both arguments are feckless. By entering a no-contest plea to the community-control violation, Alexander admitted the truth of the facts alleged in the complaint,[8] thereby waiving certain due-process rights, including her right to confront her probation officer.[9] Moreover, Alexander has not demonstrated, or even alleged, that she suffered any prejudice as a result of the alleged noncompliance. We overrule Alexander's first assignment of error.

Effect of Plea of No Contest

{¶5} In her second assignment of error, Alexander argues that the trial court erred by failing to comply with Crim.R. 11 in accepting her no-contest plea. Alexander contends that she did not fully understand her constitutional rights prior to entering her plea.

{¶6} Under Crim.R. 11(C)(2)(c), a trial court must inform the defendant that she is waiving certain constitutional rights before accepting a plea of guilty or no

[5] *Morrissey*, supra, at 485.
[6] Id. at 487-488 (emphasis added).
[7] *Gagnon*, supra, at 786, citing *Morrissey*, supra, at 487.
[8] Crim.R. 11(B)(2).
[9] See *State v. Delaney* (1984), 11 Ohio St.3d 231, 233, 465 N.E.2d 72.

contest to a felony charge. Before accepting the plea, the court "must inform the defendant that he is waiving his privilege against compulsory self-incrimination, his right to jury trial, his right to confront his accusers, and his right of compulsory process of witnesses."[10]

{¶7} But the requirements of Crim.R. 11(C)(2) do not apply to a community-control-violation hearing.[11] A defendant faced with revocation of probation or parole is not afforded the full panoply of rights given to a defendant in a criminal prosecution.[12] So a revocation hearing is an informal one, "structured to assure that the finding of a * * * violation will be based on verified facts and that the exercise of discretion will be informed by an accurate knowledge of the [defendant's] behavior."[13]

{¶8} Instead, Crim.R. 32.3(A) applies to community-control-revocation hearings. Before a trial court imposes a prison term for a violation of the conditions of a community-control sanction, the court must hold a hearing at which the defendant is present and apprised of the grounds for the violation.[14]

{¶9} In this case, the trial court informed Alexander of the grounds for the alleged violation. Before accepting Alexander's no-contest plea, the court asked her, "Do you understand if you enter a plea of no contest, I take a look at the basis for the violation. If it does constitute a violation of your probation, ma'am, I will find you guilty, and if I do so, I can impose the original sentence that I told you, which would be one year in the Ohio Department of Corrections. Do you understand that?" When

[10] *State v. Ballard* (1981), 66 Ohio St.2d 473, 423 N.E.2d 115, paragraph one of the syllabus, following *Boykin v. Alabama* (1969), 395 U.S. 238, 89 S.Ct. 1709.
[11] See *State v. Durgan* (May 10, 1976), 1st Dist. Nos. C-75288 and C-75503; *State v. Jones*, 1st Dist. No. C-050112, 2006-Ohio-2339, at ¶18.
[12] *Morrissey*, supra, at 480.
[13] Id. at 484.
[14] Crim.R. 32.3(A).

Alexander responded, "Yes," the court asked her if she had any questions, and Alexander responded that she did not.

{¶10} Alexander did not dispute the grounds for the community-control violation. She apologized for her behavior and indicated, "I want to admit and live up to my mistakes that I have done on this probation thing." Because nothing in the record suggests that Alexander did not understand the consequences of her no-contest plea, we overrule the second assignment of error and affirm the judgment of the trial court.

Judgment affirmed.

PAINTER, P.J., and **HILDEBRANDT, J.,** concur.

Please Note:

The court has recorded its own entry on the date of the release of this decision.