[Cite as *State v. Lane*, 2010-Ohio-5639.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2010 CA 21
v.	:	T.C. NO. 10CR16
CHRISTOPHER L. LANE	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
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O P I N I O N

Rendered on the 19th day of November, 2010.

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FROELICH, J.

{¶ 1} On February 25, 2010, Appellant Lane ("Lane") pled guilty to one count of

violating R.C. 2937.99 for failing to appear at a sentencing hearing for an underlying robbery charge. A violation of R.C. 2937.99 is a fourth degree felony when the failure to appear is pursuant to a felony charge. R.C. 2937.99(B). The court immediately sentenced Lane to five years of intensive probation supervision which included up to six months of drug testing and treatment to be monitored by the Adult Probation Department of Greene County. The drug testing and treatment component of the sentence was pursuant to a plea agreement between the State and Lane.

{¶ 2} Appointed counsel for Lane filed an *Anders* brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, stating that he "was unable to find any meritorious issues for appeal...." Lane was advised of his counsel's *Anders* brief representations and that he could file a timely pro se brief assigning any errors for review by this court. Lane was further advised that absent such a filing, the appeal will be deemed submitted on its merits. No pro se brief has been received. The case is now before us for our independent review of the record. *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

{¶ 3} Lane's appellate counsel has identified one possible "*Anders* Argument" for appeal: "Appellant's Conviction And Sentencing Is Against The Manifest Weight Of The Evidence."

{¶ 4} Lane's guilty plea serves as a complete admission of factual guilt and his factual guilt, accordingly, is removed from further consideration. *Menna v. New York* (1975), 423 U.S. 61, 62 n.2, 96 S.Ct. 241, 46 L.Ed.2d 195; *State v. Steele*, Montgomery App. No. 23402, 2009-Ohio-6019, at ¶ 5; Crim.R. 11(B)(1). Therefore, "[a]s a consequence

of entering a plea of guilty in this case, defendant is precluded from arguing on appeal that his conviction is not supported by legally sufficient evidence or is against the manifest weight of the evidence." *State v. Martin*, Montgomery App. No. 23379, 2010-Ohio-976, at ¶ 6 (quoting *Steele*), Montgomery App. No. 23402, 2009-Ohio-6019, at ¶ 5). This assignment of error lacks arguable merit.

{¶ 5} Appellant's counsel also states that Lane "believes that his sentence of five (5) years intensive probation with Greene Leaf drug treatment was too harsh for the [failure to appear conviction] and should have received the (5) years intensive probation without any drug treatment since this was not a drug case nor was the underlying robbery case involving drugs."

{¶ 6} With regards to felony sentencing, "The trial court has full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum, consecutive, or more than the minimum sentences." *State v. Rollins*, Champaign App. No. 08CA003, 2009-Ohio-899, at ¶7 (citing *State v. Foster*, 109 Ohio St. 3d 1, 2006-Ohio-856, at paragraph 7 of the syllabus). Furthermore, "[c]ommunity control is the default penalty for felonies of the fourth and fifth degree, except as those identified as mandatory prison sentences." *Foster* at ¶ 68. "Nevertheless, in exercising its discretion the trial court must consider the statutory policies that apply to every felony offense, including those set out in R.C. 2929.11 and 2929.12." *Rollins* at ¶ 7 (citing *State v. Mathis*, 109 Ohio St. 3d 54, 2006-Ohio-855, at ¶ 37).

{¶ 7} "When reviewing felony sentences, an appellate court must first determine whether the sentencing court complied with all of the applicable rules

and statutes in imposing the sentence, including R.C. 2929.11 and 2929.12, in order to find out whether the sentence is contrary to law." *Rollins* at ¶ 8 (citing *State v. Kalish*, 120 Ohio St. 3d 23, 2008-Ohio-4912, at ¶ 4). "If the sentence is not clearly and convincingly contrary to law, the trial court's decision in imposing the term of imprisonment must be reviewed under an abuse of discretion standard." *Rollins* at ¶ 8.

{¶ 8} "'Abuse of discretion' has been defined as an attitude that is unreasonable, arbitrary, or unconscionable." *AAAA Enters., Inc. v. River Place Cmty. Corp.* (1990), 50 Ohio St. 3d 157, 161. "It is to be expected that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary. A decision is unreasonable if there is no sound reasoning that would support that decision. It is not enough that a reviewing court, were it deciding the issue *de novo*, would not have found the reasoning persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result." *Id.* Finally, "[w]hen applying the abuse of discretion standard, a reviewing court is not free to merely substitute its judgment for that of the trial court." *In re Jane Doe I* (1991), 57 Ohio St. 3d 135, 137-38.

{¶ 9} Under R.C. 2929.11(A), "[t]he overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender." In determining a sentence, the court must consider factors such as the need to incapacitate and deter the offender from future crimes. *Id.* The court shall also consider the need for rehabilitation by the offender. *Id.* In

order to accomplish these incapacitation and deterrence goals, the sentence imposed shall be commensurate with the seriousness of the crime committed, and "consistent with sentences imposed for similar crimes committed by similar offenders." *Id.* at R.C. 2929.11(B). When considering the purposes and principles of sentencing set forth in R.C. 2929.11, the court must also consider the seriousness of the crime committed along with potential recidivism factors as listed under R.C. 2929.12. R.C. 2929.12(A).

{¶ 10} As noted above, community control sanctions are standard penalties for fourth and fifth degree felonies. *Foster* at ¶ 68. If a mandatory prison sentence is not required for a felony conviction, trial courts have the discretion to order up to five years of community control sanctions with provisions for random drug testing and treatment. R.C. 2929.15(A)(1); R.C. 2929.17. However, probation "conditions cannot be overly broad so as to unnecessarily impinge upon the probationer's liberty." *State v. Jones* (1990), 49 Ohio St. 3d 51, 52. When deciding probation conditions, "courts should consider whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to the conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation." *Id.* at 53.[1] Conditions that satisfy these prongs are permissible, and absent an

[1] The precise holding of *Jones* and its effect on probation and community-control conditions has been questioned with regards to felony sentencing because it predates Am.Sub. S.B. No. 2 (1995). *See, e.g., State v. Sturgeon* (2000), 138 Ohio App. 3d 882, 885. *But State v. Talty*, 103 Ohio St. 3d 177, 181, 2004-Ohio-4888, states that "*Jones* stands for the proposition that probation conditions must be reasonably related to the statutory ends of

abuse of discretion, trial courts have broad sentencing discretion when considering community-control sanctions that further these interests. *Rollins* at ¶ 7.

{¶ 11} In contrast, examples of conditions that are not acceptable under the *Jones* test include requirements that defendants get conventional haircuts and remain clean shaven, as these types of conditions do not bear any relationship with the criminal charge or conduct involved. *See State v. King*, 151 Ohio App. 3d 346, 2003-Ohio-208, at ¶¶ 28-29 (citing *State v. Alexander* (Oct. 6, 2000), Champaign App. No. 2006-CA-6).

{¶ 12} At Lane's sentencing hearing, prior to accepting Lane's guilty plea, the trial court noted that Lane and his counsel had negotiated a plea agreement with the State. The court then stated the terms of that negotiated agreement, which included the State's recommendation that Lane would plead guilty to the failure to appear charge, and that Lane be "placed on Community Control with the Greenleaf [sic] Program." Following the court's recitation of these terms, the court asked Lane whether he understood these terms to be those that were negotiated before the hearing, and whether Lane both acknowledged and consented to the agreement.

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probation and must not be over broad. Because community control is the functional equivalent of probation, this proposition applies with equal force to community-control sanctions. With the passage of Am.Sub.S.B. No. 2 in 1995, community control replaced probation as a possible sentence under Ohio's felony sentencing law." (Citations omitted). "The community-control statute, despite changing the manner in which probation was administered, did not change the underlying goals of rehabilitation, administering justice, and ensuring good behavior-notwithstanding the lack of explicit language in the community-control statute to that effect. Consequently, we see no meaningful distinction between community-control and probation for purposes of reviewing the reasonableness of their conditions." *Id.*

Lane answered yes to both inquiries.

{¶ 13} Next, the trial court stated that it had considered the record along with the report given by the Adult Probation Department; the court also considered the purposes and principles of R.C. 2929.11, and the seriousness and recidivism factors under R.C. 2929.12. The court informed appellant what the maximum penalties for his crime were, and found that the appellant had knowingly and voluntarily pled guilty. The court also noted, and the record further reflects, that defendant Lane was already attending the Greene Leaf Therapeutic Community Program ("Greene Leaf Program") at the time of the present hearing. Both Lane and his counsel were afforded the opportunity to address the court. At no time did Lane or his counsel make any objections to any portion of the hearing or sentence.

{¶ 14} The five years of intensive probation under community control with the six month term of drug testing and treatment were within the statutory limits authorized under Ohio law. The trial court noted that it had considered the record, the Adult Probation Department's report, and the principles and purposes of Ohio's sentencing guidelines under R.C. 2929.11 and 2929.12, and the fact that Lane was already participating in the Greene Leaf Program. The trial court's decision to impose the drug testing and analysis condition as a community-control sanction is reasonably related to Lane's rehabilitation and potential future criminal conduct.

{¶ 15} Moreover, Lane and his counsel voluntarily negotiated the terms of his plea agreement, which included participation in the Greene Leaf Program. As indicated above, the trial court specifically asked Lane about his consent to this condition, and noted his affirmative response. Any objection to the Greene Leaf

Program component of the plea agreement or anything else about the sentence should have been raised during the sentencing hearing, but was not. By accepting the plea agreement and subsequently pleading guilty, Lane has waived any meritorious objections to the terms of his sentence. We see no abuse of discretion with the trial court's sentence for Lane, and therefore this assignment of error lacks arguable merit.

{¶ 16} Furthermore, we have conducted an independent review of the record aside from Lane's assignments of error, and have found no other errors of arguable merit. Accordingly, we agree with his counsel that there are no meritorious issues for appeal.

{¶ 17} The judgment of the trial court is affirmed.

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DONOVAN, P.J. and GRADY, J., concur.

Copies mailed to:

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Hon. J. Timothy Campbell