

[Cite as *State v. Leverette*, 2010-Ohio-6104.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23822
v.	:	T.C. NO. 2008CR04390
HEATHER A. LEVERETTE	:	(Criminal appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	

**OPINION**

Rendered on the 10<sup>th</sup> day of December, 2010.

ANDREW T. FRENCH, Atty. Reg. No. 0069384, Assistant Prosecuting Attorney, 301 W. Third Street, 5<sup>th</sup> Floor, Dayton, Ohio 45422  
Attorney for Plaintiff-Appellee

WILLIAM T. DALY, Atty. Reg. No. 0069300, 1250 W. Dorothy Lane, Suite 105, Dayton, Ohio 45409  
Attorney for Defendant-Appellant

HEATHER A. LEVERETTE, 1479 Collins Avenue, Marysville, Ohio 43040  
Defendant-Appellant

DONOVAN, P.J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Heather Leverette, filed January 7, 2010. On January 6, 2009, Leverette was indicted by the Montgomery County Grand Jury on one count of Complicity to Commit

Aggravated Robbery with a deadly weapon, a felony of the first degree. On September 23, 2009, Leverette entered a guilty plea as charged. On October 23, 2009, Leverette received community control sanctions for a period not to exceed five years. Leverette violated the terms and conditions of her community control, and on December 10, 2009, following a hearing, the trial court sentenced Leverette to six years in prison.

{¶ 2} Appointed counsel for Leverette filed an *Anders* brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, stating that he could find no meritorious issues for appellate review. We notified Leverette of her appellate counsel's representations and provided her with sixty days to file a pro se brief. Leverette filed a pro se brief on April 26, 2010. On July 16, 2010, the state filed a brief in response to Leverette's pro se brief. This matter is now before us for our independent review of the record. *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346.

{¶ 3} In her pro se brief, Leverette stated that she was "requesting an appeal on [her] sentence/time remaining here at ORW [Ohio Reformatory for Women] based upon the statement made by my sentencing judge." In support of her request, Leverette relies on a statement that she attributes to the trial judge: "We would like to keep Mrs. Leverette in custody until such time as her co-def (Mr. Johnny A. Flemming) has been apprehended as she and Fleming may go on the run again." We have reviewed the entire transcript that has been filed with this Court, and we have been unable to locate such a statement. In fact, the trial judge

made clear at the December 10, 2009 hearing that the sentence had nothing to do with Mr. Fleming or Leverette's cooperation in his capture, stating: "[T]his is not about Mr. Fleming. I don't care where he is. I don't care what he does, nor whether you cooperate, ma'm. It's your lack of truthfulness, your lack of any semblance of responsibility that is of my concern." (Tr. 95: 14-17.) Therefore, we find no merit in this argument.

{¶ 4} However, the state has identified one possible issue for appeal as follows:

{¶ 5} The trial court's decision, finding that Appellant had violated the terms of her community control sanctions, is supported by a preponderance of the evidence as well as the substantial weight of the evidence. "The right of the defendant to continue on probation rests within the sound discretion of the court. (Internal citation omitted). Therefore, we review the trial court's decision for abuse of discretion, which 'means more than a mere error of law or an error in judgment. It implies an unreasonable, arbitrary, unconscionable attitude on the part of the trial court.' (Internal citation omitted). A decision is unreasonable and, therefore, an abuse of discretion if no sound reasoning process supports the decision. (Internal citation omitted)." *State v. Williams*, Greene App. No. 2007-CA-28, 2008 Ohio 2385.

{¶ 6} Leverette's community control sanctions included, in relevant part, a requirement that Leverette notify her Probation Officer of any change of residence immediately after the change (Rule #3), and a prohibition against the use

or possession of any controlled substances or drugs of abuse (Rule #6). The Termination Entry contained a special instruction as follows: "NO Breaks," and it provides, "If you violate any condition of this sanction, or if you violate any law, the court can impose a longer time under the same sanction, impose a more restrictive sanction, or a prison term of 10 years to be served."

{¶ 7} A review of the transcript of the probation revocation hearing reveals that Leverette did not comply with the terms and conditions of her community control. First, Leverette violated the terms of her community control sanctions when she failed to notify her probation officer that she had changed addresses, in violation of Rule #3 of her Terms and Conditions. While Leverette informed her probation officer that she was living with her sister on Forest Park Drive, the record reveals that she was living with her boyfriend, Mr. Flemming, on Osceola Drive.

{¶ 8} Second, Leverette violated the terms of her community control sanctions when she was found in constructive possession of the marijuana that the Southern Ohio Fugitive Strike Team (SOFAST) found in the back bedroom along with her driver's license, in violation of Rule #6 of her Terms and Conditions. The record reveals that Leverette was living at Osceola Drive, had dominion and control over the house—and, therefore, had dominion and control over the back bedroom of the house, and the marijuana was found in plain view.

{¶ 9} Leverette was on notice that violation of the terms and conditions of her community control could result in the imposition of a prison term of

up to 10 years, and, given the violations that occurred, the trial court did not abuse its discretion in imposing a six-year term of incarceration.

{¶ 10} In addition to reviewing the possible issue for appeal raised by the state, we have conducted an independent review of the trial court's proceedings and have found no error having arguable merit. Accordingly, Leverette's appeal is without merit and the judgment of the trial court is affirmed.

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FROELICH, J. and OSOWIK, J., concur.

(Hon. Thomas J. Osowik, Sixth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

Andrew T. French  
William T. Daly  
Heather A. Leverette  
Hon. Mary Katherine Huffman