

[Cite as *State v. Jones*, 2018-Ohio-4143.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY**

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 2018-CA-10
	:	
v.	:	Trial Court Case No. 2016-CR-571
	:	
TIMOTHY L. JONES	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

.....

OPINION

Rendered on the 12th day of October, 2018.

.....

ANDREW P. PICKERING, Atty. Reg. No. 0068770, Assistant Prosecuting Attorney, Clark County Prosecutor's Office, 50 East Columbia Street, Suite 449, Springfield, Ohio 45502
Attorney for Plaintiff-Appellee

KAREN S. MILLER, Atty. Reg. No. 0071853, P.O. Box 341274, Dayton, Ohio 45434
Attorney for Defendant-Appellant

.....

TUCKER, J.

{¶ 1} Defendant-appellant Timothy Jones appeals from an order entered in the Clark County Court of Common Pleas finding him in violation of the terms of his community control sanctions and sentencing him to a jail term of 60 days. For the reasons set forth below, we affirm.

I. Facts and Procedural History

{¶ 2} On November 21, 2016, Jones was indicted on one count of having weapons under disability and one count of carrying a concealed weapon. Following negotiations, a plea agreement was entered whereby Jones agreed to plead guilty to the charge of carrying a concealed weapon in exchange for the dismissal of the having a weapon under disability charge. No agreement was reached as to sentencing.

{¶ 3} A sentencing hearing was conducted on May 24, 2017, at which time the trial court imposed community control sanctions for a term of five years with the condition that Jones serve 180 days in the Clark County Jail. At the hearing, the trial court stated that Jones should report to begin serving the jail time immediately following the hearing. However, defense counsel asked for a one-day reporting delay in order to permit Jones time to return a work vehicle to Medina. The State indicated that it had no objection to the delay, but noted that if Jones failed to report the next day, he would be in violation of his community control sanctions and that a prison term could then be imposed. The trial court then ordered Jones to report for jail the following day at 8:00 a.m. The probation officer discussed the community control sanctions rules with Jones at the time of the hearing, following which Jones and his probation officer signed a document setting forth

those rules. Of relevance hereto, Rule 5 stated that Jones would “follow all orders verbal or written including reporting requirements given to me by my supervising officer or other authorized representatives of the Court.” Rule 12(D) stated that Jones would “serve 180 days in the Clark County Jail. The defendant will turn himself into the Clark County Common Pleas Court Security Office on Thursday, May 25, 2017 at 8:00 a.m.” The sentencing judgment entry, with the community control sanctions rules signed by Jones attached, was file-stamped by the clerk on May 31, 2017, and journalized on June 1, 2017.

{¶ 4} On June 1, 2017, the State filed a notice alleging that Jones had violated the terms of his community control by failing to report for jail on May 25. The trial court issued a capias for Jones’s arrest.

{¶ 5} On October 19, 2017, Jones reported and began serving his jail time. On October 25, 2017, Jones appeared before the trial court regarding the violation notice. At that time, defense counsel stated that Jones would admit that he did not report, but that Jones denied any violation. The trial court set the matter for a hearing.

{¶ 6} On November 1, 2017, Jones filed a motion to dismiss the violation, arguing that he could not have violated his community control rules by failing to report on May 25 when the termination entry and community control rules were not journalized until June 1. On November 1, the State filed an amended violation notice that stated:

* * * [T]he Defendant has violated the Court’s ORDER as follows;

1. The defendant was ordered to turn himself into [sic] the Clark County Common Pleas Court Security Office on Thursday, May 25, 2017 at 8:00 a.m. As of Wednesday, May 31, 2017, the defendant failed to report as

ordered to begin serving his 180 day sentence.

2. The defendant failed to report to the Adult Probation Department as directed by this officer on May 25, 2017. As of June 1, 2017, this defendant had not contacted this Probation Officer.

{¶ 7} A hearing was conducted on December 21, 2017, at which time Jones indicated that he wanted to admit to the violations as set forth in the amended violation application. The trial court continued Jones's community control, but it imposed an additional 60 days of jail time as a sanction for the violations.

{¶ 8} Jones appeals.

II. Analysis

{¶ 9} The sole assignment of error asserted by Jones states as follows:

DEFENDANT COULD NOT VIOLATE THE TERMS AND CONDITIONS OF HIS COMMUNITY CONTROL SANCTIONS PRIOR TO THE SENTENCING ENTRY ORDERING DEFENDANT BE PLACED ON COMMUNITY CONTROL BEING JOURNALIZED. SPECIFICALLY, MR. JONES, DID NOT VIOLATE THE TERMS OF HIS COMMUNITY CONTROL WHEN HE FAILED TO REPORT ON MAY 25, 2017 TO SERVE THE 180 DAY JAIL SANCTION, AS THE SENTENCING ENTRY WAS NOT JOURNALIZED UNTIL JUNE 1, 2017. A TRIAL COURT'S JUDGMENT IS NOT EFFECTIVE UNTIL IT IS JOURNALIZED; THEREFORE, MR. JONES, COULD NOT HAVE VIOLATED THE TERMS OF HIS COMMUNITY CONTROL ON MAY 25, 2017 AS HIS COMMUNITY

CONTROL WAS NOT EFFECTIVE UNTIL JUNE 1, 2017.

{¶ 10} Jones contends that there can be no violation of the terms of community control when the termination entry setting those terms has not been journalized.

{¶ 11} There is no dispute that Jones was aware of the terms of the community control sanctions and that his failure to report to the Clark County Jail would result in a violation of the community control sanctions. The record shows that as of June 1, 2017, the original termination entry and rules of community control had been time-stamped and journalized. Thus, there is no question that the rules were in effect as of that date. However, Jones neither reported for jail nor to his probation officer on that day. Further, Jones admitted that he violated both rules as alleged by the State.

{¶ 12} Thus, regardless of whether the termination entry and rules were in effect prior to June 1, 2017, the trial court did not err in finding that Jones violated the conditions of his community control sanctions because, as of June 1, 2017, he had not reported to the jail or to his probation officer. Therefore, we find Jones's argument lacks merit.

{¶ 13} The sole assignment of error is overruled.

III. Conclusion

{¶ 14} The sole assignment of error being overruled, the judgment of the trial court is affirmed.

.....

WELBAUM, P.J., concurs.

DONOVAN, J., dissenting:

{¶ 15} A court speaks through its journal, and an entry is effective only when it has

been journalized. “A judgment is effective only when entered on the journal by the clerk.” Crim.R. 32(C). At the time of Jones’s failure to appear on May 25, 2017, his community control had not yet been journalized, and at the time he signed the contract with his probation officer (also on May 25, 2017), which encompassed Rule 5, he was not subject to community control by judgment entry. Hence, Jones’s community control did not begin to run until June 1, 2017, which would not allow for a violation to have occurred on May 25, 2017.

{¶ 16} To the extent that the majority suggests Jones was in violation of community control as of June 1, 2017, there was no new oral or written order by the court or the probation officer issued on that date which constituted a violation of community control. In *State v. Battle*, 1st Dist. Hamilton No. C-88013, 1989 WL 71826, *1 (June 28, 1989), the court reasoned that a journal entry ordering probation which was signed in September could not be violated by an incident which occurred in August.

{¶ 17} In the instant case, Jones was undoubtedly in contempt of court, but I would find no violation of community control was established. Thus, I would reverse.

Copies sent to:

Andrew P. Pickering
Karen S. Miller
Hon. Richard J. O’Neill