

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals Nos. L-05-1178
L-05-1179

Appellee

Trial Court Nos. CR-2003-1416
CR-2004-2547

v.

Carl D. Grace

DECISION AND JUDGMENT ENTRY

Appellant

Decided: March 17, 2006

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Jevne C. Meader, Assistant Prosecuting Attorney, for appellee.

Jack J. Brady, for appellant.

* * * * *

PARISH, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that revoked appellant's community control and sentenced him to a total of four years imprisonment for two prior convictions. For the following reasons, the judgment of the trial court is reversed.

{¶ 2} Appellant sets forth a single assignment of error:

{¶ 3} "The trial court committed prejudicial error when it committed the Appellant/Defendant to prison for two consecutive two year sentences and such a sentence is contrary to law."

{¶ 4} On July 11, 2003, appellant was sentenced to community control for possession of crack cocaine after having entered a guilty plea to the offense. It is undisputed that the trial court failed to inform appellant at his sentencing hearing of the specific prison sentence he would receive if he violated community control. On October 14, 2004, appellant pled guilty to another charge of possession of crack cocaine. On December 22, 2004, appellant admitted violating community control in the first case. At that time, the trial court revoked appellant's community control and imposed a two-year sentence for the first offense and a two-year sentence for the second, with the sentences to be served consecutively. Appellant now appeals, arguing that his sentences are contrary to law because the trial court failed to inform him, pursuant to R.C. 2929.19(B)(5), of the sentence he would receive should he violate the terms of his community control.

{¶ 5} The state now concedes appellant's argument. Upon review of the record of this case, we find that this question has been decided by the Supreme Court of Ohio in *State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, and *State v. Fraley*, 105 Ohio St.3d 13, 2004-Ohio-7110. We find that the trial court erred when it failed to notify appellant on July 11, 2003, of the specific prison term he would face if he violated the terms of his community control. Accordingly, appellant's sole assignment of error is well-taken.

{¶ 6} On consideration whereof, the December 22, 2004 judgment of the Lucas County Court of Common Pleas is reversed as to sentence only. Appellant's sentence is vacated. This matter is remanded for resentencing, at which time the trial court should

reimpose community control sanctions and specify a prison sentence it will impose for any future violations. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Mark L. Pietrykowski, J.

JUDGE

William J. Skow, J.

JUDGE

Dennis M. Parish, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.