[Cite as *State v. Johnson*, 2010-Ohio-1887.]

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

State of Ohio — Court of Appeals No. L-09-1218

Appellee — Trial Court No. CR0200803673

v.

Gregory D. Johnson — **DECISION AND JUDGMENT**

Appellant — Decided: April 30, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and Robert L. Clark, Assistant Prosecuting Attorney, for appellee.

Patricia Horner, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which found that appellant had violated terms of his community control. The court imposed a previously suspended ten-month prison sentence following a hearing held on

August 28, 2009. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Gregory D. Johnson, sets forth the following single assignment of error:

{¶ 3} "ASSIGNMENT OF ERROR. DEFENDANT'S WAIVER TO A HEARING WAS NOT DONE IN CONFORMITY TO CRIM.R. 32.3."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. On November 12, 2008, appellant was indicted on one count of burglary, a felony of the second degree. On March 19, 2009, appellant entered an *Alford* plea to breaking and entering, in violation of R.C. 2911.13(A), a felony of the fifth degree. Appellant received a ten-month suspended term of incarceration conditioned upon community control.

{¶ 5} Appellant's conviction stemmed from an incident in which appellant broke into a central Toledo home and stripped it of its copper plumbing. This was discovered when the house was being shown to a prospective tenant. When the party showing the home to the prospective tenant encountered appellant coming out of the basement, appellant fled the scene. In his haste to depart, appellant dropped his wallet in the vicinity of the removed copper pipes. In addition to the dropped wallet, appellant's truck remained parked outside of the vacant home at the time police officers arrived at the premises to investigate the matter.

{¶ 6} From the onset of community control, appellant violated a multitude of the terms and conditions. Appellant was directly observed and caught in an act of attempting

to substitute a clean urine sample for his own, tested positive for cocaine, failed to report as required, and failed to tender restitution payments.

{¶ 7} On July 7, 2009, appellant appeared before the trial court, represented to the court that he was firing his retained counsel, and requested a continuance to retain new counsel. The matter was continued for six weeks. On August 21, 2009, appellant again appeared before the trial court, represented to the court that he had been unable to retain the counsel whom he had initially planned on retaining as replacement counsel, and requested an additional continuance. Appellant received a second continuance to retain new counsel.

{¶ 8} On August 28, 2009, appellant appeared for the third time before the trial court. Appellant had retained new counsel who was present with him. Appellant's counsel represented to the court that he was prepared on behalf of his client to admit to the community control violations, requested that the matter directly proceed to hearing, and further asked that he be heard in mitigation on behalf of his client. Appellant voiced no objection to or disagreement with the representations of his counsel to the court.

{¶ 9} During the ensuing hearing, counsel presented the court with various mitigating information pertaining to restitution payments and efforts by appellant to return to drug and alcohol treatment. Following counsel's mitigating statement on appellant's behalf, appellant himself addressed the court in mitigation. Appellant stated in pertinent part, "Your Honor, I have just been going through a lot of stress, you know. I do a lot of great things, you know what I'm saying. I do a lot of stupid things, too." At

the conclusion of the hearing, appellant's previously suspended sentence was imposed due to his violation of a number of terms of community control.

{¶ 10} In his sole assignment of error, appellant asserts that the trial court did not comport with Crim.R. 32.3. Specifically, appellant argues that he was not informed of his right to a hearing so that he could waive that right on the record.

{¶ 11} Crim.R. 32.3(A) establishes, "The court shall not impose a prison term for violation of the conditions of a community control sanction or revoke probation except after hearing in which the defendant shall be present and apprised of the grounds on which action is proposed."

{¶ 12} In conjunction with the above parameters of community control violation hearings, this court has specifically held, "Upon review of the relevant statutory provisions and case law, we find, as have several Ohio appellate courts, that the requirements of Crim.R. 11 apply only to guilty and no contest pleas. Concordantly, a defendant in a community control revocation hearing need not be afforded the full panoply of rights given a defendant in criminal proceedings." *State v. Martin*, 6th Dist. No. S-02-012, 2002-Ohio-5202, at ¶ 7.

{¶ 13} We have carefully reviewed and considered the record of proceedings in this matter. The record clearly shows that contrary to appellant's contention, a hearing was conducted in this matter. The record establishes appellant was furnished multiple continuances at his own request in order to retain replacement counsel following his termination of his original counsel. The record establishes that retained counsel was

present with appellant, and advocating on his behalf, throughout the revocation hearing. The crux of appellant's argument centers upon the notion that appellant should have been given a Crim.R. 11(C) recitation in the absence of a disputed revocation hearing. That assertion is defeated by our ruling in *Martin* and similar case law consistently establishing that Crim.R. 11 does not apply to community control revocation hearings.

{¶ 14} The record in the instant case unambiguously establishes that the requirements of the applicable Crim.R. 32.3 provision have been met. Appellant was furnished a hearing, was present at the hearing with counsel, and was clearly informed of the allegations against him. Appellant's sole assignment of error is not well-taken.

{¶ 15} On consideration whereof, we find that substantial justice has been done in this matter. The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
JUDGE

Keila D. Cosme, J. _____
CONCUR.
JUDGE