

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

State of Ohio

Court of Appeals No. WD-09-043

Appellee

Trial Court No. 2008CR0096

v.

Dustin Ward

DECISION AND JUDGMENT

Appellant

Decided: June 11, 2010

* * * * *

Paul Dobson, Wood County Prosecuting Attorney, Gwen Howe-Gebers and
Jacqueline M. Kirian, Assistant Prosecuting Attorneys, for appellee.

William F. Hayes for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals the imposition of consecutive terms of imprisonment by the Wood County Court of Common Pleas on the violation of the terms of his community control. For the reasons that follow, we affirm.

{¶ 2} Appellant is Dustin Ward. According to police documents, in February 2008, appellant used money taken from a relative to illegally purchase the prescription

drug Fentanyl. After a complaint about appellant's drug abuse, Wood County Sheriff's deputies executed a search warrant on his Tontogany home. Deputies found evidence of drug abuse and, although the record is not clear, apparently certain stolen property.

{¶ 3} Appellant was arrested, arraigned and agreed to waive indictment and be named in a bill of information, charging him with aggravated possession of drugs and receiving stolen property. Both offenses are fifth degree felonies. Appellant initially pled not guilty, but later amended this plea to guilty as charged. The trial court accepted appellant's plea and ordered a presentence investigation.

{¶ 4} At a June 3, 2008 sentencing hearing, the trial court imposed a sentence of five years of community control, including a drug rehabilitation program. At the sentencing hearing, the court cautioned appellant:

{¶ 5} "And I want to advise the [appellant] that the Court is reserving eleven months on both counts. Meaning, if you failed to comply with the order of the Court you would be facing eleven months for each count for a total of twenty-two months in prison if you fail to comply with those orders."

{¶ 6} In its written "Notice To Offender," executed at the time of sentencing, the court warned, "You are herein notified that the prison term which is not being imposed upon you at this time but might be imposed upon you should you violate the terms and conditions of community control is ten months [sic] for each count." (Emphasis in original.) In its sentencing entry, the court reiterated, "[T]he Court is reserving ten

months in prison for each count if he should violate the term/conditions of his community control * * *."

{¶ 7} On April 14, 2009, after his second violation of the conditions of his community control, the trial court concluded that appellant was no longer amenable to that sanction and imposed an eight month term of imprisonment for each count to be served consecutively. It is from this judgment that appellant now brings this appeal. Appellant sets forth a single assignment of error:

{¶ 8} "The trial court erred in failing to properly inform the appellant of the potential penalties for a violation of community control and did not have the authority to impose consecutive sentences."

{¶ 9} Appellant insists that the notice he received at his sentencing judgment regarding the sentence that would be imposed if he violated the terms of his community control was deficient. According to appellant, he was statutorily entitled to be told that consecutive sentences would be imposed. Since he was not so notified, appellant maintains, consecutive sentences were not available to the court when fashioning its order.

{¶ 10} In material part, R.C. 2929.15(B) provides:

{¶ 11} "If the conditions of a community control sanction are violated * * * the sentencing court may impose * * * a prison term on the offender pursuant to [R.C. 2929.14.] The prison term, if any, imposed upon a violator pursuant to this division shall be within the range of prison terms available for the offense for which the sanction that

was violated was imposed and shall not exceed the prison term specified in the notice provided to the offender at the sentencing hearing pursuant to division [R.C. 2929.19 (B)[5].]"

{¶ 12} R.C. 2929.19(B)(5) requires a court imposing community control sanctions to, " * * * notify the offender that, if the conditions of the sanction are violated, * * * the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and *shall indicate the specific prison term* that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to [R.C. 2929.14.]" (Emphasis added.)

{¶ 13} Strict compliance with this provision is required. *State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, ¶ 24. Notification of an offender of a specific prison term is a prerequisite to the imposition of any prison term for a subsequent violation of the terms of a community control sanction. *Id.* at paragraph two of the syllabus.

{¶ 14} Appellant insists that, since a court speaks only through its journal, see *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, ¶ 5, we may only look to the trial court's sentencing entry to ascertain whether the trial court has complied with the statutory notification requirements. In this case, in neither the "Notice To Offender" document, nor the sentencing entry, did the court indicate that the reserved sentences were consecutive or suggest that the total time of incarceration would be 20 months.

Absent such notice, appellant argues, consecutive sentences may not be imposed on violation of community control.

{¶ 15} "Pursuant to R.C. 2929.19(B)(5), a trial court sentencing an offender to a community control sanction is required to deliver the statutorily detailed notifications *at the sentencing hearing.*" *State v. Brooks*, supra, at paragraph one of the syllabus.

(Emphasis added.) The court should also, " * * * incorporate that notice into its journal entry imposing sentence." *State v. Jordan*, supra, ¶ 17.

{¶ 16} In this case, the court clearly told appellant at the sentencing hearing that with regard to community control, he " * * * would be facing eleven months for each count for a total of twenty-two months in prison if you fail to comply with those orders." In its sentencing entry, the court reiterated that it was, " * * * reserving ten months in prison for each count if [appellant] should violate the term/conditions of his community control * * *." ¹

{¶ 17} The omission of the term "consecutive" does not render the phrase "ten months in prison for *each* count" to mean "concurrent" sentences, especially as the defendant had already been told during the sentencing hearing that "eleven months for *each* count" meant 22 months in prison.

{¶ 18} Accordingly, the notice appellant received was in conformity with the law. Appellant's sole assignment of error is not well-taken.

¹Any discrepancy in the maximum amount of time is not at issue here.

{¶ 19} On consideration whereof, the judgment of the Wood County Court of Common Pleas is affirmed. It is ordered that appellant pay court 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.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.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:
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