

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

State of Ohio  
Appellee

Court of Appeals Nos. OT-19-043  
OT-19-044

v.

Trial Court Nos. 19 CR 052  
16 CR 005

Chelsea Esker fka Chelsea Gruber  
Appellant

**DECISION AND JUDGMENT**  
Decided: September 11, 2020

\* \* \* \* \*

James J. VanEerten, Ottawa County Prosecuting Attorney, and  
Barbara Gallé Rivas, Assistant Prosecuting Attorney, for appellee.

Russell V. Leffler, for appellant.

\* \* \* \* \*

**PIETRYKOWSKI, J.**

{¶ 1} In this consolidated appeal, defendant-appellant, Chelsea Esker, fka Gruber, appeals the September 20, 2019 judgment entry of the Ottawa County Court of Common Pleas which, following her conviction for attempted domestic violence and admission to a community control violation, sentenced her to a total of 30 months of imprisonment. Because we find that her sentence is not contrary to law, we affirm.

{¶ 2} Following a single motor-vehicle accident on December 4, 2015, appellant was indicted on January 6, 2016, in case No. 16 CR 005, on charges of felony OVI, driving under suspension, and leaving the scene of an accident. Appellant entered a plea of guilty to felony OVI and the remaining charges were dismissed. On August 11, 2016, appellant was sentenced to a 24-month suspended sentence and placed on community control for three years; subsequently, a nunc pro tunc entry was entered reflecting a suspended sentence of 18 months.

{¶ 3} On December 27, 2017, a complaint of bond violation was filed in case No. 16 CR 005 alleging that appellant violated the terms of community control by her arrest and charge of domestic violence and her admission that she had been drinking at the time of the offense. Appellant was found guilty and on April 2, 2018, her community control was extended one year with the addition of serving 180 days in the CROSSWAEH Community Based Correctional Facility and the potential for a referral to and completion of the Specialized Docket Program of the court if deemed appropriate.

{¶ 4} On March 21, 2019, appellant was indicted on one count of domestic violence, a fourth-degree felony, case No. 19 CR 052. Stemming from this charge, appellant was further found to have violated the terms of community control in case No. 16 CR 005. On June 17, 2019, in case No. 19 CR 052 appellant was sentenced to community control for three years, and in case No. 16 CR 005 her community control was extended for one year. The judgment included the following conditions: appellant was ordered to spend 30 days in the Ottawa County Detention Facility, ordered to

“participate in and successfully complete” the Mental Health Court Program and remain compliant with SCRAM (BAC) monitoring. Appellant was also ordered to participate in mental health and substance abuse assessments and comply with all treatment recommendations.

{¶ 5} In August 2019, a complaint of community control violation was filed alleging that appellant violated the terms of community control by consuming alcohol, failing to attend daily group recovery meetings, providing fraudulent paperwork indicating that she had attended nonexistent meetings, and refusing to provide access to her cellular phone in violation of the general conditions of community control.

{¶ 6} Appellant admitted to three of the four alleged violations; the state dismissed the count regarding the cell phone password. On September 19, 2019, the sentencing hearing was held where in sentencing appellant to a total of 30 months of imprisonment, the court stated: “It should be noted that your Community Control violation was a substantive rehabilitative requirement to address a significant factor contributing to your criminal conduct.” The sentence was reflected in the court’s September 20, 2019 nunc pro tunc disposition entry, in which, as to case No. 16 CR 005, it sentenced appellant to 18 months in prison, and in case No. 19 CR 052, it sentenced appellant to 12 months of imprisonment, to be served consecutively. This appeal followed with appellant raising one assignment of error for our consideration:

It was contrary to law to sentence appellant to a maximum consecutive sentence under the facts of this case.

{¶ 7} In appellant’s assignment of error, her chief argument is that her sentence was contrary to law because the court erroneously found that the community control violation was substantive or nontechnical, rather than a technical violation which would limit the sentence duration under R.C. 2929.15(B)(1)(c).

{¶ 8} Our review of felony sentences is governed by R.C. 2953.08(G)(2). As such, we may only increase, modify, or vacate and remand a judgment if we clearly and convincingly find that: (1) “the record does not support the sentencing court’s findings under division \* \* \* (C)(4) of section 2929.14, \* \* \*,” or (2) “the sentence is otherwise contrary to law.” *State v. Yeager*, 6th Dist. Sandusky No. S-15-025, 2016-Ohio-4759, ¶ 7, citing R.C. 2953.08(G)(2).

{¶ 9} R.C. 2929.15(B) provides, in relevant part:

(B)(1) If the conditions of a community control sanction are violated or if the offender violates a law or leaves the state without the permission of the court or the offender’s probation officer, the sentencing court may impose upon the violator one or more of the following penalties:

\* \* \*

(c) A prison term on the offender pursuant to section 2929.14 of the Revised Code and division (B)(3) of this section, provided that a prison term imposed under this division is subject to the following limitations, as applicable:

(i) If the prison term is imposed for any technical violation of the conditions of a community control sanction imposed for a felony of the fifth degree or for any violation of law committed while under a community control sanction imposed for such a felony that consists of a new criminal offense and that is not a felony, the prison term shall not exceed ninety days.

(ii) If the prison term is imposed for any technical violation of the conditions of a community control sanction imposed for a felony of the fourth degree that is not an offense of violence and is not a sexually oriented offense or for any violation of law committed while under a community control sanction imposed for such a felony that consists of a new criminal offense and that is not a felony, the prison term shall not exceed one hundred eighty days.

{¶ 10} Accordingly, a prison term exceeding the above limits and imposed for a technical violation of community control is contrary to law. *State v. Whitacker*, 6th Dist. Wood Nos. WD-19-038, WD-19-039, WD-19-040, 2020-Ohio-4249, ¶ 12, citing *State v. Goetz*, 6th Dist. Ottawa Nos. OT-19-013, OT-19-014, 2019-Ohio-5424, ¶ 17.

{¶ 11} The Supreme Court of Ohio has recently addressed the distinction between technical and nontechnical violations of community control. *State v. Nelson*, Slip Opinion No. 2020-Ohio-3690. The court held that a nontechnical violation is a violation concerning “a condition of community control that was ‘specifically tailored to address’

matters related to the defendant's misconduct or if it can be deemed a 'substantive rehabilitative requirement which addressed a significant factor contributing to' the defendant's misconduct." *Id.* at ¶ 26, quoting *State v. Davis*, 12th Dist. Warren No. CA2017-11-156, 2018-Ohio-2672, ¶ 17, 18. Conversely, a violation of community control is considered technical in nature "when the condition violated is akin to 'an administrative requirement facilitating community control supervision.'" *Id.*, quoting *Davis* at ¶ 18.

{¶ 12} Appellant contends that her "one-off" should be considered a technical violation and, accordingly, her sentence be reduced to nine months of imprisonment. We disagree. Appellant was charged with violating the conditions of her community control prohibiting consumption of alcohol and failing to attend and forging attendance documents of meetings directly relating to maintaining sobriety as required by the agreement she signed upon entering the Mental Health Court. Appellant admitted to the violations. Further, the felony OVI and attempted domestic violence charges occurred while appellant was under the influence of alcohol. As set forth above, the court specifically noted that the violations related to a "substantive rehabilitative requirement" and addresses a significant factor (alcohol addiction) which contributed to appellant's criminal conduct.

{¶ 13} This court has held that a defendant's violation of community control conditions relating to drug usage were "substantive rehabilitative requirements rather than general administrative requirements to facilitate his supervision." *Whitacker*, 6th

Dist. Wood Nos. WD-19-038, WD-19-039, WD-19-040, 2020-Ohio-4249, at ¶ 15, citing *State v. Hope*, 6th Dist. Wood No. WD-18-080, 2019-Ohio-3023. We acknowledge that these cases involve the use of illegal substances; however, there is no requirement that a nontechnical violation involve a criminal act. *See Nelson*, Slip Opinion No. 2020-Ohio-3690, at ¶ 26. A court is to assess the nature of the community control violation in light of the manner in which it was violated. *Id.* at ¶ 23.

{¶ 14} Accordingly, we find that the trial court did not err in concluding that appellant committed nontechnical violations of community control. Again, appellant's history of offenses is linked to alcohol consumption. Further, her failure to attend the required meetings and forging of the necessary paperwork indicates appellant's refusal to appreciate the seriousness of her actions and demonstrates a disregard for the orders of the court. Reviewing the record, we further find that the court properly considered the purposes of felony sentencing and the seriousness and recidivism factors and that the sentences imposed were within the statutory ranges for fourth and fifth-degree felonies. *See* R.C. 2929.14(A)(4) and (5). The record further evidences that the court fully considered R.C. 2929.14, prior to imposing a consecutive sentence.

{¶ 15} Based on the foregoing, we find that appellant's sentence was not contrary to law and appellant's assignment of error is not well-taken. The September 20, 2019 judgment of the Ottawa County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

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.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.

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JUDGE

Christine E. Mayle, J.  
CONCUR.

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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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