

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

State of Ohio

Court of Appeals No. WD-20-069

Appellee

Trial Court No. 2014CR0097

v.

John D. Leveck

**DECISION AND JUDGMENT**

Appellant

Decided: September 30, 2021

\* \* \* \* \*

Paul A. Dobson, Wood County Prosecuting Attorney, and  
David T. Harold, Assistant Prosecuting Attorney, for appellee.

Lawrence A. Gold, for appellant.

\* \* \* \* \*

**DUHART, J.**

{¶ 1} Appellant, John D. Leveck, appeals the judgment entered by the Wood County Court of Common Pleas on September 17, 2020, sentencing him to serve a term of twelve months in prison on Count 1, for illegal use of a minor in nudity-oriented

material or performance, and a term of 48 months in prison on Count 4, unlawful sexual conduct with a minor. For the reasons that follow, we reverse the judgment of the trial court and remand the matter for resentencing.

### **Procedural History and Facts**

{¶ 2} On March 6, 2014, an indictment was filed in the Wood County Common Pleas Court, charging appellant as follows: Count 1, Illegal Use Of Minor In Nudity-Oriented Material or Performance, in violation of R.C. 2907.323(A)(3)(B), a felony of the fifth degree; Count 2, Illegal Use Of Minor In Nudity-Oriented Material Or Performance, in violation of R.C. 2907.323(A)(1)(B), a felony of the second degree; Count 3, Attempted Illegal Use Of Minor In Nudity-Oriented Material or Performance, in violation of R.C. 2923.02 and 2907.323(A)(1)(B), a felony of the third degree; and Count 4, Unlawful Sexual Conduct With A Minor, in violation of R.C. 2907.04(A)(B)(3), a felony of the third degree. Also on March 6, 2014, the prosecutor requested the clerk to issue a warrant on the indictment.

{¶ 3} On March 17, 2014, the case was called for arraignment in the Wood County Common Pleas Court. Appellant's failure to appear resulted in the trial court issuing a nationwide warrant for appellant's arrest. This warrant was served on appellant on January 13, 2016.

{¶ 4} On February 1, 2016, appellant was present in the trial court for arraignment. He was found to be indigent and counsel was appointed. Not guilty pleas were entered

on all counts, an own recognizance bond with additional conditions was established, and a pretrial conferenced was scheduled for March 21, 2016.

{¶ 5} Following several pretrial conferences and the modification of the conditions of appellant's bond, on November 14, 2016, appellant entered guilty pleas to Counts 1 and 4. At the plea hearing, the following statement of facts was placed on the record by the state:

Your Honor, had the State proceeded to trial, it would have called the necessary witnesses of the Bowling Green Police Division as well as the victim and any other necessary witnesses who would have offered testimony that on or about February 11, 2014, the Bowling Green Police Division was called to investigate a report started by the Ottawa County JFS of a minor having sexual relations or participating in sexual acts with a 34 year old male.

The investigation led them to 205 Sand Ridge here in Bowling Green, Wood County, Ohio. The subsequent investigation took on an interview process as well as many forensic searches that included telephones, Facebook accounts, and computers.

That investigation would have revealed the testimony that the defendant's phone was, in fact, searched as well as the computer. Conversations of a sexual nature and acts with a minor were discovered. Internet searches specifically regarding Ohio's age of consent were

discovered. Further conversation soliciting nude photos and pictures from the minor were discovered. The victim's testimony indicated -- I'm sorry. The testimony would have been heard that the defendant, in fact, was told of the victim's age on or about this date or nearby.

Furthermore, testimony would have been heard from the victim about the defendant on a particular evening -- the particular evening at hand going from being friends, having alcohol involved at a particular party, to putting his hands down her pants to later engaging in oral sex with her as well as inserting fingers into her vagina. Investigation after those acts led to Facebook posts indicating the defendant apologizing to the victim and indicating no one should know about those things.

On these facts, the court found a factual basis for the plea of guilty. The court referred the case for a presentence investigation report and scheduled a sentencing hearing for January 23, 2017.

{¶ 6} On January 23, 2017, the trial court sentenced appellant to serve five years of community control sanctions, including thirty days in the Wood County Justice Center ("WCJC"). The trial court reserved a term of twelve months in the Ohio Department of Rehabilitation and Correction ("ODRC") on Count 1 for violation of the terms or conditions of appellant's community control. The court further reserved a term of 36 months in the ODRC on Count 4. Counts 2 and 3 were dismissed by the state of Ohio.

{¶ 7} On January 29, 2020, the Wood County Adult Probation Department filed an Order to Arrest for appellant's alleged violation of the terms and conditions of his community control. A bench warrant was issued by the trial court on the same date and was served on appellant on January 30, 2020. On January 31, 2020, a petition for the revocation of appellant's community control was filed by the Wood County Adult Probation Department.

{¶ 8} On February 3, 2020, appellant was present in court for a bond hearing. At this time, the trial court established a cash bond of \$5,000 without the application of 10% and scheduled a hearing on appellant's community control violation for March 2, 2020.

{¶ 9} On February 13, 2020, an order to arrest was filed by the Wood County Adult Probation Department and a bench warrant was issued by the court for appellant's arrest. The warrant was served on appellant on this same date.

{¶ 10} On February 19, 2020, an addendum to the petition for the revocation of appellant's community control was filed by the state of Ohio. On March 2, 2020, appellant was present in the trial court for a bond hearing. A cash bond of \$20,000 without the application of 10% was established and the matter was continued to March 30, 2020, for a hearing on appellant's community control violation.

{¶ 11} After several continuations, on September 14, 2020, appellant admitted to being in violation of the terms and conditions of his community control and waived a formal hearing. The court proceeded to sentencing, ordering appellant to serve a term of twelve months in the ODRC on Count 1 and a term of 48 months in the ODRC on Count

4. The court ordered the terms to be served concurrent to each other but consecutive to a sentence imposed by the Fulton County Common Pleas Court.

{¶ 12} Appellant timely filed an appeal, raising the following two assignments of error:

First Assignment of error: The court abused its discretion and erred to the prejudice of appellant by sentencing appellant to a prison term that exceeded appellant's originally reserved sentence.

Second Assignment of error: Appellant received ineffective assistance of counsel in violation of his rights under the Sixth and Fourteenth amendments to the United States Constitution and Article I §10 of the Ohio Constitution.

{¶ 13} Appellant argues in his first assignment of error that the trial court abused its discretion to the prejudice of appellant when it sentenced appellant to 48 months on Count 4, which exceeded the trial court's originally reserved sentence of 36 months.

{¶ 14} Pursuant to R.C. 2953.08(G)(2), we may remand a matter for resentencing if we find either of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

6.

{¶ 15} Appellant correctly states that the 48-month prison term exceeds the 36-month reserve sentence that was articulated during the 2017 sentencing hearing. “Pursuant to R.C. [2929.19(B)(4)]<sup>1</sup>, 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*, 103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837, ¶ 15. If the trial court later finds a violation of community control, it may choose to impose a prison term in a new sentencing, and pursuant to R.C. 2929.15(B)(3), that prison term “shall not exceed the prison term specified in the notice provided to the offender at the sentencing hearing.” *State v. Howard*, 162 Ohio St.3d 314, 2020-Ohio-3195, 165 N.E.3d 1088, ¶ 14, quoting R.C. 2929.15(B)(3).

{¶ 16} As the 2020 sentence, imposing a 48-month prison term for Count 4 is clearly contrary to law, as stated at R.C. 2929.19(B)(4) and 2929.15(B)(3), we find appellant’s first assignment of error well-taken. We reverse the decision of the trial court and remand this case for resentencing in accordance with this opinion. Appellee is ordered to pay the costs of this appeal pursuant to App. R. 24.

Judgment reversed.

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<sup>1</sup> In *Brooks*, the court cited to a prior version of the statute in which the provision was codified at R.C. 2929.19(B)(5).

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

Christine E. Mayle, J.

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JUDGE

Gene A. Zmuda, P.J.

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JUDGE

Myron C. Duhart, 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:  
<http://www.supremecourt.ohio.gov/ROD/docs/>.