

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	No. 12AP-607
	:	(M.C. No. 2011 CRB 6803)
v.	:	
	:	(REGULAR CALENDAR)
Anthony J. Weston, Jr.,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 11, 2013

Richard C. Pfeiffer, Jr., City Attorney, Lara N. Baker, City Prosecutor, and Melanie R. Tobias, for appellee.

Yeura R. Venters, Public Defender, and Allen V. Adair, for appellant.

APPEAL from the Franklin County Municipal Court.

BROWN, J.

{¶ 1} This is an appeal by defendant-appellant, Anthony J. Weston, Jr., from a judgment of the Franklin County Municipal Court, extending the term of appellant's probation.

{¶ 2} On April 1, 2011, appellant was charged with public indecency in violation of R.C. 2907.09(A)(2). At a hearing on July 26, 2011, appellant entered a guilty plea to an amended count of criminal mischief. During the hearing, the trial court accepted the plea and informed appellant that he would be placed on probation for a period of one year, with notice that the period might be extended. The court filed a sentencing entry on that same date.

{¶ 3} On May 18, 2012, the department of probation filed a "statement of fact," recommending that appellant's probation be extended in order for him to complete a sexual offender treatment program. The trial court conducted a hearing on July 9, 2012, during which appellant indicated he would not agree to sign a form extending his probation. By entry filed July 9, 2012, the trial court continued and extended appellant's probation until July 26, 2016. The entry stated in part: "Can terminate as soon as counseling is completed."

{¶ 4} On appeal, appellant sets forth the following assignment of error for this court's review:

THE TRIAL COURT ERRONEOUSLY EXTENDED
APPELLANT'S TERM OF COMMUNITY CONTROL.

{¶ 5} Under his single assignment of error, appellant asserts the trial court erred in extending the term of his community control. Appellant contends there is no evidence he violated the conditions of his probation and that the record lacks sufficient justification for the court's action.

{¶ 6} R.C. 2951.07 states in part: "A community control sanction continues for the period that the judge or magistrate determines and, subject to the five-year limit specified in section 2929.15 or 2929.25 of the Revised Code, may be extended." It is within the discretion of the trial court whether to extend the period of probation pursuant to the authority granted under R.C. 2951.07. *State v. Tresville*, 8th Dist. No. 33625 (Feb. 6, 1975). While a trial court has discretion to extend probation, it must "have a rational basis for doing so." *State v. Rose*, 8th Dist. No. 70984 (Mar. 20, 1997).

{¶ 7} As indicated under the facts, appellant was charged with public indecency. The complaint alleged that appellant, while riding on a public transportation bus, masturbated in the presence of a female passenger. At the time of appellant's guilty plea to the amended count (July 26, 2011), the trial court stated on the record:

THE COURT: I am going to sentence you to 60 days in jail and suspend all 60 days. I am going to place you on probation for a period of one year. I am going to let you know that depending on the kind of counseling that you need, I am just going to give you the information up front, your probation may need to be extended. * * * Instead of placing you on probation for two years and so that it's still * * * hanging over

your head, I am making a notation that * * * it might need to be extended.

(July 26, 2011 Tr., 4.)

{¶ 8} During the subsequent hearing on July 9, 2012, the court engaged in the following colloquy with appellant:

THE COURT: Okay. And in this case, I had sentenced you, Mr. Weston, back on July 26th of last year. At the time, I indicated one of the conditions is you were to complete any counseling or treatment as determined appropriate by a probation officer. And when I sentenced you to the one-year probation, I explained to you that it may – your probation may need to be extended because I don't know what kind of counseling or treatment is going to be recommended. And you indicated that you understood that it would need to possibly be continued and extended.

And it's my understanding that Ms. Anderson, your probation officer, has requested that you sign an extension of your probation, and that you were hesitant to do that and wanted to talk to your attorney. And have you decided whether or not you are going to sign that continuation and extension of probation?

THE DEFENDANT: I decided I'm not going to sign it, Your Honor.

THE COURT: Why is that, sir?

THE DEFENDANT: Because I would like * * * my probation to terminate on the 26th.

THE COURT: Have you completed your counseling?

THE DEFENDANT: I have not.

THE COURT: Okay.

Then the Court will – because I explained to you, this – a year ago, that your probation may need to be extended. You understood that at the time, so I am going to continue and extend your probation with the only condition is that you successfully complete the STOP program. Now, because I do not know how long your counseling will take, I am going to

continue and extend it until July 26th of the year 2016. But it can terminate as soon as counseling is completed.

(July 9, 2012, Tr., 1-2.)

{¶ 9} As noted, appellant contends there is no evidence he willfully violated the terms of his probation and he maintains that the failure to complete the sexual treatment program within one year was due to no fault on his part. A trial court, however, need not find a violation in order to extend probation if there exists a rational basis and such extension is within the limits as prescribed by R.C. 2951.07. *See State v. Puhl*, 6th Dist. No. WD-96-059 (May 2, 1997) (while there was no evidence appellant willfully violated condition of probation requiring him to successfully complete any recommendations for treatment in sexual offender's program, trial court had rational basis for ordering 18-month extension of probation so appellant could continue needed therapy); *State v. Vlahopoulos*, 8th Dist. No. 68436 (Aug. 31, 1995) (although trial court found no violation of probation, it was within discretion of court to note that defendant had not paid any pending fine or court costs, and court had rational basis in extending probation from four years to five).

{¶ 10} In the present case, we agree with the state that the trial court had a rational basis for extending appellant's probation so that he could complete the sexual offender treatment program. At the time appellant entered his guilty plea, the conditions of probation included a requirement that he "[c]omplete any recommended counseling or treatment as determined by probation officer or assessment." The trial court stated its reasoning on the record for extending the period of probation, noting that the initial decision to place appellant on probation for one year "was to help with the court costs," but further noting that "the defendant understood and agreed that it may need to be extended if he could not complete the counseling or treatment as determined appropriate by the probation officer within the one-year probation period of time." (July 9, 2012, Tr., 4.) The court further noted, "in reviewing the facts of the incident, and in consultation with the probation officer * * * this was not his first offense." (July 9, 2012, Tr., 4.) The court determined that "[t]here are some serious issues and repeat behavior of this nature that the Court feels the interest of the public needs to be addressed, and if it can be

controlled with the full completion of the counseling, it needs to do so." (July 9, 2012, Tr., 4.) Upon review, we conclude that the trial court did not abuse its discretion in extending appellant's probation in order for him to complete the sexual offender treatment program.

{¶ 11} Based upon the foregoing, appellant's single assignment of error is overruled, and the judgment of the Franklin County Municipal Court is hereby affirmed.

Judgment affirmed.

TYACK and McCORMAC, JJ., concur.

McCORMAC, J., retired of the Tenth Appellate District,
assigned to active duty under authority of the Ohio
Constitution, Article IV, Section 6(C).
