

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2010-11-105
 :
 - vs - : OPINION
 : 5/2/2011
 :
 JUSTIN KUNKLE, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 08 CR 25527

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Terrence M. McNamara, P.O. Box 984, Union, KY 41091, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Justin Kunkle, appeals from the Warren County Court of Common Pleas decision revoking his community control and sentencing him to serve nine months in prison. For the reasons outlined below, we reverse and remand for further proceedings.

{¶2} On April 22, 2009, appellant pled guilty to one count of aggravated possession of drugs in violation of R.C. 2925.11(A), a fifth-degree felony. The trial court subsequently sentenced appellant to serve three years of community control, ordered

him to successfully complete a chemical dependency treatment program at the STAR Community Justice Facility (STAR program), and suspended his driver's license for six months.

{¶3} On October 21, 2010, after appellant admitted to violating the terms of his community control, the trial court sentenced him to serve nine months in prison. The trial court also denied appellant's request to receive credit for the days he spent in the STAR program.

{¶4} Appellant now appeals from the trial court's decision, raising two assignments of error for review. For ease of discussion, appellant's two assignments of error will be addressed out of order.

{¶5} Assignment of Error No. 2:

{¶6} "THE TRIAL COURT ERRED WHEN IT IMPOSED ANY PRISON TERM AFTER FAILING TO COMPLY WITH THE MANDATORY REQUIREMENTS OF ORC 2929.19(B)(5)."

{¶7} In his second assignment of error, appellant argues that the trial court erred by failing to comply with the requirements of R.C. 2929.19(B)(5) at his original sentencing hearing, and therefore, this matter must be reversed and remanded for resentencing. The state concedes, and we agree, that the trial court did not notify appellant of the specific prison term that could be imposed for a violation of his community control. See *State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, paragraph two of the syllabus; see, also, *State v. Honchell*, Clermont App. No. CA2003-10-085, 2004-Ohio-3014, ¶6-11. In turn, because the trial court failed to inform appellant of the specific prison sentence that could be imposed at his original sentencing hearing, the trial court erred by imposing a prison sentence on appellant for violating the terms of his community control. Accordingly, appellant's second

assignment of error is sustained, the trial court's decision sentencing him to prison for violating the terms of his community control is reversed, and this matter is remanded for resentencing.

{¶8} Assignment of Error No. 1:

{¶9} "THE TRIAL COURT ERRED WHEN IT DENIED [APPELLANT] JAIL TIME CREDIT FOR HIS TIME IN THE STAR PROGRAM."

{¶10} In his first assignment of error, appellant argues that the trial court erred by denying him "confinement credit" for time he spent in the STAR program. However, in light of our decision regarding appellant's second assignment of error, we find it unnecessary to reach the merits of appellant's first assignment of error as that issue is now rendered moot. See *State v. Shelton*, Hamilton App. No. C-030740, 2004-Ohio-4248, ¶11-12.

{¶11} Judgment reversed and remanded.

POWELL, P.J., and HENDRICKSON, J., concur.