IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-060299 C-060300
Plaintiff-Appellee,	:	TRIAL NO. B-0510693 B-0411065
vs.	:	*JUDGMENT ENTRY.*
ORLANDO BAKER,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

In November 2004, Baker pleaded guilty to violating a protective order[2] in case number B-0411065 and was placed on five years' intensive supervision community control. A year later, in case number B-0510693, Baker pleaded no contest to a charge of failure to give notice of a change of address.[3] This conviction was a violation of his community-control sanctions. As a result of this conviction, the trial court restored and continued Baker's community-control sanctions from case number B-0411065 and informed Baker that he would be sentenced for up to six years if he violated the terms of his community control again.

In March 2006, Baker was charged with community-control violations for (1) refusing to answer questions about his whereabouts for the week of February 2 to 9, 2006, (2) possessing a bag of marijuana, (3) leaving his residence without permission,

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.
[2] R.C. 2919.27(A).
[3] R.C. 2950.05(E)(1).

and (4) failing to report to his probation officer on February 6, 2006 (he did not report until February 9). Baker waived his probable-cause hearing and pleaded no contest to these community-control violations. The trial court sentenced Baker to four years' incarceration.

Baker now appeals, arguing (1) that the trial court abused its discretion by revoking his community control because the condition violated was not appropriate; (2) that the trial court abused its discretion by imposing an excessive sentence that is not supported by the record; and (3) that he was denied effective assistance of counsel at his community-control-revocation hearing.

In his first assignment of error, Baker claims that the trial court abused its discretion by revoking his community control because the conditions violated were not appropriate. Baker argues that all four community-control violations hinged on the fact that he left the Volunteers of America ("VOA") facility. And Baker contends that the trial court did not properly inform him about the "myriad of programs" that the VOA required him to participate in for him to live in the residence.

R.C. 2929.15(A)(1) governs the authority of the trial court to impose conditions of community control. That section provides that when sentencing an offender for a felony, the trial court may impose one or more community sanctions, including residential, nonresidential, and financial sanctions, and any other conditions that it considers "appropriate." The General Assembly has thus granted broad discretion to trial courts in imposing community-control sanctions. We review a court's imposition of community-control sanctions under an abuse-of-discretion standard.[4]

[4] See *Lakewood v. Hartman*, 86 Ohio St.3d 275, 1999-Ohio-101, 714 N.E.2d 902.

A community-control-revocation hearing is not a criminal trial, and the state is not required to establish a violation of the terms of community control "beyond a reasonable doubt."[5] Rather, "the quantum of evidence required to establish a violation and revoke a community control sanction must be substantial."[6] The trial court must consider the credibility of the witnesses when making this determination. Thus, a trial court's decision finding a violation of community control will not be disturbed on appeal absent an abuse of discretion.[7] An abuse of discretion connotes an arbitrary, unreasonable, or unconscionable decision by the trial court.[8] Unreasonable means that no sound reasoning process supports the decision.[9]

Here, Baker pleaded no contest to violating the terms of his community-control sanctions. The four violations were (1) refusing to answer questions about his whereabouts for the week of February 2 to 9, 2006, (2) possessing a bag of marijuana, (3) leaving his residence without permission, and (4) failing to report to his probation officer on February 6, 2006 (he did not report until February 9).

None of these conditions were inappropriate considering Baker is a sexual predator. The rules Baker violated required him to not possess illegal drugs, to report his residence, and to report to his probation officer.

We thus hold that the trial court did not abuse its discretion in establishing the conditions of Baker's community control. Furthermore, the trial court was not arbitrary, unreasonable, or unconscionable in determining Baker violated these conditions. Baker's first assignment of error is overruled.

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[5] See *State v. Hylton* (1991), 75 Ohio App.3d 778, 600 N.E.2d 821.
[6] Id. at 782.
[7] See *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.
[8] See *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.
[9] See *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597; *State v. Echols* (1998), 128 Ohio App.3d 677, 669-670, 716 N.E.2d 728.

In his second assignment of error, Baker claims that the trial court abused its discretion by imposing an excessive sentence that is not supported by the record.

In 2006, the Ohio Supreme Court in *State v. Foster* eliminated most sentencing requirements, holding that courts have full discretion to impose any sentence authorized by law that is in accordance with the stated purposes and principles of felony sentencing.[10] In *Foster*, the court held that *Apprendi v. New Jersey*[11] and *Blakely v. Washington*[12] apply to Ohio's sentencing statutes. In so holding, the court found unconstitutional many of the judicial findings that had previously been required to impose more than the minimum, maximum, or consecutive sentences.[13] Because *Foster* eliminated the requirement for sentencing courts to make certain findings or state reasons for imposing more than the minimum, maximum, or consecutive sentences, courts now have full discretion to sentence a defendant within the statutory range and without stating any findings.

Although Baker claims that his sentence is excessive, he only received one year's incarceration for violating a protection order, a fifth-degree felony, and three years' incarceration for failure to file a notice of change of address, a third-degree felony. Both sentences were within the statutory ranges. Thus, Baker's second assignment of error is without merit and overruled.

In his third assignment of error, Baker claims that his trial counsel was ineffective at his community-control-revocation hearing by advising Baker to waive his probable cause hearing and pleading no contest to the community-control violations. Baker's argument is meritless.

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[10] See *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.
[11] See *Apprendi v. New Jersey* (2000), 530 U.S. 466, 120 S.Ct. 2348.
[12] See *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531.
[13] *Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

In *Strickland v. Washington*,[14] the United States Supreme Court enunciated the two-prong standard for evaluating claims of ineffective assistance of counsel. The defendant must show that counsel's representation fell below an objective standard of reasonableness, overcoming a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance.[15] And the defendant must show that counsel's performance prejudiced the defense so as to have deprived the defendant of a fair trial.[16] To prove prejudice, the "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different."[17]

In the present case, Baker claims that if his counsel had not waived the probable cause hearing on his behalf, the court would have been more fully informed about the facts surrounding Baker's community-control violation. In particular, Baker maintains that he was never informed about the VOA's rules and regulations, so he could not have been expected to have known that he violated a rule or regulation by leaving the residence to visit with a friend.

Baker was sent to the VOA because he could not find any other place to live. The court expressly warned Baker to be careful when he lived at the VOA. But Baker could not even last ten minutes, as he left the residence soon after he arrived because he did not like the rules and regulations that the VOA maintained.

And even if we were to accept the fact that Baker had mitigating evidence as to why he left the VOA, Baker still failed to inform anyone of his whereabouts for a week, failed to report to the probation officer, and possessed a bag of marijuana when he was

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[14] See *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052.
[15] Id. at 687-688.
[16] Id.
[17] Id. at 694.

searched at the Hamilton County Justice Center. Thus, Baker's counsel did not prejudice him by advising him to waive the probable-cause hearing and plead no contest—Baker simply violated his community-control sanctions multiple times.

We thus overrule Baker's third assignment of error, and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., HENDON and **CUNNINGHAM, JJ.**

To the Clerk:

Enter upon the Journal of the Court on June 27, 2007
per order of the Court _____.
Presiding Judge