

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

STATE OF OHIO,	:	APPEAL NOS. C-100500
		C-100501
Plaintiff-Appellee,	:	C-100504
		C-100506
vs.	:	TRIAL NOS. C-08CRB-39624
		C-09CRB-6993A, C
JOHN A. MEYER,	:	C-10CRB-3545B
Defendant-Appellant.	:	<i>JUDGMENT ENTRY.</i>
	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant John A. Meyer was charged in three separate cases with two counts of theft, one count of obstructing official business and one count of criminal trespass. He pleaded no contest to all the charges. On June 22, 2010, the trial court sentenced him to 90 days' imprisonment on each theft count, 90 days on the obstructing-official-business count, and 30 days on the trespass count. All the sentences were to run concurrently. The court also fined him \$100 on each count. Finally, it ordered him to "stay out of Kroger," one of the victims of the thefts. This appeal followed.

In his sole assignment of error, Meyer contends that the trial court erred in ordering him to stay off the victim's property for an unspecified period of time. He argues that the trial court could not impose a "stay away" order without imposing community control. We agree.

"[T]he only sentence which a trial court may impose is that provided for by statute." *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 22,

quoting *Colegrove v. Burns*, 175 Ohio St. 437, 438, 195 N.E.2d 811 (1964). The statutes applicable at the time of sentencing, former R.C. 2929.01(E), 2929.24 and 2929.25, did not provide authority for a “stay away” order when the defendant was not placed on community control. See *State v. Geiger*, 169 Ohio App.3d 374, 2006-Ohio-5642, 862 N.E.2d 914 (3d Dist.); *State v. Kendrick*, 12th Dist. No. CA98-05-092, 1998 Ohio App. LEXIS 5422 (Nov. 16, 1998); *State v. Meyer*, 2d Dist. No. 92-CA-91, 1994 Ohio App. LEXIS 2575 (June 15, 1994).

Consequently, we modify the sentences, striking those portions of the sentences that require Meyer to “stay out of Kroger,” and he cannot be found in contempt for violating those orders. We note, though, that representatives from Kroger had previously told Meyer to stay out of their stores and had asked the court for the “stay away” order. Thus, he could again be subject to a charge of criminal trespass if he fails to heed Kroger’s admonition.

As to the remaining portions of the sentences, the state argues that any issues relating to the sentences are moot because Meyer has already served his 90-day sentence. See *State v. Golston*, 71 Ohio St.3d 224, 226, 543 N.E.2d 109 (1994); *In re Payne*, 1st Dist. No. C-040705, 2005-Ohio-4849, ¶ 2. But the court also imposed a \$100 fine on each count for which Meyer was convicted, and the record does not show that the fines have been paid. Therefore, the sentences are not moot. See *Golston* at 224; *State v. Welsh*, 1st Dist. No. C-970032, 1998 Ohio App. LEXIS 1591, *3 (Apr. 17, 1998).

Meyer has not challenged any part of his sentences but the “stay away” order. Consequently, while we sustain his assignment of error, we affirm the sentences as modified and we affirm the trial court’s judgment in all other respects.

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A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and DINKELACKER, JJ.

To the clerk:

Enter upon the journal of the court on August 29, 2012
per order of the court _____
Presiding Judge

