

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

STATE OF OHIO,	:	APPEAL NO. C-110744
	:	TRIAL NO. B-0701900
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
JEFFERY HACKLE,	:	
Defendant-Appellant.	:	

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 Jeffery Hackle appeals from the trial court's decision revoking his community control and sentencing him to six months' imprisonment. We find no merit in his three assignments of error, and we affirm the trial court's judgment.

Hackle was originally convicted of nonsupport of dependents under R.C. 2919.21(B), a fourth-degree felony. The trial court sentenced him to three years of community control. Subsequently, he repeatedly violated the conditions of his community control. On the first three violations, the trial court extended the term of his community control.

In July 2011, a fourth community-control violation was filed, alleging that Hackle had made only minimal payments toward his support arrearages and that he had been convicted of possession of an open container under R.C. 4301.62. After a

hearing, the trial court found that he had again violated the terms of his community control, revoked his community control, and sentenced him. This appeal followed.

In his first assignment of error, Hackle contends that the trial court erred in sentencing him to serve a prison term. We note that even though the original offense occurred in 2007, and Hackle had been on community control for several years, he was not sentenced for the fourth community-control violation until after September 30, 2011, the effective date of Am.Sub.H.B. No. 86.

The new nonsupport statute sets forth a preference for community control. R.C. 2919.21(G)(1)(a). It states that “[t]he preference for placement on community control sanctions described in division (G)(1)(a) of this section does not apply to any offender” who “was previously convicted of or pleaded guilty to a violation of this section that was a felony, and the offender was sentenced to a prison term for that violation[,]” or an offender who “previously was convicted of or pleaded guilty to a violation of this section that was a felony, the offender was sentenced to one or more community control sanctions \* \* \* for that violation, and the offender failed to comply with the conditions of any of those community control sanctions.”

That section is consistent with R.C. 2929.13(B)(2), which provides that the trial court, in sentencing an offender for a fourth-degree felony, “shall determine whether any of the following apply: \* \* \* (h) The offender committed the offense while under a community control sanction[.]” If the court makes any of the enumerated findings, and, after considering the factors set forth in R.C. 2929.12, finds that a prison term is consistent with purposes and principles of sentencing set forth in R.C. 2929.11 and finds that the offender is not amenable to an available

community control sanction, the court shall impose a prison term upon the offender. R.C. 2929.13(B)(3)(a).

The record shows that Hackle had previously been convicted of nonsupport and had served a prison term, and that he had violated the terms of community control numerous times. The court was aware of his history and found that he was not amenable to community-control sanctions. While it did not use the statutory language, “the court is not required to use talismanic words as long as the reasons for the sentence are apparent from the record.” *State v. Jones*, 1st Dist. No. C-110603, 2012-Ohio-2075, ¶ 22.

Hackle argues that the trial court erred in imposing a prison term for a community-control violation based on his failure to pay the support arrearages because the court had failed to consider his ability to pay. Essentially, he is arguing that the court erred in revoking his community control. A sentencing court must inquire into a defendant’s failure to pay before revoking community control on that basis. The failure to pay must have been willful and not the result of indigence. *State v. Rudin*, 1st Dist. No. C-110747, 2012-Ohio-2643, ¶ 8-11; *State v. Dockery*, 187 Ohio App.3d 798, 2010-Ohio-2365, 933 N.E.2d 1155, ¶ 13-17 (1st.Dist).

The record shows that the trial court considered Hackle’s ability to pay. The parties argued the issue extensively. The court simply did not believe his excuses. In a hearing on a community-control violation, credibility is an issue for the trial court to decide. *State v. Harion*, 8th Dist. No. 97269, 2012-Ohio-2492, ¶ 17; *State v. Harper*, 12th Dist. No. CA2010-05-036, 2011-Ohio-991, ¶ 6.

Further, even if the court had not considered Hackle's ability to pay, the community-control violation was also based on the open-container conviction. Hackle contends that the court erred in finding that he had violated the conditions of his community control based on a conviction for a minor misdemeanor. But the conditions of his community control required him to obey all laws. A conviction for a minor misdemeanor was a violation of the law, and justified a finding that he had violated the terms of his community control. We hold that the trial court did not err in revoking Hackle's community control and sentencing him to a six-month prison term. Consequently, we overrule his first assignment of error.

In his second assignment of error, Hackle contends that he was denied the effective assistance of counsel. Hackle has not demonstrated that counsel's representation fell below an objective standard of reasonableness, or that, but for counsel's unprofessional errors, the results of the proceeding would have been otherwise. Therefore he has failed to meet his burden to show ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687-689, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Blair*, 1st Dist. Nos. C-100150 and C-100151, 2010-Ohio-6310, ¶ 20-22. We overrule Hackle's second assignment of error.

Finally, in his third assignment of error, Hackle contends that the trial court erred in finding that he had violated the conditions of community control. He argues that the court never specified in a judgment entry a specific amount of restitution. But, the child-support arrearage had already been determined, and Hackle had paid almost nothing on thousands of dollars of arrearage. Further, the community-

control violation was also based on the open-container conviction, which, by itself, would have justified the court's determination.

Consequently, the trial court's finding that Hackle had failed to comply with the conditions of his community control was supported by substantial evidence. It was, therefore, within the trial court's discretion to revoke Hackle's community control. *See Rudin*, 2012-Ohio-2643, at ¶ 8; *Dockery*, 187 Ohio App.3d 798, 2010-Ohio-2365, 933 N.E.2d 1155, at ¶10 and 13. Consequently, we overrule Hackle's third assignment of error, and affirm the trial court's judgment.

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.

**HENDON, P.J., DINKELACKER and FISCHER, JJ.**

To the clerk:

Enter upon the journal of the court on September 26, 2012  
per order of the court \_\_\_\_\_.  
Presiding Judge