

[Cite as *State v. Pugh*, 2007-Ohio-6609.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 21889
v.	:	T.C. NO. 02 TRD 3872
REGINALD L. PUGH	:	(Criminal Appeal from County Court Area One)
Defendant-Appellant	:	
	:	

**OPINION**

Rendered on the 7<sup>th</sup> day of December, 2007.

RAYMOND J. DUNDES, Atty. Reg. No. 0041515, Prosecuting Attorney, Area One, 195 S. Clayton Road, New Lebanon, Ohio 45345  
Attorney for Plaintiff-Appellee

GLEN H. DEWAR, Atty. Reg. No. 0042077, Public Defender, 117 South Main Street, Suite 400, Dayton, Ohio 45422  
Attorney for Defendant-Appellant

DONOVAN, J.

{¶ 1} On June 19, 2002, defendant-appellant, Reginald Pugh, pleaded guilty to the offense of driving with no operator’s license, a First degree Misdemeanor, and to disorderly conduct, a Fourth degree Misdemeanor. On the same date, the trial court proceeded to

sentencing. On the offense of no operator's license, the court sentenced Pugh to 180 days in jail, imposed a fine of one thousand dollars, and ordered a probationary term of three years. 150 days of the jail term, and \$950 of the fine were suspended on the condition that Pugh refrain from other crimes including driving without a valid operator's license, find employment, obtain a valid driver's license, and pay the fines and costs. For the offense of disorderly conduct, the court sentenced Pugh to 30 days in jail, and a fine of \$500. 23 days of his jail sentence were suspended on the condition that there be no other property offenses for three years. The trial court credited Pugh for the seven days already served.

{¶ 2} On February 26, 2003, Pugh admitted to violating the terms of his probation during a revocation hearing. As a result, the court imposed a 15-day jail term, credited him with 15 days served, and extended his probation for three years on the same conditions as stated above.

{¶ 3} On June 22, 2005, Pugh admitted to violating the terms of his probation for the second time. For this violation, the court imposed a jail term of 60 days, crediting 47 days for time served, and extended Pugh's probation for three years.

{¶ 4} On October 4, 2006, upon his third notice of revocation, Pugh admitted to violating the terms of his probation, and the trial court imposed the remaining 75 days of the original sentence, crediting him for 17 days served, and ordered Pugh to serve the remaining 58 days consecutively to additional days imposed in a separate case.

{¶ 5} Pugh filed a timely notice of appeal and Motion to Stay further execution of the imposed sentence. On October 18, 2006, the trial court granted Pugh's Motion to Stay execution of the sentence pending the outcome of this appeal.

{¶ 6} In his sole assignment of error, Pugh contends that the trial court erred when it extended his probationary period on June 22, 2005, after the court had revoked his probation and had imposed a sentence. Pugh bases his argument on R.C. 2951.09, and we find his argument well-taken.

{¶ 7} R.C. 2951.09 states in relevant part that “[w]hen a defendant on probation is brought before the judge or magistrate under section 2951.08 of the Revised Code, the judge or magistrate immediately shall inquire into the conduct of the defendant, and may terminate the probation and impose any sentence that originally could have been imposed or continue the probation and remand the defendant to the custody of the probation authority, at any time during the probationary period.”Ohio Rev. Code \_ 2951.09.

{¶ 8} Pugh cites to this court’s decision in *State v. Ham*. In *Ham*, this court held that the trial court is permitted to either impose part of the defendant’s original sentence for probation violation, or extend the probationary period. *State v. Ham*, 170 Ohio App.3d 38, 865 N.E.2d 953, 2007-Ohio-133. In *Ham*, the appellant pled guilty to possession of a drug abuse instrument and possession of drug paraphernalia under two separate cases. The appellant received an initial sentence of 90 days and was placed on probation for two years in the first case, and 30 days jail term and two years of probation in the second case. The trial court suspended 82 days of her 90 day jail sentence, and 22 days of her 30 day jail term on the condition that Ham refrain from other crimes for five years. Ham was found to be in violation of the terms of her probation. As a consequence of her first violation the court imposed consecutive jail terms of 12 days under the first case, and 11 days under the second case. The court also extended Ham’s probation for two years.

{¶ 9} On appeal, Ham argued that the trial court violated R.C. 2951.09 by extending her probationary period after it had imposed a jail term of 23 days as part of the original sentence. This court held “[u]nder R.C. 2951.09, the court lacked the authority to extend Ham’s probation. Once it chose to impose a part of her original sentence for the violation, it was not permitted under the statute to additionally continue her probation.” *Id.*

{¶ 10} In the present action, Pugh asserts that the trial court was without jurisdiction to extend Pugh’s probation in addition to imposing part of his original sentence on June 22, 2005. Based on the statute and our decision in *Ham*, we agree. At the second revocation hearing on June 22, 2005, when the trial court imposed 60 days of the original sentence, it could not additionally extend Pugh’s probation for three years. The statute is written to provide the trial court with two options, imposing part of the original sentence or extending the probation. The trial court is only permitted to impose either of those options, not both.

{¶ 11} Accordingly, we find that the trial court erred when it extended Pugh’s probationary period in violation of R.C. 2951.09 after it had revoked his probation and imposed part of the original sentence. The judgment of the trial court is reversed and the sentence vacated.

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BROGAN, J. and GRADY, J., concur.

Copies mailed to:

Raymond J. Dundes  
Glen H. Dewar  
Hon. James L. Manning