

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 21938
v.	:	T.C. NO. 05 TRD 1101
DOLAS L. PALMER	:	(Criminal Appeal from County Court Area #1)
Defendant-Appellant	:	

OPINION

Rendered on the 14th day of December, 2007.

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WOLFF, P.J.

{¶ 1} In this appeal, Dolas Palmer asks us to hold, in accordance with our dicta in *State v. Redmond*, Montgomery App. No. 21500, 2007-Ohio-441, that he was unlawfully both sentenced to jail and continued on community control, contrary to R.C. 2929.25(C)(2). Because of the particular procedural history of this case and our disagreement with Palmer’s

interpretation of R.C. 2929.25(C)(2), we decline to hold that the trial court violated R.C. 2929.25(C)(2), which was the subject of our dicta in *Redmond*.

{¶ 2} On April 13, 2005, Palmer pleaded guilty to driving without a license. The trial court imposed a sentence of 120 days, gave Palmer credit for ten days already served, ordered that Palmer serve ten more days, and suspended 100 days on condition that Palmer serve one year of community control with certain specific conditions.

{¶ 3} On November 30, 2005, the trial court found Palmer had violated his community control conditions and imposed 45 days jail time, for which the court gave Palmer credit. The court also extended Palmer's community control to five years from date of conviction.

{¶ 4} On October 25, 2006, the trial court again found community control violations. The trial court imposed thirty days in jail, gave Palmer credit for fourteen days and ordered sixteen days to be served. The trial court also "extended [probation] to 5 years." It is from this "order of revocation" that Palmer appeals, contending that the trial court could not both continue his community control (or probation) and impose a jail sentence.

{¶ 5} In our *Redmond* dicta, we quoted R.C. 2929.25(C)(2) and commented as follows:

{¶ 6} "R.C. 2929.25(C)(2) provides in part:

{¶ 7} "'If any offender violates any condition of a community control sanction, the sentencing court may impose upon the violator a longer time under the same community control sanction if the total time under all of the community control sanctions imposed on the violator does not exceed the five-year limit specified in division (A)(2) of this section *or* may impose on the violator a more restrictive community control sanction or combination of community control sanctions, including a jail term.'" (Emphasis ours).

{¶ 8} “Because the community control extension option and the jail term option are provided for in the disjunctive, the trial court cannot utilize both options.”

{¶ 9} Palmer contends that R.C. 2929.25(C)(2) forbade the trial court from both *continuing* him on community control and imposing jail time. We disagree.

{¶ 10} In our judgment, what R.C. 2929.25(C)(2) forbids is *extending* an offender’s community control beyond what was previously imposed *and* imposing a jail sentence. This is what happened in *Redmond*, but it is not what happened here.

{¶ 11} Despite the language in the order of revocation that “extended [probation] to 5 years,” consideration of the entire record causes us to conclude that the trial court did not extend Palmer’s community control on October 25, 2006. R.C. 2929.25(A)(2) provides that “[t]he duration of all community control sanctions imposed upon an offender and in effect for an offender at any time shall not exceed five years.” It was on November 30, 2005, that the trial court extended Palmer’s community control to five years “from date of conviction.” Furthermore, the trial court stated from the bench on October 25, 2006: “*** he has sixteen more days to serve. Place the Defendant back on Community Control when he’s released, *on the same conditions.*” (Emphasis ours).

{¶ 12} Taking into account the statutory five-year limitation on community control, we conclude that the trial court’s extension of community control was effected in the trial court’s November 30, 2005 order of revocation, an order which is not before us.

{¶ 13} Because the trial court did not both extend community control and impose a jail sentence on October 25, 2006, the trial court did not violate R.C. 2929.25(C)(2).

{¶ 14} The assignment of error is overruled.

{¶ 15} The order of revocation will be affirmed.

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FAIN, J. and DONOVAN, J., concur.

Copies mailed to:

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Hon. James L. Manning