

[Cite as *State v. Ryan*, 2010-Ohio-216.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 2008-CA-99
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2007-CR-222
v.	:	
	:	
BRIAN RYAN	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 22nd day of January, 2010.

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BROGAN, J.

{¶ 1} Brian Ryan appeals from the judgment of the Greene County Common Pleas Court revoking Ryan's community control sanction. Ryan was convicted of one count of identity fraud on April 20, 2007, pursuant to his guilty plea. The trial court placed Ryan on community control for five years. Ryan did not appeal his

conviction and sentence. On November 13, 2008, the trial court determined that Ryan had violated the terms of the community control sanction and then imposed a six-month prison sentence upon Ryan. This appeal followed from that judgment.

{¶ 2} In his first assignment, Ryan contends the trial court erred by permitting him to enter his guilty plea to the identity theft charge without obtaining a written waiver of counsel or ascertaining whether his plea was knowingly, intelligently and voluntarily made in accordance with Crim.R. 44(A). In his second assignment, Ryan contends the trial court denied him his right to counsel as guaranteed by the United States and Ohio Constitutions. Lastly, he contends the trial court failed to abide by Crim.R. 5 in assuring that he had the right to counsel if he could not afford one.

{¶ 3} The State argues that Ryan may not collaterally attack his un-appealed conviction through an appeal of the trial court's revocation of community control. We agree. The State directs our attention to our case of *State v. Grimes*, Mont. App. No. 20746, 2005-Ohio-4510. In that case, Grimes was convicted of drug offenses and tampering with evidence and placed on community control. Grimes did not appeal her conviction, but later had her community control sanction revoked. She appealed the revocation decision and attempted to attack the validity of her earlier guilty plea. We held in that case we could not consider Grimes' guilty plea argument because we lacked jurisdiction to do so because Grimes did not appeal the underlying conviction in a timely manner.

{¶ 4} Ryan has appealed from the revocation of his community control in the Fall of 2008. This is the only matter before us; we have no jurisdiction to consider any other issues, including the validity of Ryan's guilty plea in June of 2007.

{¶ 5} The record reveals that Ryan received notice of the community control violation hearing, that he was on community control at the time of the alleged violations, that he was represented by counsel at the hearing, and that he was in violation of the terms of his community control sanctions. In fact, the judge found this proof beyond a reasonable doubt even though he was only required to find “substantial” proof of a violation of the terms of community control sanctions. *State v. Banks*, Tuscarawas App. No. 2006APO90053, 2007-Ohio-919, ¶ 10.

{¶ 6} The Appellant’s assignments of error are Overruled. The judgment of the trial court is Affirmed.

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GRADY and FROELICH, JJ., concur.

Copies mailed to:

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