

[Cite as *State v. Redick*, 2009-Ohio-3850.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JAMES E. REDICK

Defendant-Appellant

JUDGES:

Hon. John W. Wise, P. J.

Hon. Julie A. Edwards, J.

Hon. Patricia A. Delaney, J.

Case No. 08 CA 73

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 07 CR 194

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 31, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

GREGG MARX
ASSISTANT PROSECUTOR
201 South Broad Street, Suite 400
Lancaster, Ohio 43130

THOMAS R. ELWING
60 West Columbus Street
Pickerington, Ohio 43147

Wise, P. J.

{¶1} Appellant James E. Redick appeals the decision of the Fairfield County Court of Common Pleas, which revoked his community control sanction. The relevant facts leading to this appeal are as follows.

{¶2} On July 2, 2007, appellant pled guilty in the trial court to one count of Theft of a Motor Vehicle, in violation of R.C. 2913.02, a felony of the fourth degree, and one count of Contributing to the Delinquency of a Minor, in violation of R.C. 2919.24(A)(1), a misdemeanor of the first degree. The trial court thereupon sentenced appellant to fourteen months in prison, suspended for three years of community control.

{¶3} On August 20, 2008, the State filed a motion to revoke appellant's community control. On August 25, 2008, a probable cause hearing was held. The court found that there was probable cause to believe that appellant had violated the terms of his community control as set forth in the State's motion to revoke.

{¶4} On September 18, 2008, the court conducted a full hearing and heard testimony from appellant's probation officer, Ben Tiller. Tiller testified that he works as an intensive probation officer for the Fairfield County Common Pleas Court and was responsible for supervising appellant. Tiller noted that one of appellant's conditions of community control was attendance and successful completion of a six-month program at SEPTA, a community-based correctional facility in Nelsonville, Ohio. According to Tiller, appellant was unsuccessfully terminated from the SEPTA program on August 11, 2008. Defense counsel objected to the testimony concerning unsuccessful termination, arguing that Tiller did not have personal knowledge thereof. The trial court overruled the defense objection.

{¶15} The trial court found appellant had not completed the SEPTA program as ordered by the trial court and revoked Appellant's community control. Tr. at 18, 21. The trial court ultimately found that appellant was not amenable to community control and ordered his fourteen-month sentence into execution.

{¶16} On October 24, 2008, appellant filed a notice of appeal. He herein raises the following sole Assignment of Error:

{¶17} "I. THE TRIAL COURT ERRED IN REVOKING APPELLANT'S COMMUNITY CONTROL WHERE ALL EVIDENCE AGAINST APPELLANT WAS PRESENTED TO THE COURT IN VIOLATION OF APPELLANT'S DUE PROCESS RIGHT OF CONFRONTATION AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION."

I.

{¶18} In his sole Assignment of Error, appellant contends he was deprived of due process because of alleged hearsay evidence presented during his revocation hearing. We disagree.

{¶19} In *Gagnon v. Scarpelli* (1973), 411 U.S. 778, 786, 93 S.Ct. 1756, 36 L.Ed.2d 656, the United States Supreme Court held that the due process requirements of *Morrissey v. Brewer* (1972), 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484, with regard to parole violation hearings, were applicable to probation revocation proceedings. The minimal due process requirements for final revocation hearings include:

{¶10} “(a) [W]ritten notice of the claimed violations of (probation or) parole; (b) disclosure to the (probationer or) parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a “neutral and detached” hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking (probation or) parole.’ ” *Id.*, citing *Morrissey*, *supra*, at 489.

{¶11} Generally, probation revocation hearings are not subject to the rules of evidence. The admission of hearsay evidence into a probation revocation hearing can only be construed as reversible error when it constituted the sole, crucial evidence in support of the probation violation determination. *State v. Thompson*, Wood App. No. WD-06-034, 2007-Ohio-2665, ¶ 44, citing *State v. Ohly*, 166 Ohio App.3d 808, 2006-Ohio-2353. Additionally, in regard to any issues concerning the right to confront witnesses as set forth in *Crawford v. Washington* (2004), 541 U.S. 36, we have held that said case does not apply to community control revocation hearings. See *State v. Crace*, Fairfield App.No. 05CA93, 2006-Ohio-3027, ¶ 18.

{¶12} In the case sub judice, Tiller testified that he had been contacted on August 11, 2008 by Ms. Miller, the intake coordinator at the SEPTA Correctional Facility. Tr. at 7. Miller requested that Tiller remove appellant from the facility “because he was unsuccessfully terminated.” *Id.* Tiller told the court that he had also received written reports and a termination notice from SEPTA regarding appellant “effectively terminating his treatment at the SEPTA facility on August 11th.” *Id.* Tiller also received

previous conduct reports where appellant had received conduct violations of SEPTA policy on various dates between May 9 and August 11 of 2008. Id.

{¶13} Furthermore, the notice of Appellant's unsuccessful termination from the SEPTA program was provided to the trial court. See Tr. at 10. Tiller observed that he has never seen any probationer under his supervision who had been at the SEPTA Correctional Facility that had been brought back to Fairfield County for no reason. Id. Tiller stated that every time someone is brought back, he or she has been terminated from the program. Id. According to Tiller, appellant was terminated because of a "pattern of unwillingness to conform to the program expectations." Tr. at 11. This was appellant's fourth major conduct violation, which according to SEPTA's policy results in an unsuccessful termination. Tr. at 11. Tiller further noted that this was appellant's third revocation hearing. See Tr. at 12, 19. He recommended that appellant's community control be terminated because appellant did not demonstrate the capability of following the rules of community control. Tr. at 12. The transcript consistently establishes that appellant was arrested because he had not successfully completed the SEPTA program.

{¶14} Upon review of the record, we find the court's decision to revoke community control was properly documented and that appellant's due process rights were protected during the revocation proceedings.

{¶15} Accordingly, appellant's sole Assignment of Error is overruled.

{¶16} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Fairfield County, Ohio, is affirmed.

By: Wise, P. J.

Edwards, J., and

Delaney, J., concur.

/S/ JOHN W. WISE_____

/S/ JULIE A. EDWARDS_____

/S/ PATRICIA A. DELANEY_____

JUDGES

JWW/d 72

