

[Cite as *State v. Crawford*, 2009-Ohio-3851.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RODNEY D. CRAWFORD

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 09-CA-8

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Fairfield County Municipal
Court, Criminal Case No. TRC 0610951

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

July 27, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Rodney D. Crawford appeals the January 9, 2009 Judgment Entry of the Fairfield County Municipal Court extending his community control period and imposing a jail term as a result of a probation violation. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On November 6, 2006, Appellant was arrested for operating a vehicle under the influence of alcohol, in violation of R.C. 4511.19(A)(1)(a); driving under suspension, in violation of R.C. 4510.11; improper use of marked lanes, in violation of R.C. 4511.33; and no operator's license, in violation of R.C. 4510.12. Appellant subsequently entered a plea of guilty to and was sentenced on the OVI and driving under suspension charges. The remaining charges were dismissed. The trial court sentenced Appellant to 120 days in jail, with 117 days suspended, 3 days in a driver's intervention program, a \$250 fine and two years of community control for the OVI charge, and 170 days, with 170 days suspended, a \$75 fine and two years of community control for the driving under suspension charge.

{¶3} On June 1, 2008, Appellant was again arrested for OVI, and the State filed a motion to revoke Appellant's probation. On December 8, 2008, the trial court conducted a revocation hearing; revoking Appellant's probation based upon his failure to maintain good behavior.

{¶4} On January 5, 2009, Appellant stipulated to violating the terms of his community control, and the trial court found Appellant did violate the terms of his probation. The trial court ordered Appellant's community control period be extended

until January 17, 2010, his reporting status changed from non-reporting to intensive supervised reporting and ordering he serve 20 days in jail.

{¶15} Appellant now appeals, assigning as error:

{¶16} "I. THE TRIAL COURT EXCEEDED ITS JURISDICTION BY EXTENDING DEFENDANT'S TERM OF COMMUNITY CONTROL AND IMPOSING A JAIL TERM PURSUANT TO R.C. 2929.25(C)(2)."

{¶17} In his sole assignment of error, Appellant argues the trial court erred in both extending his term of community control and in imposing jail time pursuant to R.C. 2929.25(C)(2).

{¶18} A trial court may impose requirements on an offender as a condition of probation "[i]n the interests of doing justice, rehabilitating the offender, and ensuring the offender's good behavior." R.C. 2951.02; *State v. Sheets* (1996), 112 Ohio App.3d 1. A trial court has broad discretion in determining conditions of probation and will not be subject to reversal on appeal absent an abuse of that discretion. *State v. Jones* (1990), 49 Ohio St.3d 51, 52, 550 N.E.2d 469, 470. An abuse of discretion connotes a decision that is unreasonable, arbitrary, or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 16 O.O.3d 169, 173, 404 N.E.2d 144, 149.

{¶19} Ohio Revised Code 2929.25(C)(2) states:

{¶110} "If an 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. If the court imposes a jail term upon a violator pursuant to this division, the total time spent in jail for the misdemeanor offense and the violation of a condition of the community control sanction shall not exceed the maximum jail term available for the offense for which the sanction that was violated was imposed. The court may reduce the longer period of time that the violator is required to spend under the longer sanction or the more restrictive sanction by all or part of the time the violator successfully spent under the sanction that was initially imposed” (Emphasis added).

{¶11} In *State v. Palmer* (December 14, 2007) Montgomery Co. App. No. 21938, the Second District addressed the issue raised herein:

{¶12} “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.

{¶13} “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.

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

{¶15} “R.C. 2929.25(C)(2) provides in part:

{¶16} “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).

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

{¶18} “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.

{¶19} “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.”

{¶20} In following the holding of the Second District's in *Palmer*, we find R.C. 2929.25(C)(2) does not allow the trial court to both extend a defendant's community control and impose jail time following a defendant's violation of the terms of probation. Rather the statute provides, upon violation of the terms of community control, the trial court may extend the term of community control *or*, in the alternative, may impose a more restrictive sanction, including a jail term. Therefore, the trial court erred as a matter of law in both extending Appellant's term of community control and imposing a jail term.

{¶21} Accordingly, the January 9, 2009 judgment of the Fairfield County Municipal Court is reversed and the matter remanded to the trial court for further proceedings in accordance with this opinion and the law.

By: Hoffman, P.J.

Wise, J. and

Edwards, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

