

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio

Court of Appeals No. S-14-003

Appellee

Trial Court No. CRB 1300784

v.

Billy L. Jones

DECISION AND JUDGMENT

Appellant

Decided: March 16, 2015

* * * * *

Geoffrey L. Oglesby, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Billy L. Jones, appellant, appeals his sentence for a minor misdemeanor under a January 30, 2014 judgment of the Fremont Municipal Court. The state has not participated in this appeal.

{¶ 2} In a criminal complaint filed on August 16, 2013, appellant was originally charged with obstructing official business, a violation of R.C. 2921.31(A) and a second

degree misdemeanor. At the request of the prosecutor, the trial court reduced the charge to disorderly conduct, a violation of R.C. 2917.11(A)(1) and a minor misdemeanor.

Appellant pled guilty to the offense. In the January 30, 2014 judgment, the trial court reduced the charge as requested, the court found appellant guilty of the offense pursuant to a guilty plea, and imposed sentence. The trial court sentenced appellant to pay a fine of \$100 and costs and to serve 40 hours of community service.

{¶ 3} On appeal, appellant contends that his sentence to community service is contrary to law in two respects. First, the court imposed a term of 40 hours community service, and the maximum period authorized by R.C. 2929.27(D) for a minor misdemeanor is 30 hours. Second, the trial court's judgment did not impose community service in lieu of all or part of a fine as provided in R.C. 2929.27(D).

{¶ 4} Because we conclude the trial court imposed a sentence beyond the statutory range of sentence permitted under R.C. 2929.27(D) and 2929.28(A)(2)(v) and contrary to the procedure set forth in R.C. 2929.27(D), we reverse and remand for resentencing.

{¶ 5} Appellant asserts two assignments of error on appeal:

Assignment of Error No. 1. A trial court errs, and does not have jurisdiction or authority to order forty hours of community service for a minor misdemeanor when R.C. 2929.27(D) only allows for thirty hours of community service.

Assignment of Error No. 2. A trial court errs, and does not have jurisdiction or authority to order community service unless it does so in lieu of all or party [sic] of the fine pursuant to R.C. 2927(D) [sic].

{¶ 6} We consider the two assignment of error together.

{¶ 7} We review misdemeanor sentences for an abuse of discretion. *State v. Ostrander*, 6th Dist. Fulton No. F-10-011, 2011-Ohio-3495, ¶ 28.

{¶ 8} Appellant does not dispute that the maximum fine for a minor misdemeanor is a fine “not more than one hundred fifty dollars.” R.C. 2929.28(A)(2)(v). R.C. 2929.27(D) also authorizes imposition of a term of community service as part of a sentence for a minor misdemeanor:

(D) The court imposing a sentence for a minor misdemeanor *may impose a term of community service in lieu of all or part of a fine. The term of community service imposed for a minor misdemeanor shall not exceed thirty hours.* After imposing a term of community service, the court may modify the sentence to authorize a reasonable contribution, as determined by the court, to the appropriate general fund as provided in division (B) of this section. (Emphasis added.)

{¶ 9} The express wording of the statute limits a term of community service in a sentence for a minor misdemeanor to a maximum of 30 hours. *See Lakewood v. Ryan*, 8th Dist. Cuyahoga No. 94770, 2010-Ohio-5370, ¶ 21. We conclude the trial court

judgment is contrary to law because the trial court's sentence to 40 hours community service exceeds the statutory maximum of 30 hours under R.C. 2929.27(D).

{¶ 10} We find assignment of error No. 1 well-taken.

{¶ 11} Under assignment of error No. 2, appellant argues that the trial court lacked jurisdiction and authority to impose any sentence to community service because the court failed to follow statutory procedure under R.C. 2929.27(D) requiring a sentencing court to impose community service in lieu of all or part of a fine.

{¶ 12} In *Cincinnati v. Howard*, 179 Ohio App.3d 60, 2008-Ohio-5502, 900 N.E.2d 689 (1st Dist.), the First District Court of Appeals considered a case where the trial court imposed a maximum fine under R.C. 2929.28(A)(2)(v) and also imposed a term of community service for a minor misdemeanor. The court held that R.C. 2929.27(D) does not authorize imposition of any term of community service where the trial court imposes a maximum fine of \$150. *Id.* at ¶ 9. In reaching this conclusion, the court of appeals reasoned: "Here, the trial court fined Howard \$150—the maximum fine possible, even under state law. Since the trial court fined Howard the maximum amount, it could not have ordered community service 'in lieu of all or part of a fine.'" (Footnote omitted.)

{¶ 13} Appellant argues that the trial court was without authority to order any term of community service because its judgment did not impose community service in lieu of all or part of a fine. In our view, the trial court did not lack jurisdiction to impose a sentence that include a term of community service. Where the trial court imposes a fine

less than the statutory amount for a minor misdemeanor, a sentence to community service is permitted within the statutory range of sentences authorized under R.C. 2929.27(D) and 2929.28(A)(2)(v).

{¶ 14} We agree that the trial court failed to follow the statutory procedure mandated under R.C. 2929.27(D) requiring a judgment to community service for a minor misdemeanor be imposed in lieu of all or part of a fine. In our view the failure constitutes an abuse of discretion, not lack of authority to impose sentence.

{¶ 15} We find appellant's assignment of error No. 2, contending that the trial court was without jurisdiction to order community service without stating that the term of community service was ordered in lieu of all or part of a fine not well-taken.

{¶ 16} We reverse the judgment of the Fremont Municipal Court and remand the case for resentencing. We direct the court on remand, if it intends to impose a period of community service as a part of appellant's sentence, to state in its judgment specifically what fine, or part of a fine, the term of community service is imposed in lieu of. Any term of community service imposed on remand shall also not exceed the maximum term of 30 hours. We order the state to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.