

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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| STATE OF OHIO, | : | APPEAL NOS. C-190347 |
| | | C-190348 |
| Plaintiff-Appellee, | : | TRIAL NO. B-1805518 |
| | | B-1804830-B |
| vs. | : | |
| | | <i>JUDGMENT ENTRY.</i> |
| STEVEN JENT, | : | |
| Defendant-Appellant. | : | |

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Steven Jent appeals the judgments of the Hamilton County Court of Common Pleas, revoking his community control and imposing a sentence of 18 months in the case numbered B-1805518 and 12 months in the case numbered B-1804830-B. In December 2018, the trial court sentenced Mr. Jent to 90 days and imposed four years of community control on both his theft, a felony of the fourth degree, and forgery, a felony of the fifth degree, offenses. As to the conditions of his community control, the court instructed Mr. Jent to pay the court costs of the proceedings, make restitution to the victim in the amount of \$7,500, stay away from the victim, maintain employment (or perform community service), and submit monthly drug screens. In April 2019, the Hamilton County Adult Probation Department filed a complaint against Mr. Jent, alleging that he violated his community control when he failed to report to his probation officer and failed to pay his court costs

and make restitution. After Mr. Jent pled no contest to his violations, the court revoked his community control and sentenced him to 18 months for his theft offense and 12 months for his forgery offense, running the sentences consecutively for a total of 30 months.

On appeal, Mr. Jent raises a single assignment of error, challenging his 30-month sentence as contrary to law. Specifically, Mr. Jent asserts that his community control violations were merely “technical violations,” and therefore, under R.C. 2929.15(B)(1)(c), the court could not sentence him to more than 90 days for his fifth-degree-forgery offense and 180 days for his fourth-degree-theft offense. However, Mr. Jent failed to object to these sentences at the community control violation hearing below, and thus he waived all but plain error. *See State v. Davis*, 12th Dist. Warren No. CA2017-11-156, 2018-Ohio-2672, ¶ 10, fn. 2 (“Appellant did not object” to the trial court “sentencing him to 11 months in prison for the fourth-degree felony attempted tampering with evidence community control violation” at the “sentencing hearing, thus waiving all but plain error.”). On appeal, Mr. Jent fails to acknowledge this point or present any plain error argument.

Under the plain error standard, Mr. Jent bears the burden of proof to demonstrate plain error on the record, and must show “‘an error, *i.e.*, a deviation from a legal rule’ that constitutes ‘an “obvious” defect’ ” in the proceedings below. *State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 22, quoting *State v. Barnes*, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002), and *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, ¶ 16.

Pursuant to R.C. 2929.15(B)(1)(c), if the defendant violates the conditions of his community control sanction, the sentencing court may impose a prison term, provided that the term imposed for fifth-degree felonies does not exceed 90 days and the term

imposed for fourth-degree felonies does not exceed 180 days. *See* R.C. 2929.15(B)(1)(c)(i)-(ii). But these “limitations set forth in R.C. 2929.15(B)(1)(c) apply only to ‘technical violations.’” *State v. Kernall*, 2019-Ohio-3070, 132 N.E.3d 758, ¶ 12 (1st Dist.). Because the term “technical” is undefined in the statute, this court in *Kernall* established a two-fold inquiry: a trial court may sentence a defendant to a term greater than that set forth in either subsections of R.C. 2929.15(B)(1)(c), if the court concludes that the violation is not technical because the defendant either “(1) violated a condition that was a substantive rehabilitative requirement specifically tailored to the offender’s conduct, or (2) engaged in a pattern of conduct that demonstrated a failure to comply with the community-control sanction as a whole.” *State v. Sanchez Martinez*, 1st Dist. Hamilton No. C-180580, 2019-Ohio-3350, ¶ 8 (interpreting *Kernall*’s two-fold analysis); *see Kernall* at ¶ 18.

At Mr. Jent’s hearing, his counsel never raised the “technical” violation issue to the court’s attention, which deprived the court of the opportunity to develop the record as to whether the violations were technical. Because determining whether a violation is “technical” often necessitates a fact-intensive inquiry, Mr. Jent’s failure to object and develop the relevant facts regarding his community control conditions and his violations render his burden under plain error review even more difficult. *See State v. Hope*, 2019-Ohio-3023, 140 N.E.3d 1168, ¶ 18 (6th Dist.) (“Further, we find that appellant’s positive drug screen constituted a nontechnical violation of a specifically tailored substantive rehabilitative requirement in light of the specific facts of this case.”); *Kernall* at ¶ 18 (“[A]n offender’s violations of community control can be considered under the totality of the circumstances.”). Moreover, we had not issued *Kernall* at the time of this hearing, which further increases his burden to show the

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plainness of the error given the absence (at that time) of precedent in this district on the meaning of “technical.”

Reviewing the limited record here for plain error, we see no “obvious defect” in the proceedings below. *See Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, at ¶ 22. Accordingly, we see no plain error in the trial court imposing a term for both his fourth- and fifth-degree offenses that exceeded the statutory caps provided in R.C. 2929.15(B)(1)(c)(i)-(ii).

For the forgoing reasons, we overrule Mr. Jent’s sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., BERGERON and CROUSE, JJ.

To the clerk:

Enter upon the journal of the court on April 29, 2020,
per order of the court_____.

Presiding Judge