

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

STATE OF OHIO,	:	APPEAL NO. C-240573
	:	TRIAL NO. B-2305355
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY</i>
TIMMY JOHNSON,	:	
Defendant-Appellant.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

In January 2014, defendant-appellant Timmy Johnson was convicted of unlawful sexual conduct with a minor under R.C. 2907.04, and because of that, he is considered a convicted sex offender. He is required to regularly verify his address with his probation officer. In November 2023, the Hamilton County Grand Jury indicted Johnson for failing to verify his address under R.C. 2950.06, a felony of the third degree. A month later, Johnson pleaded guilty to the charge, and the trial court sentenced him to two years of community control and ordered him to attend a 180-day treatment program. In sentencing him to community control, the trial court reserved a 36-month prison sentence if he were to violate his community control conditions.

In July 2024, Johnson allegedly violated four conditions of his community control. The State alleged that Johnson had new criminal charges (strangulation and

OHIO FIRST DISTRICT COURT OF APPEALS

assault), that he failed to report to his probation officer after his release, that he failed to verify his address, and that he failed to pay the probation fees and costs. The probation department filed a notice of the violations and the assigned judge held a violation hearing. At the hearing, all parties agreed that the charges alleging strangulation and assault were no longer being pursued. Thus, the trial court focused on the allegations that Johnson failed to verify his address and that he failed to report to his probation officer upon his release from treatment.

The violation hearing was markedly casual, and it was, at times, unclear what phase of the proceedings the parties were in. The trial court did not begin the hearing with any inquiry regarding whether Johnson was requesting a probable cause hearing or waiving such a hearing. Without the trial court inquiring whether Johnson wished to waive the probable cause hearing, and without his counsel explicitly waiving it, Johnson's counsel stated that Johnson admitted to the violations. However, when given the opportunity to speak, Johnson did not confirm those admissions or enter his own plea. He seemingly asserted that he did not violate his community control conditions. He explained that he was not at home when his probation officer came by to verify his address because he did not know the officer planned to come that day, or else he would have been there. Johnson also stated that he did report to his probation officer upon his release from treatment. Nevertheless, the trial court accepted Johnson's counsel's admission of the violations with no clarity on the record that Johnson was aware of the admissions. The judge had a brief colloquy with Johnson and sentenced him to 30 months' imprisonment.

The lack of clarity at the violation hearing forms the basis of this appeal. Johnson now asserts two assignments of error. He first argues that the trial court abused its discretion by revoking his community control, as it did not personally

OHIO FIRST DISTRICT COURT OF APPEALS

address him to ask whether he admitted to the violations. Second, he argues that the record does not clearly and convincingly support the trial court’s decision to sentence him to 30 months’ imprisonment. We need only address Johnson’s first assignment of error, as it is dispositive.

We review a trial court’s decision to revoke a defendant’s community control under an abuse of discretion standard. *State v. Huerta*, 2022-Ohio-210, ¶ 18 (2d Dist.), quoting *State v. Cunningham*, 2015-Ohio-2554, ¶ 10-12, 14 (2d Dist.), quoting *State v. Lewis*, 2010-Ohio-3652, ¶ 11 (2d Dist.). An abuse of discretion occurs when the trial court “exercise[es] its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority.” *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

It is well-settled that community control violation hearings are not as formal and do not require the same notification of rights as Crim.R. 11 guilty plea hearings. *Huerta* at ¶ 18, quoting *Cunningham* at ¶ 10-12, 14. However, a trial court must still provide *basic* due process at these hearings. At a minimum, there should be a demarcation between the probable cause and sentencing phases of the proceeding, there must be some stipulation by the defendant or their counsel as to a waiver of probable cause or an admission of the violations, and the record should reflect that the defendant understood the proceeding and its implications. *See State v. Thompson*, 2015-Ohio-2836, ¶ 6 (1st Dist.), citing *State v. Delaney*, 11 Ohio St.3d 231, 233 (1984), citing *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), and *Morrissey v. Brewer*, 408 U.S. 471 (1972) (“Certain minimum requirements of due process under the Fourteenth Amendment apply at community-control-revocation proceedings, including the requirement that a court conduct a preliminary hearing . . . commonly referred to as a ‘probable-cause’ hearing . . .”). Based on the record before us, we cannot say that the

OHIO FIRST DISTRICT COURT OF APPEALS

trial court fulfilled these basic requirements. There was no clear demarcation between the probable cause and sentencing phases (or any indication that Johnson or his counsel waived such), and we cannot decipher whether Johnson understood the proceeding and its implications on his liberty. His counsel admitted to the violations on Johnson's behalf, but it was unclear whether Johnson understood that or even agreed with those admissions. Such confusion and lack of clarity in the record constitutes reversible error. *See State v. Rhoads*, 2011-Ohio-4744, ¶ 41 (5th Dist.) ("We find defense counsel's admission to violating community control on behalf of appellant was inadequate given appellant's denials to the alleged violations.").

A community control violation hearing is not the same as a Crim.R. 11 sentencing. But there must be some indication from the record that the defendant appreciates the substance of the hearing. We cannot say that Johnson did in this case. For those reasons, we sustain Johnson's first assignment of error, which renders his second assignment moot.

Based on the foregoing analysis, we sustain Johnson's first assignment of error, rendering his second assignment moot, reverse the judgment of the trial court revoking Johnson's community control and imposing sentence, and remand the cause for further proceedings.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

KINSLEY, P.J., ZAYAS and NESTOR, JJ.

To the clerk:

Enter upon the journal of the court on 5/21/2025 per order of the court.

OHIO FIRST DISTRICT COURT OF APPEALS

By: 
Administrative Judge