

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

STATE OF OHIO,	:	APPEAL NO. C-240314
	:	TRIAL NO. B-2201074
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY</i>
TONY WHITING,	:	
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.

On April 17, 2023, defendant-appellant Tony Whiting entered a guilty plea in the case numbered B-2201074. The court sentenced Whiting to a two-year community-control term, under the condition that Whiting could not handle, own, or possess a firearm. Whiting was expressly warned of the terms of his community control, and the sentence he would face if he breached the terms of his community control.

On May 2, 2024, Whiting was before the court for an alleged community-control violation, stemming from a gun being retrieved from his car during a traffic stop in the case numbered B-2305294. While the evidence retrieved from the car during the traffic stop was ultimately suppressed, the court continued the matter.

On May 6, 2024, the court heard Whiting’s fiancée testify that she had placed the gun in Whiting’s car. However, the court relied on its own recollection of testimony

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

offered at the suppression hearing in the case numbered B-2305294 to conclude that Whiting possessed the gun and breached the terms of his community control. The State neither cross-examined Whiting's fiancée, nor called any witnesses or introduced any evidence. Whiting did not object to the process followed by the trial court.

“It is axiomatic that a trial court may take judicial notice of its own docket.” *State ex rel. Roush v. Hickson*, 2023-Ohio-1696, ¶ 7, citing *Indus. Risk Insurers v. Lorenz Equip. Co.*, 69 Ohio St.3d 576, 580 (1994). However, while a court may take judicial notice of its docket, a court may not take notice of evidence contained in the transcripts underlying other proceedings on its docket. *Natl. Distillers and Chem. Corp. v. Limbach*, 71 Ohio St.3d 214, 216 (1994).

A defendant is entitled to minimal due process requirements at a community-control-revocation hearing. *State v. Kernall*, 2019-Ohio-3070, ¶ 23 (1st Dist.). These requirements include but are not limited to “the right to confront and cross-examine adverse witnesses” *Id.*

Where a defendant does not object to the process followed by the court below, our review is limited to plain error. *State v. Day*, 2022-Ohio-1954, ¶ 14 (1st Dist.). Plain error only exists where (1) an error occurred, (2) the error was obvious, and (3) there was a reasonable probability that the error resulted in prejudice and affected the trial's outcome. *State v. Bailey*, 2022-Ohio-4407, ¶ 8.

Upon a review of the record, we hold that the process adopted by the trial court at Whiting's community-control-revocation hearing was improper. The trial court relied upon its recollection of testimony elicited at the suppression hearing in the case B-2305294, and did not supplement the record with transcripts from that proceeding. By referencing this testimony, the court took judicial notice of testimony from a

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

separate proceeding and thereby relied upon facts outside of the record before it. While probation-revocation hearings are inherently informal proceedings and not bound by the Ohio Rules of Evidence, the court's action in this case divested the State of its burden of production and denied Whiting the meaningful opportunity to confront adverse witnesses. Accordingly, we sustain Whiting's first assignment of error. This in turn moots Whiting's second assignment of error.

However, we overrule Whiting's third assignment of error, which challenges the court's sentencing notifications to Whiting at his initial guilty plea. The court did not err when it incorporated indefinite sentencing language. *See State v. Jones*, 2022-Ohio-4485, ¶ 10 (recognizing that R.C. 2929.19(B)(4) now requires the incorporation of indefinite language at sentencing). Further, the court at sentencing apprised Whiting of prohibited conduct as well as the potential sentence for each offense should he violate the terms of his community control. *See State v. Ward*, 2021-Ohio-1320, ¶ 4 (1st Dist.) (holding a sentencing court must provide a specific notification for each offense for which a community-control sanction is imposed). Thus, the sentencing procedures followed by the court were appropriate.

The judgment of the trial court is therefore reversed, and the cause is remanded to the trial court for a new community-control revocation hearing.

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.

**CROUSE, P.J., NESTOR and MOORE, JJ.**

**To the clerk:**

**Enter upon the journal of the court on 6/20/2025 per order of the court.**

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

By: *Ginger S. Bock*  
**Administrative Judge**