

[Cite as *State v. Breckenridge*, 2009-Ohio-3620.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	No. 09AP-95
	:	(C.P.C. No. 04CR-6851)
v.	:	
	:	(REGULAR CALENDAR)
Sheila Breckenridge,	:	
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on July 23, 2009

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*Richard Cordray*, Attorney General, *Jordan Finegold*, and *Brian Peters*, for appellee.

*Sheila Breckenridge*, pro se.

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APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} Sheila Breckenridge, defendant-appellant, appeals from a judgment of the Franklin County Court of Common Pleas, in which the court denied her pro se motion for findings of fact and conclusions of law to terminate community control and motion to void payment of investigative costs.

{¶2} On July 20, 2005, appellant was found guilty, pursuant to a jury verdict, of three counts of Medicaid fraud and one count of forgery, all stemming from her actions while employed as a licensed practical nurse. On July 27, 2005, the trial court sentenced

appellant to three years of community control, restitution to the state of Ohio Medicaid program of \$4,440 on one of the Medicaid fraud counts, \$15,168 on another Medicaid fraud count, and \$956.70 on the third Medicaid fraud count. The court imposed \$2,924.50 in court costs and a \$1,000 fine, and ordered further restitution to the state of \$15,814.14 as recoupment of the state's investigative costs in the case. We affirmed the trial court's judgment in *State v. Breckenridge*, 10th Dist. No. 05AP-868, 2006-Ohio-5038 ("*Breckenridge I*").

{¶3} On June 24, 2008, appellant's probation officer filed a request for revocation of community control and statement of violations. The probation officer claimed appellant had failed to make consistent monthly payments toward the court costs, fine, and restitution, leaving a balance of \$37,093.34. On October 24, 2008, appellant filed a motion for discharge from community control. Also on October 24, 2008, a resentencing hearing was held regarding appellant's violation of the terms of her community control, at which appellant was represented by appointed counsel. Although we have no transcript of the hearing, it appears that, at the conclusion of the hearing, the trial court extended appellant's community control for the complete five-year term and ordered appellant to comply with all prior sanctions, including all prior fines and court costs imposed. On October 27, 2008, appellant filed a motion for findings of fact and conclusions of law regarding the October 24, 2008 hearing. On October 29, 2008, the trial court issued a judgment entry in which the trial court journalized the community control extension announced at the October 24, 2008 hearing. On November 20, 2008, appellant filed a motion for the court to journalize the October 24, 2008 pronouncement, apparently not aware that the court had journalized the pronouncement on October 29, 2008. Appellant

indicated in the November 20, 2008 motion that she had forwarded a letter to her appointed counsel that day discharging him as her counsel. Also on November 20, 2008, appellant filed a motion to vacate the portion of the judgment ordering her to pay the investigative costs.

{¶4} On January 5, 2009, the trial court issued a decision and entry denying appellant's pro se motion for findings of fact and conclusions of law to terminate community control and denying appellant's motion to void payment of investigative costs. Appellant, pro se, appeals the January 5, 2009 judgment of the trial court, asserting the following assignments of error:

#1. THE COURT DENIED DEFENDANT-APPELLANT THE RIGHT TO REPRESENT HERSELF WHEN COURT-APPOINTED COUNSEL WAS TOTALLY UNPREPARED TO REPRESENT THE DEFENDANT . . . AT THE HEARING HELD ON OCTOBER 24th, 2008.

#2. DEFENDANT-APPELLANT WAS GUARANTEED THOSE RIGHTS PROVIDED AS TO REQUIREMENTS OF FINDINGS OF FACT BECAUSE SHE WAS TRIED AND SENTENCED prior TO FEBRUARY 27, 2006.

#3. THE JUDGMENT OF SENTENCE IMPOSED BY THE COURT ON OCTOBER 24, 2008 EXTENDING COMMUNITY CONTROL IS TOTALLY VOID BECAUSE COMMUNITY CONTROL HAD EXPIRED prior TO THE OCTOBER 24th, 2008 DATE OF THE COURT'S SENTENCE IMPOSED.

#4. THE COST OF THE INVESTIGATION OF THIS MATTER IS NOT, AND WAS NOT PROVIDED BY STATUTE. DEFENDANT-APPELLANT IS NOT LEGALLY REQUIRED TO PAY SUCH COSTS.

#5. THE ATTEMPT TO EXTEND DEFENDANT'S COMMUNITY CONTROL, BY THE PROBATION OFFICER, COURTNEY WASHINGTON, WAS NOT LEGAL WHEN SAID PROBATION OFFICER FAILED TO ADVISE DEFENDANT-APPELLANT THAT SHE HAD A RIGHT TO

AN ATTORNEY PRIOR TO SUCH ATTEMPT WITHOUT THE COURT'S AUTHORIZATION, after a hearing, WITH DEFENDANT AND AN ATTORNEY BEING PRESENT.

#6. THE COURT'S SETTING THE HEARING DATE FOR REVOCATION HEARING WAS A CLEAR ABUSE OF DISCRETION ON THE COURT'S PART BECAUSE COMMUNITY CONTROL HAD EXPIRED PRIOR TO THE HEARING HELD ON OCTOBER 24, 2008.

#7. DEFENDANT'S FORMER ATTORNEY, GEORGE SCHUMANN, WELL KNEW THAT THERE WAS A CONFLICT IN HIS OFFICE AND SHOULD HAVE ADVISED THE COURT IN A TIMELY FASHION.

#8. BLAISE BAKER, COURT APPOINTED ATTORNEY, HAD NO INTENTION OF EFFECTIVELY REPRESENTING APPELLANT. STILL, THE COURT INSISTED, AND INSISTS, UPON REQUIRING APPELLANT TO USE BLAISE BAKER'S REPRESENTATION, EVEN AT THIS LATE DATE ALTHOUGH HE HAS NOT FILED any DOCUMENT ON APPELLANT'S BEHALF. SUCH A REQUIRMENT IS A MOCKERY OF JUSTICE.

#9. ALTHOUGH APPELLANT'S INDIGENCY DOES NOT RELIEVE HER FROM HER OBLIGATION TO COMPLY WITH THE TERMS OF HER COMMUNITY CONTROL TO PAY RESTITUTION, THE COURT WAS NOT AND IS NOT AUTHORIZED TO EXTEND APPELLANT'S ALREADY EXPIRED TERM OF COMMUNITY CONTROL, THEREFORE, THE COURT HAD NO JURISDICTION OVER THE SUBJECT MATTER NOR THE PERSON OF THE DEFENDANT.

{¶5} Appellant argues in her first assignment of error that the trial court denied her the right to represent herself at the October 24, 2008 hearing. Appellant maintains that the trial court repeatedly told her to speak to her attorney when she made it known to the court that she wished to represent herself at the revocation hearing. We must reject appellant's argument for several reasons. Initially, appellant failed to appeal the trial court's October 29, 2008 judgment, which addressed the October 24, 2008 hearing and

journalized the oral pronouncement made at that hearing. Instead, appellant has appealed the trial court's January 5, 2009 judgment. The January 5, 2009 judgment addressed appellant's motion for findings of fact and conclusions of law and appellant's motion to vacate the portion of the judgment ordering her to pay the investigative costs, both of which it denied. Accordingly, the issues involved in the October 29, 2008 judgment are not presently before us. In addition, even if we could address this argument, this court is without a transcript of the October 24, 2008 community control revocation hearing; thus, we have no evidence of what transpired before the court at the hearing. Pursuant to App.R. 9(B), appellant had a duty to file the relevant transcripts with this court. The duty to file a transcript falls upon the appellant because the appellant bears the burden of showing error by reference to the record. *Columbus v. Hodge* (1987), 37 Ohio App.3d 68, 68-69. Therefore, because appellant failed to file a transcript of the hearing, we are unable to address appellant's contention. Appellant's first assignment is overruled.

{¶6} Appellant argues in her second assignment of error that the trial court was required to issue findings of fact and conclusions of law because prior to February 27, 2006, the Ohio Rules of Criminal Procedure required a court to make findings of fact and conclusions of law, and she was tried and sentenced prior to that date. Appellant fails to explain the significance of February 27, 2006, but she may be referring to the release date of the Supreme Court of Ohio's decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. Appellant does not explain the importance of the holding in *Foster*, and we fail to see how it applies to her request for findings of fact and conclusions of law at the revocation hearing. Appellant also does not indicate which rule within the Ohio Rules of

Criminal Procedure requires such findings of fact and conclusions of law. Regardless, the trial court here did, in fact, in its judgment go on to make findings and give reasons to support its decision to extend appellant's community control and maintain the prior imposition of costs, and we fail to see any error in such findings and reasons. For these reasons, appellant's second assignment of error is overruled.

{¶7} We will address appellant's third and sixth assignments of error together, as they generally assert the same argument. Appellant argues in her third and sixth assignments of error that the sentence imposed by the court at the October 24, 2008 hearing extending community control was void because community control had expired prior to that date. Again, we first note that appellant failed to appeal the trial court's October 29, 2008 judgment, which addressed the October 24, 2008 hearing and journalized the oral pronouncement made at that hearing. Regardless, even if this court could address this argument as being one that raises the trial court's lack of subject-matter jurisdiction, which may be raised at any stage of the proceedings, *State v. Williams* (1988), 53 Ohio App.3d 1, 4, we would find appellant's argument not well-taken. In support of her contention, appellant cites *Davis v. Wolfe*, 92 Ohio St.3d 549, 2001-Ohio-1281, *State v. Fairbank*, 6th Dist. No. WD-06-015, 2006-Ohio-6180, and *State v. McKinney*, 5th Dist. No. 03CA083, 2004-Ohio-4035. However, these cases are not persuasive. Appellant relies on these cases for the proposition that a trial court loses its jurisdiction to impose a penalty for a defendant's violation of community control sanctions once the term of community control has expired, even if a motion to revoke probation or any other proceeding is initiated prior to expiration. However, *Davis*, which both *Fairbank* and *McKinney* cite, relied upon the language in former R.C. 2951.09 that provided "[a]t

the end or termination of the period of probation, the jurisdiction of the judge or magistrate to impose sentence ceases and the defendant shall be discharged." R.C. 2951.09 was repealed effective January 1, 2004, thereby rendering the holding on this issue in *Davis* without any further support. Thus, we cannot rely upon *Davis* for the proposition appellant urges. Furthermore, appellant also cites *Fairbank* for the proposition that to extend the offender's term of community control, the probation officer must report the violation before the term of community control has expired. Here, appellant's probation officer filed a statement of violations detailing the alleged community control violations on June 24, 2008, which was before appellant's initial term of three years of community control expired on July 27, 2008. Therefore, *Fairbank* is inapplicable on this basis too. For these reasons, appellant's third and sixth assignments of error are overruled.

{¶8} Appellant argues in her fourth assignment of error that the trial court could not legally order her to pay the costs of the investigation of this matter as a penalty. However, appellant already raised this argument in *Breckenridge I*, and we rejected it. See *Breckenridge I* at ¶39 (rejecting appellant's ninth assignment of error that asserted the trial court erred by awarding investigative costs because appellant's counsel subsequently conceded that R.C. 2913.40(F) specifically provides for an award of such costs against persons convicted of Medicaid fraud in addition to any other penalties). Therefore, appellant's fourth assignment of error is overruled.

{¶9} Appellant argues in her fifth assignment of error that her probation officer's attempt to extend appellant's community control was not legal when the probation officer failed to advise her that she had a right to an attorney prior to such attempt without the court's authorization. Appellant presents little additional argument to support her

assertion, and the precise nature of her complaint is not clear from her briefing. Insofar as appellant may be arguing that her probation officer extended her community control, such contention is not accurate. It was the trial court that extended her community control after a hearing on that matter; the probation officer merely filed a request to revoke appellant's community control. Therefore, appellant's fifth assignment of error is overruled.

{¶10} Appellant argues in her seventh assignment of error that her former attorney knew there was a conflict in her office and should have advised the court in a timely manner. However, appellant fails to support this contention with any argument and specifically asserts that this assignment of error needs no argument or supporting law because it is "a given." It is an appellant's duty to support her assignment of error with an argument, which includes citations to legal authority. App.R. 16(A)(7). If an argument exists that can support this assignment of error, it is not this court's duty to root it out. *Whitehall v. Ruckman*, 10th Dist. No. 07AP-445, 2007-Ohio-6780, ¶20. Regardless, the counsel about whom appellant complains was her attorney during proceedings not under review in the current appeal. Therefore, for these reasons, appellant's seventh assignment of error is overruled.

{¶11} Appellant generally argues in her eighth assignment of error that the attorney that represented her at her revocation hearing was ineffective. However, as noted above, appellant failed to appeal the October 29, 2008 judgment extending her community control. Therefore, appellant has waived any argument that her counsel at that hearing provided ineffective assistance. Furthermore, appellant filed the two motions under review in the current appeal pro se and can maintain no ineffective assistance of

counsel with respect to those two motions. Therefore, appellant's eighth assignment of error is overruled.

{¶12} Appellant argues in her ninth assignment of error that R.C. 2949.15 precluded the trial court from ordering her to pay court costs because she is indigent. In its July 27, 2005 judgment, the trial court ordered appellant to pay court costs in the amount of \$2,924.50. In the October 29, 2008 judgment extending community control, the trial court ordered appellant to pay all costs as previously ordered in the July 27, 2005 judgment. However, appellant failed to raise the issue of court costs in her direct appeal in *Breckenridge I*, and appellant failed to appeal the October 29, 2008 judgment maintaining the prior order of court costs. Therefore, appellant has waived this issue, and we cannot address it in the present appeal. However, even if we could address it, we find R.C. 2949.15 does not preclude the trial court from ordering appellant to pay court costs. R.C. 2949.15 permits a clerk of the court of common pleas to issue a writ of execution against the property of a non-indigent person convicted of a felony if that person fails to pay the costs of prosecution. We fail to see the application of R.C. 2949.15 to appellant's present argument. Therefore, appellant's ninth assignment of error is overruled.

{¶13} Accordingly, appellant's nine assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

BRYANT and TYACK, JJ., concur.

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