

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

STATE OF OHIO,	:	APPEAL NO. C-150336
	:	TRIAL NO. B-1401355
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
TIMOTHY JONES,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Timothy Jones appeals the judgment of the Hamilton County Common Pleas Court revoking his community control and sentencing him to 36 months in prison.

In his first assignment of error, Jones argues that the trial court erred to his prejudice and denied him due process when it failed to hold both a preliminary and a final community-control-revocation hearing, but instead held that he had violated his community control and sentenced him to prison following a single evidentiary hearing. We disagree.

Ohio appellate courts, including this one, have held that the judgment of the trial court revoking community-control sanctions will not be reversed even though two separate hearings were not held unless it appears from the record that the defendant was prejudiced. *See State v. Thompson*, 1st Dist. Hamilton Nos. C-140746

and C-140747, 2015-Ohio-2836, ¶ 6-7, citing *State v. Delaney*, 11 Ohio St.3d 231, 234, 465 N.E.2d 72 (1984); see also *State v. Knerr*, 3d Dist. Auglaize Nos. 2-14-03 and 2-14-04, 2014-Ohio-3988, ¶ 14, citing *State v. Miller*, 45 Ohio App.2d 301, 306, 345 N.E.2d 82 (3d Dist.1975); *State v. Jackson*, 7th Dist. Mahoning No. 14 MA 108, 2015-Ohio-3959, ¶ 9; *State v. Waddell*, 10th Dist. Franklin No. 14AP-372, 2014-Ohio-4829, ¶ 8-12.

The record reflects that Jones did not object to the combined-hearing procedure in the trial court. Nor has he offered any evidence to support his argument that he was prejudiced. The record, in fact, supports a contrary conclusion. Jones received notice of the reason underlying his community-control violation. At the hearing, the state presented evidence of the violation through witness testimony and exhibits. Jones's counsel cross-examined the state's witnesses. Jones then testified at the hearing. At the conclusion of the hearing, the trial court found Jones guilty of violating his community control. The trial court then permitted defense counsel to present his arguments in mitigation before it revoked Jones's community control and imposed a 36-month prison sentence. As a result, we overrule his first assignment of error.

In his second assignment of error, Jones argues that the trial court erred by revoking his community control and imposing a 36-month prison sentence, because the evidence at the revocation hearing was insufficient as a matter of law to conclude that he had violated the conditions of his community control.

In community-control-revocation proceedings, the state need not present evidence of a community-control violation beyond a reasonable doubt. Instead, the state must only present substantial evidence of the violation. See *State v. McCants*, 1st Dist. Hamilton No. C-120725, 2013-Ohio-2646, ¶ 11. "Substantial evidence has been defined as being more than a scintilla, but less than a preponderance." *Id.* The

rules of evidence are inapplicable to revocation hearings, but the admission of hearsay may implicate a defendant's due process right to confront and cross-examine adverse witnesses. *Id.* at ¶ 14; *State v. Craig*, 130 Ohio App.3d 639, 642-43, 720 N.E.2d 966 (1st Dist.1998); *State v. Hylton*, 75 Ohio App.3d 778, 782, 600 N.E.2d 821 (4th Dist.1991); *State v. Ohly*, 166 Ohio App.3d 808, 2006-Ohio-2353, 853 N.E.2d 675, ¶ 26 (6th Dist.).

Here, the record reflects that Jones was required to complete the program at River City as a condition of his community control. The state presented testimony from Geri Roberts and James Fuller, both employees of River City, who testified that Jones had been discharged from the River City program following his violation of a no-tolerance policy for violence. The state also introduced into evidence a copy of a video showing an physical altercation between Jones and another resident, which had led to his violation of the no-tolerance policy and his discharge from River City. Because the record contains substantial evidence to support the trial court's finding that Jones had violated the terms of his community control, we overrule his second assignment of error and affirm the judgment of the trial court.

Further, 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.

FISCHER, P.J., HENDON and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on May 25, 2016

per order of the court _____.

Presiding Judge