

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

STATE OF OHIO	:	
Plaintiff	:	CASE NO. 2006 CR 01023
vs.	:	Judge McBride
ISOME EARL STURGILL, JR.	:	DECISION/ENTRY
Defendant	:	

Scott C. O'Reilly, assistant prosecuting attorney for the state of Ohio, 123 North Third Street, Batavia, Ohio 45103.

Edwin L. Vardiman, Jr., attorney for the defendant Isome Earl Sturgill, Jr., 7416 Jager Court, Cincinnati, Ohio 45230.

On March 27, 2007, the defendant pled guilty to the charge of failure to comply with the signal of an officer in violation of R.C. 2921.331(B), which was a felony of the third degree. The defendant was sentenced on April 23, 2007 to a stated prison term of five years.¹

The defendant filed a motion for judicial release on November 17, 2010, and the court granted that motion at a hearing held on January 27, 2011, ordering the prison sentence suspended and imposing community control sanctions.²

¹ Judgment Entry Sentencing Defendant, Filed April 27, 2007.

² Judgment Entry Granting Judicial Release, filed February 1, 2011.

An affidavit for community control violation was filed on July 11, 2011. The defendant was ultimately found to have violated his community control sanctions on July 10, 2012 and the case was set for sentencing. At that hearing, the court raised the issue *sua sponte* of whether the defendant could still be sentenced for the remaining time of his five-year prison sentence since he was being sentenced after the effective date of R.C. 2929.14(A)(3)(B) as amended by House Bill 86, which reduced the range of penalties for most third degree felonies, including failure to comply with the signal of an officer, to 9, 12, 18, 24, 30, or 36 months.

After several continuances of the defendant's sentencing on the community control violation, the probation department filed another affidavit of community control violation on October 26, 2012. At the hearing on that matter on October 30th, the court again raised the sentencing issue set forth above.

Pursuant to R.C. 2929.20(K):

“If the court grants a motion for judicial release under this section, the court shall order the release of the eligible offender, shall place the eligible offender under an appropriate community control sanction, under appropriate conditions, and under the supervision of the department of probation serving the court and shall reserve the right to reimpose the sentence that it reduced if the offender violates the sanction. If the court reimposes the reduced sentence, it may do so either concurrently with, or consecutive to, any new sentence imposed upon the eligible offender as a result of the violation that is a new offense. * * * ”

When a trial court grants a motion for judicial release, “ ‘it, in effect, suspends the balance of the terms of the originally imposed sentence and places ‘the eligible offender under an appropriate community control sanction.’ ”³ “ * * * [A]n offender who has been

³ *State v. Terry* (Dec. 22, 2011), 10th Dist. No. 11AP-127, 2011-Ohio-6666, ¶ 9, quoting *State v. Dathard* (Aug. 13, 2002), 10th Dist. Nos. 01AP-1291, 01AP-1292, 01AP-1293, 2002-Ohio-4292, ¶ 11.

granted early judicial release pursuant to R.C. 2929.20 has already been ordered to serve a term of incarceration as part of the original sentence but, upon motion by the 'eligible offender,' is released early from prison."⁴ "Coincident with granting judicial release, a trial court shall reserve on the record the right to reimpose the original sentence on an offender if the offender violates the community control sanction."⁵ The " 'trial court's option in this instance with respect to ordering incarceration is limited to the reinstatement, with credit for time served, of the sentences that it suspended upon the granting of judicial release.' "⁶

Therefore, a sentencing revoking judicial release is merely a reimposition of the original sentence and not the imposition of a new sentence. "The General Assembly expressly provided in Section 4 of H.B. 86 that the amendments to R.C. 2929.14(A) 'apply to a person who commits an offense specified or penalized under those sections on or after the effective date of this section and to a person to whom division (B) of section 1.58 of the Revised Code makes the amendments applicable.' R.C. 1.58(B), in turn, states: 'If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment of a statute, the penalty, forfeiture, or punishment, *if not already imposed*, shall be imposed according to the statute as amended.' (Emphasis added.) Section 4 specifically states the legislature's intent not to make the changes to the sentencing laws retroactive unless the offender falls within the exception found in R.C. 1.58(B). See also *State ex. rel. Royster v. Brown*, 5th Dist. No.2011 CA 00278, 2012–Ohio–2879, ¶ 4."⁷

⁴ Id.

⁵ Id. at ¶ 10.

⁶ Id., quoting *Dathard* at ¶ 13.

⁷ *State v. Clay* (Oct. 29, 2012), 12th Dist. No. CA2011-12-016, 2012-Ohio-5011, ¶ 15.

In the present case, the defendant committed the offense at issue well before the effective date of H.B. 86. Accordingly, he “would only receive the benefit of a reduced sentence if the penalty or punishment for the * * * offense had not ‘already been imposed’ under R.C. 1.58(B).”⁸ The five-year prison term at issue in the case at bar has already been imposed. If the court were to revoke the defendant’s judicial release and order him to return to prison, it only has the option of *reimposing* the original sentence, with credit for time served.

As a result, the amendments to R.C. 2929.14(A) contained in H.B. 86 which reduced the range of penalties for most third degree felonies cannot be retroactively applied to the defendant in the present case because he does not fall within the exception found in R.C. 1.58(B).

IT IS SO ORDERED.

DATED: _____

Judge Jerry R. McBride

⁸ Id. at ¶ 16.

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile/E-Mail this 5th day of November 2012 to all counsel of record and unrepresented parties.

Administrative Assistant to Judge McBride