

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

STATE OF OHIO,	:	APPEAL NO. C-081198
Plaintiff-Appellee,	:	TRIAL NO. B-0706148
vs.	:	<i>JUDGMENT ENTRY.</i>
RACHIF R. BROWN,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Rachif R. Brown pleaded guilty to one count of failure to comply with an order or signal of a police officer, one count of receiving stolen property, one count of carrying concealed weapons, and one count of improperly handling firearms in a motor vehicle. The trial court imposed a blended sentence: one year in prison for the last three offenses, followed by three years of community control for the failure-to-comply offense, a third-degree felony. As conditions of his community control, Brown was required to obey all laws, “to obtain and maintain full-time employment,” to “obey a 9:30 p.m. curfew except for work purposes,” and to comply with “regular reporting and drug testing.” The court warned Brown that it would impose a five-year term of incarceration for a community-control violation.

Brown served his year in prison and began serving his community-control term in late July of 2008. On September 29, 2008, Brown’s probation officer filed a notice of a

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

community-control violation. This notice indicated that Brown had been arrested on September 23, 2008, at 3:46 a.m. for aggravated robbery, that he had failed to obtain and maintain employment, and that he had failed to obey his curfew, as evidenced by his arrest.

The trial court appointed counsel to represent Brown on the claimed violation. Brown's probation officer testified about the grounds for the community-control violation at a probable-cause hearing. At this hearing, Brown acknowledged that he had been recently arrested at 3:46 a.m. for robbery, but that he did not "do anything" and that the "dude" who did was "supposed" to turn himself in. He also claimed that when he had been arrested for the robbery, he was in downtown Cincinnati waiting for his temporary-employment office to open because the place where he was to sleep had "roaches and bed bugs." The trial court found probable cause for the violation and held a final revocation hearing the following week. Both Brown and his probation officer testified. The court rejected Brown's explanations and found that Brown had violated the conditions of his community control. The court then sentenced him to five years' incarceration on the failure-to-comply count. Brown has appealed.

In his first assignment of error, Brown argues that the trial court failed to meet the minimum requirements of due process for probation-revocation hearings. But the state provided Brown with written and oral notice of the claimed violation and the facts that would be presented as evidence to support the violation. Brown did not raise an objection that this notice was insufficient. Additionally, the trial court appointed counsel, provided a probable-cause hearing and a final revocation hearing before a neutral fact-finder, and afforded Brown the opportunity to be heard, to cross-examine witnesses, and to submit evidence in his defense at both hearings.

Although the trial court did not notify Brown in writing of the evidence that it had relied upon and the reasons for revoking community control, the court orally indicated

that the probation officer's testimony about Brown's new arrest at 3:46 a.m. and Brown's breach of curfew supported the violation and the revocation of community control. Brown did not request a written statement or otherwise inform the court that this notice was insufficient, and he has not demonstrated any prejudice from the court's failure to provide the information in writing. In light of these facts, we conclude that the court afforded Brown sufficient due process before revoking his community control.² Accordingly, we overrule the first assignment of error.

In his second assignment of error, Brown argues that the state failed to sufficiently prove a community-control violation. Community-control-revocation hearings are not criminal trials, and the state is not required to present proof beyond a reasonable doubt.³ Instead, the state only needs to present "substantial proof that the defendant willfully violated the terms of community-control."⁴ We hold that the state met that standard in this case. The court was free to reject Brown's self-serving explanations that "ma[d]e[] no sense." Accordingly, we overrule the second assignment of error.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R.24.

HILDEBRANDT, P.J., CUNNINGHAM and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on November 4, 2009

per order of the Court _____
Presiding Judge

² *Gagnon v. Scarpelli* (1973), 411 U.S. 778, 786, 93 S.Ct. 1756.

³ *State v. Hylton* (1991), 75 Ohio App.3d 778, 782, 600 N.E.2d 821.

⁴ *Id.*