

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

City of Oregon
Appellee

Court of Appeals No. L-12-1110
Trial Court No. 09TRC02436

v.

April D. Lajti
Appellant

DECISION AND JUDGMENT
Decided: January 25, 2013

* * * * *

Tim A. Dugan, for appellee.

Jeffrey I. Goldstein, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, April Lajti, appeals the judgment of the Oregon Municipal Court, which found her to be in violation of her probation and ordered her to serve three days in prison, plus 28 days in the CAD program. For the following reasons, we reverse.

A. Facts and Procedural Background

{¶ 2} On September 18, 2009, Lajti was charged with operating a vehicle under the influence of alcohol. After pleading no contest to the charge, the court found her guilty, and sentenced her to 180 days in prison. Only three days were actually served, as 177 days were suspended upon Lajti's completion of the driver's intervention program. As a condition of the suspension of prison time, the trial court ordered Lajti to serve probation for a period of three years.

{¶ 3} Notably, the journal entry that set forth Lajti's original sentence specified the conditions of Lajti's probation. In that entry, several potential probation conditions are listed, with a corresponding checkbox for each condition. Of all the possible conditions available, the court only placed a checkmark next to five boxes. Pursuant to those boxes that were checked, Lajti was required to attend alcoholics anonymous meetings through the probation department, submit urine/drug screens, undergo a mental health assessment, and commit no subsequent offenses. While the form included a box entitled "Remain drug and alcohol free," no checkmark appeared in that box.

{¶ 4} On December 14, 2011, Lajti appeared before the Oregon Municipal Court's testing facility, where she tested positive for alcohol consumption, registering a .047 blood alcohol reading. As a result of her blood alcohol reading, a probation violation hearing was held on January 17, 2012.

{¶ 5} At the probation violation hearing, Lajti argued that her positive test was the result of her ingestion of NyQuil, which she claimed was used to treat a cold.

Alternatively, Lajti argued that her consumption of alcohol was not a violation of the conditions of her probation, since that condition was not indicated on the initial sentencing entry. Essentially, Lajti relied on the proposition that a court speaks through its journal entry. Since the journal entry did not expressly state that Lajti was to refrain from the consumption of alcohol, she reasoned that alcohol consumption was not prohibited.

{¶ 6} The trial court disagreed with Lajti, and found that she violated the condition of her probation for “testing positive for alcohol while on probation.” While the court acknowledged that the restriction against consuming alcohol was not journalized, it reasoned that the condition could be implied. In support of its conclusion, the court referenced a document from the probation department that Lajti signed, which notified her that she could not consume alcohol. This document was never entered into evidence.

{¶ 7} Ultimately, the court sentenced Lajti to, inter alia, three days in prison. Lajti has now timely appealed.

B. Assignments of Error

{¶ 8} Lajti assigns the following errors for our review:

1. THE TRIAL COURT ERRED IN IMPOSING A SENTENCE IN CONNECTION WITH A PROBATION VIOLATION WHERE APPELLANT DID NOT VIOLATE A CONDITION OF HER PROBATION.

2. THE TRIAL COURT VIOLATED APPELLANT’S DUE
PROCESS RIGHTS BY RELYING ON A DOCUMENT NOT IN
EVIDENCE WHEN IMPOSING A SENTENCE IN CONNECTION
WITH A PROBATION VIOLATION.

{¶ 9} Since our resolution of the second assignment of error assists our resolution of the first assignment of error, we will address the assignments out of order.

II. Analysis

{¶ 10} In Lajti’s second assignment of error, she argues that the trial court erred when it considered the probation department document that expressly prohibited her from using alcohol during her probation period. She contends that the trial court should not have considered that document, since it was “never introduced, authenticated, or admitted into evidence during the probation violation hearing, or subsequent sentencing.”

{¶ 11} Indeed, a trial court is not permitted to consider documentary evidence that was never offered into evidence by the parties or received into evidence by the court. *State v. Bates*, 6th Dist. No. WD-90-29, 1991 WL 21524, *2 (Feb. 22, 1991). We recognize that the rules regarding the admissibility of evidence are relaxed in probation violation hearings. However, we have previously stated that “the procedure for offering and receiving evidence has not been likewise relaxed.” *Id.*

{¶ 12} The city of Oregon concedes Lajti’s position, and states: “[Lajti] is correct that the probation department record the Trial Court referenced in its written decision * * * was not properly introduced as evidence at the hearing.” Upon our review of the

record, we agree with Lajti that the trial court erred when it considered the probation department records that were not admitted into evidence during the hearing.

Accordingly, Lajti's second assignment of error is well-taken.

{¶ 13} In Lajti's first assignment of error, she argues that the trial court erred when it sentenced her for violating a condition of probation that did not apply to her. Specifically, Lajti argues that the evidence clearly demonstrates that she was not required to refrain from consuming alcohol as a condition of her probation. She contends that such a restriction must be contained in a journalized entry in order to be enforceable, since the court speaks only through its journal. Since the restriction is not contained in a journalized entry, Lajti argues that it does not apply to her and it cannot form the basis for the trial court's determination that she violated the conditions of her probation.

{¶ 14} The city of Oregon recognizes that the journal entry from Lajti's initial trial does not prohibit her from consuming alcohol. However, it argues that the testimony of Lajti's probation officer is sufficient to establish the existence of such a condition. We disagree.

{¶ 15} It is well-established that a trial court speaks only through its journal and not by oral pronouncement. *Schenley v. Kauth*, 160 Ohio St. 109, 111, 113 N.E.2d 625 (1953). Ordinarily, this would mean that conditions applicable to probation need to be contained in a journal entry. However, at least one other court has held that reversal would be inappropriate where the defendant "was clearly apprised of the special terms of

[her] probation.” *City of Columbus v. Wright*, 10th Dist. No. 83AP-1201, 1984 WL 6048, *2 (Dec. 27, 1984).

{¶ 16} Here, the only admissible evidence relied upon by the trial court was the testimony of Lajti’s probation officer. In that testimony, the probation officer stated that she had counseled Lajti that she was not to consume alcohol. Further, the probation officer testified: “I explained that that (sic) would be her last warning, because she tested positive in March, 2011, for alcohol.”

{¶ 17} While this testimony established that the probation department believed that Lajti was prohibited from consuming alcohol while on probation, the journal entry contradicted the probation officer’s testimony. This contradiction created ambiguity as to whether Lajti was in fact prohibited from consuming alcohol.

{¶ 18} This case is factually distinguishable from *Wright*. In that case, the defendant was found to have violated the conditions of his probation concerning the consumption of alcohol. Although the court of appeals determined that the trial court’s judgment entry had not been properly journalized, it reasoned that reversal was inappropriate because the journal entry clearly stated that consumption of alcohol was prohibited and the defendant acknowledged receipt of the entry. *Id.* at *1.

{¶ 19} Unlike in *Wright*, the journal entry in this case does not prohibit the consumption of alcohol since the box next to that condition is not checked. Thus, we conclude that Lajti was not “clearly apprised of the special terms of [her] probation.” *Id.*

at *2. Having determined that a prohibition on the consumption of alcohol was not a condition of Lajti's probation, we find her first assignment of error well-taken.

III. Conclusion

{¶ 20} The judgment of the Oregon Municipal Court is hereby reversed. This case is remanded to the trial court for further proceedings consistent with this decision. Costs are hereby assessed to appellee in accordance with App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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