

COURT OF APPEALS OF OHIO

JUN 06 2019

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

CITY OF SOUTH EUCLID, :
Plaintiff-Appellee, :
v. :
BRENDA V. BICKERSTAFF, :
Defendant-Appellant. :

No. 107526

SOUTH EUCLID
MUNICIPAL COURT

2019 JUN 12 AM 9:34

FILED

JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED IN PART; MODIFIED IN PART;
AND REMANDED
RELEASED AND JOURNALIZED: June 6, 2019**

Criminal Appeal from the South Euclid Municipal Court
Case No. TRD 1800233A

Appearances:

Michael Lograsso, Law Director, City of South Euclid,
and Anthony J. Bondra, Assistant Prosecuting Attorney,
for appellee.

Brenda V. Bickerstaff, *pro se.*

KATHLEEN ANN KEOUGH, J.:

{¶ 1} Defendant-appellant, Brenda V. Bickerstaff (“Bickerstaff”), appeals her sentence. For the reasons that follow, we affirm in part; modify in part; and remand.

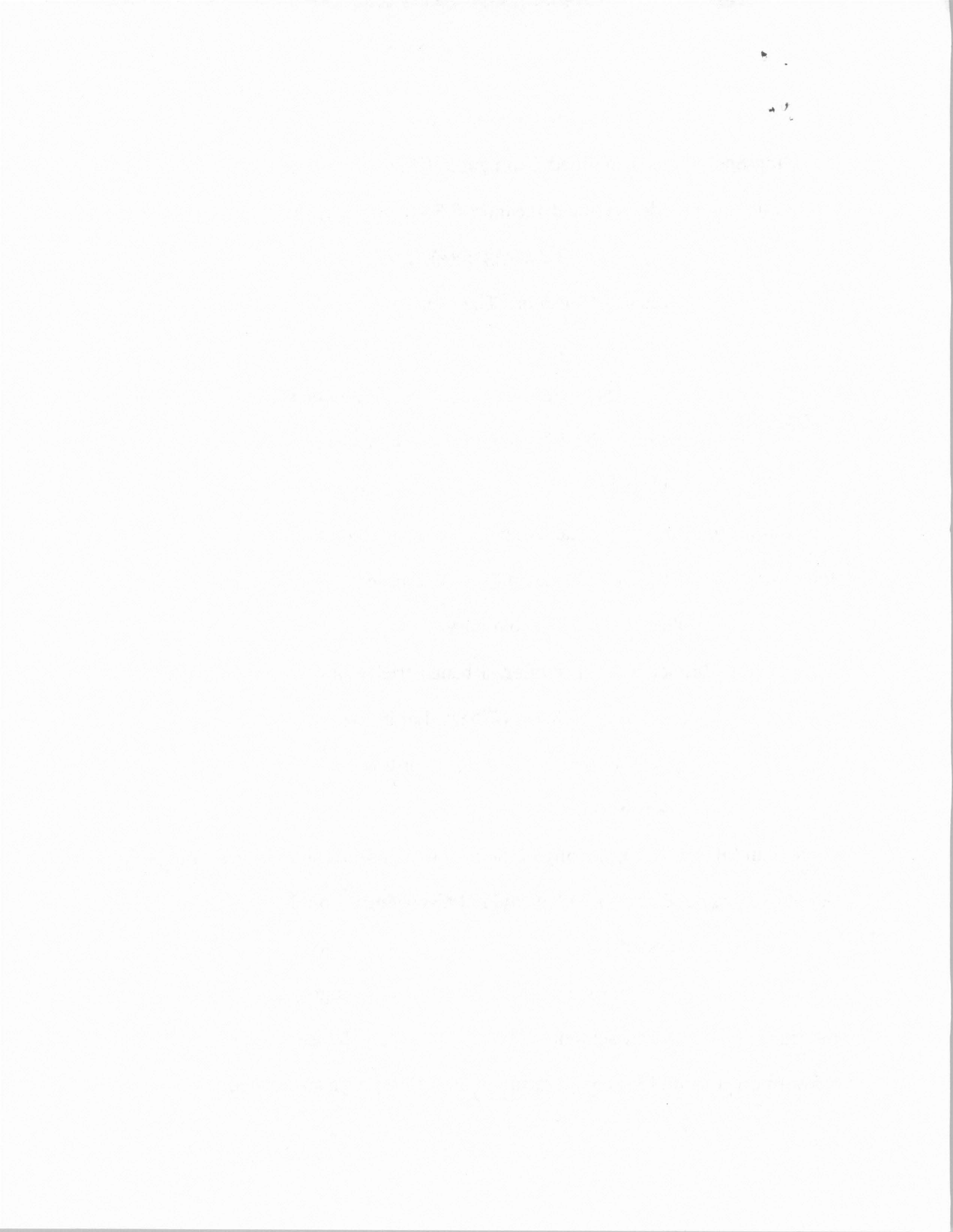
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{¶ 2} In January 2018, Bickerstaff was issued a traffic citation for violating South Euclid Codified Ordinances (“S.E.C.O.”) 331.34(c), full time and attention, a fourth-degree misdemeanor; S.E.C.O. 337.27(b)(1), driver seat belt, a minor misdemeanor; and S.E.C.O. 335.09(a)(1), failure to display a front license plate, a fourth-degree misdemeanor. The citation also noted that she was given a warning for “R.O.W.” (right of way). Bickerstaff pleaded not guilty.

{¶ 3} On July 25, 2018, the case was scheduled for a bench trial. Bickerstaff attempted to plead “no contest” to the charges; however, during the plea colloquy, she alleged that she was threatened by the prosecutor, which caused her to want to change her plea. After a lengthy conversation with the trial court, the court declined to accept Bickerstaff’s plea because in light of the allegations she was making, the plea would not be voluntary.

{¶ 4} Immediately thereafter, a bench trial was conducted, and the city presented testimony from Officer William Lozar, who issued the citation to Bickerstaff. The city also played the video recording from the body camera that Officer Lozar was wearing during the traffic stop. At the conclusion of the trial, the court found Bickerstaff not guilty of the full-time-and-attention offense, but guilty of not wearing her driver’s seat belt and not displaying a front license plate.

{¶ 5} Bickerstaff was sentenced immediately following the trial; no presentence investigation report was ordered. After a lengthy sentencing hearing, the trial court ultimately sentenced Bickerstaff on the offense for failing to display a front license plate to serve 30 days in jail, with 25 days suspended; pay a \$200



fine plus court costs; serve six months of reporting probation; perform 75 hours of community service; be subject to random drug and alcohol screening; and to “not commit no same or similar offenses or other.” On the seatbelt violation, Bickerstaff was ordered to pay a \$30 fine. Her sentence was stayed pending appeal.

{¶ 6} Bickerstaff now appeals, raising the following three assignments of error, which will be addressed together.¹

I. The imposition of a sentence of community control, incarceration, 75 hours of community service[,] and drug and alcohol screening for the crime of failure to display a license plate for a first[-]time offender constitutes an abuse of discretion.

II. It is patently obvious that the sentence imposed on appellant was not reasonable, proportional, or consistent with sentences imposed for similarly-situated defendants for commission of a fourth-degree misdemeanor of failure to display a front license plate.

III. The imposition of a sentence of probation or community control, incarceration, 75 hours of community service, and drug and alcohol screening violated appellant’s Fifth and Fourteenth Amendment rights to due process of law.

I. General Misdemeanor Sentencing Guidelines

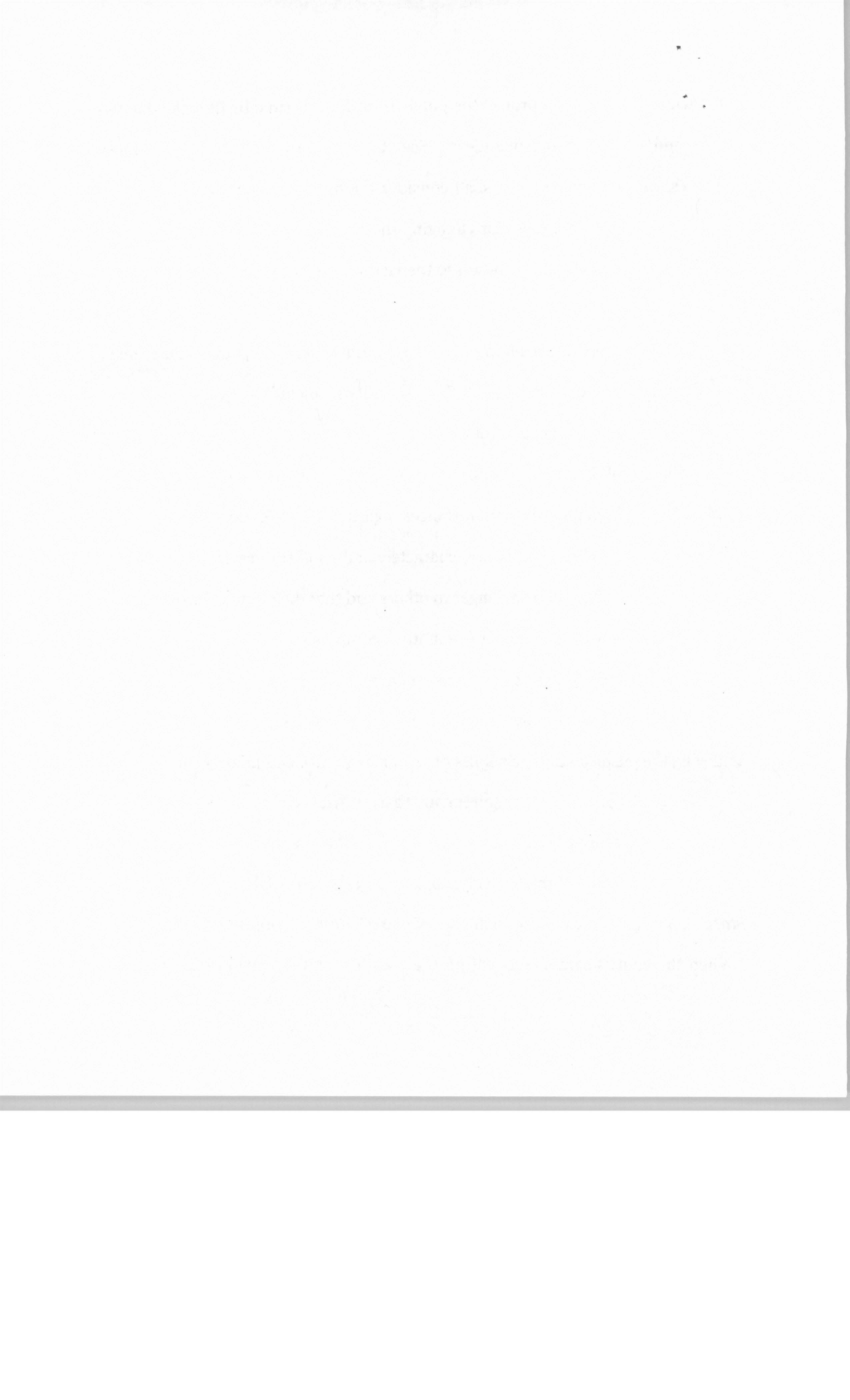
{¶ 7} Courts have broad discretion in misdemeanor sentencing. *State v. Hughley*, 8th Dist. Cuyahoga Nos. 92588 and 93070, 2009-Ohio-5824, ¶ 7, citing *Cleveland v. Jurco*, 8th Dist. Cuyahoga No. 88702, 2007-Ohio-4305, ¶ 18. The guidelines for misdemeanor sentencing are substantially similar to those applied in felony sentencing. The court must be guided by the purposes of misdemeanor

¹ Bickerstaff makes no argument on appeal challenging the imposition of the fine or costs on the failure to display a front license plate, or the fine imposed for the seatbelt violation.

sentencing, which are “to protect the public from future crime by the offender and others and to punish the offender.” *See* R.C. 2929.21(A). “To achieve those purposes, the sentencing court shall consider the impact of the offense upon the victim, [if any,] and the need for changing the offender’s behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public.” *Id.*

{¶ 8} When determining the appropriate sentence, the court must consider the factors listed in R.C. 2929.22(B), including the nature and circumstances of the offense; whether the circumstances indicate that the offender has a history of persistent criminal activity and poses a substantial risk of reoffending; and whether the circumstances regarding the offender and the offense indicate that the offender’s history, character, and condition reveal a substantial risk that the offender will be a danger to others and that the offender’s conduct has been characterized by a pattern of repetitive, compulsive, or aggressive behavior with heedless indifference to the consequences. *See* R.C. 2929.22(B)(1)(a)-(c). Additionally, the court may consider any other factors that are relevant to achieving the purposes and principles of sentencing. R.C. 2929.22(B)(2).

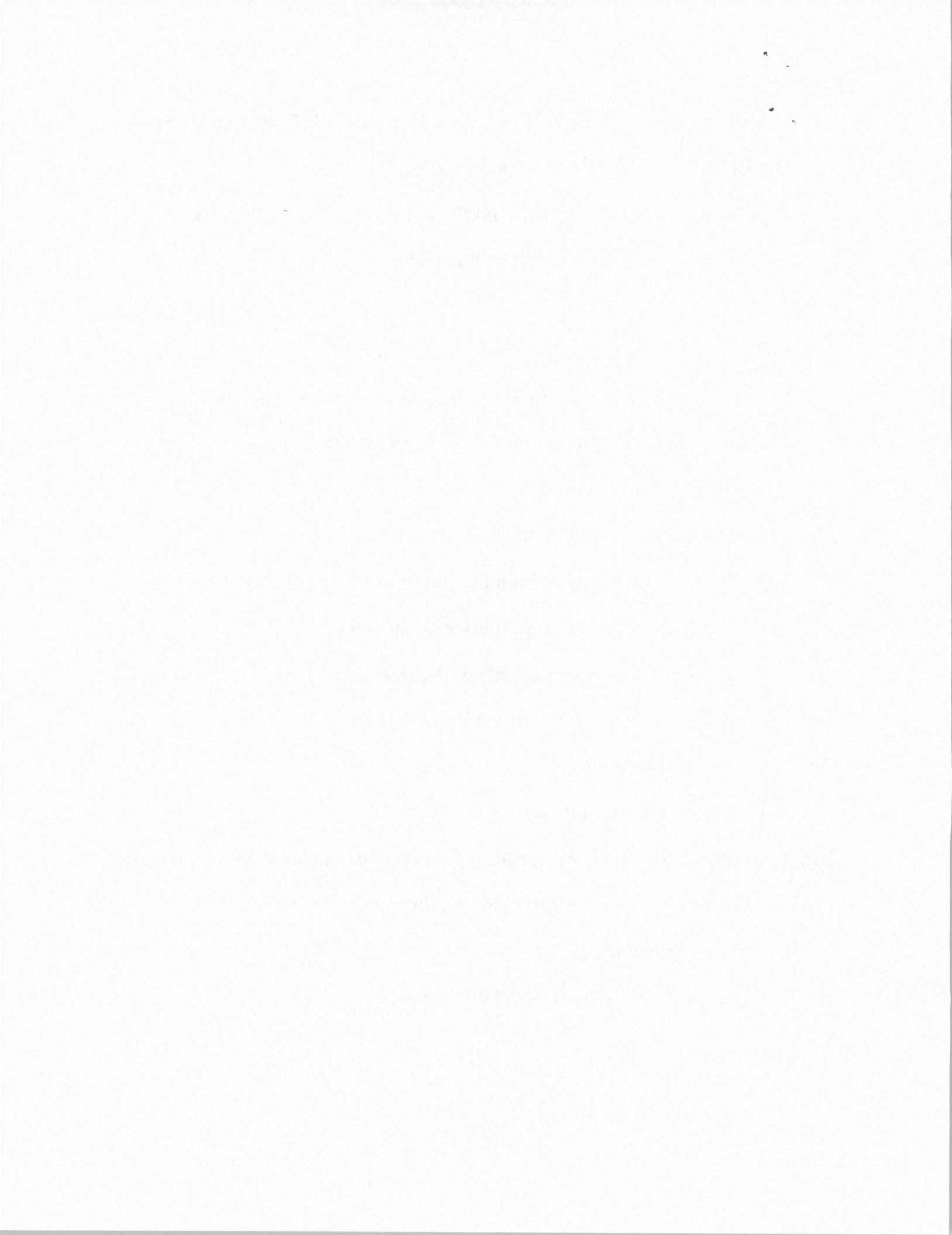
{¶ 9} There is no requirement that a trial court in sentencing on misdemeanor offenses specifically state its reasons for the sentence on the record. *Strongsville v. Jaeger*, 8th Dist. Cuyahoga No. 99579, 2013-Ohio-4476, ¶ 5, citing *State v. Harpster*, 5th Dist. Ashland No. 04COA061, 2005-Ohio-1046, ¶ 20. “When the court’s sentence is within the statutory limit, a reviewing court will



presume that the trial judge followed the standards in R.C. 2929.22, absent a showing to the contrary.” *Cleveland v. Go Invest Wisely*, 8th Dist. Cuyahoga Nos. 95172, 95173, 95174, 95175, 95176, and 95177, 2011-Ohio-3047, ¶ 10, quoting *State v. Downie*, 183 Ohio App.3d 665, 2009-Ohio-4643, 918 N.E.2d 218, ¶ 48 (7th Dist.).

{¶ 10} In this case, Bickerstaff was convicted of a fourth-degree misdemeanor, which pursuant to R.C. 2929.24(A)(4) and 2929.28(A)(2)(a)(iv) carries up to 30 days in jail and a maximum fine of \$250. Moreover, pursuant to R.C. 2929.25(A)(1), when sentencing an offender for a misdemeanor when a jail term is not required by law, the sentencing court may impose community control sanctions or a combination of community control sanctions and a jail term.

{¶ 11} For the fourth-degree misdemeanor offense of failing to display a front license plate, the trial court sentenced Bickerstaff to pay a \$200 fine and serve 30 days in jail, with 25 days suspended; 5 days was ordered into execution to serve on weekends. Bickerstaff was also required to serve six months of reporting “probation,” with various conditions. Accordingly, her sentence is not contrary to law; it is within the statutory range and authorized under statute. When a misdemeanor sentence is not contrary to law, the sentence is reviewed for an abuse of discretion. *Cleveland v. Peoples*, 8th Dist. Cuyahoga No. 100955, citing *Youngstown v. McElroy*, 7th Dist. Mahoning No. 05 MA 13, 2005-Ohio-6595, ¶ 26.

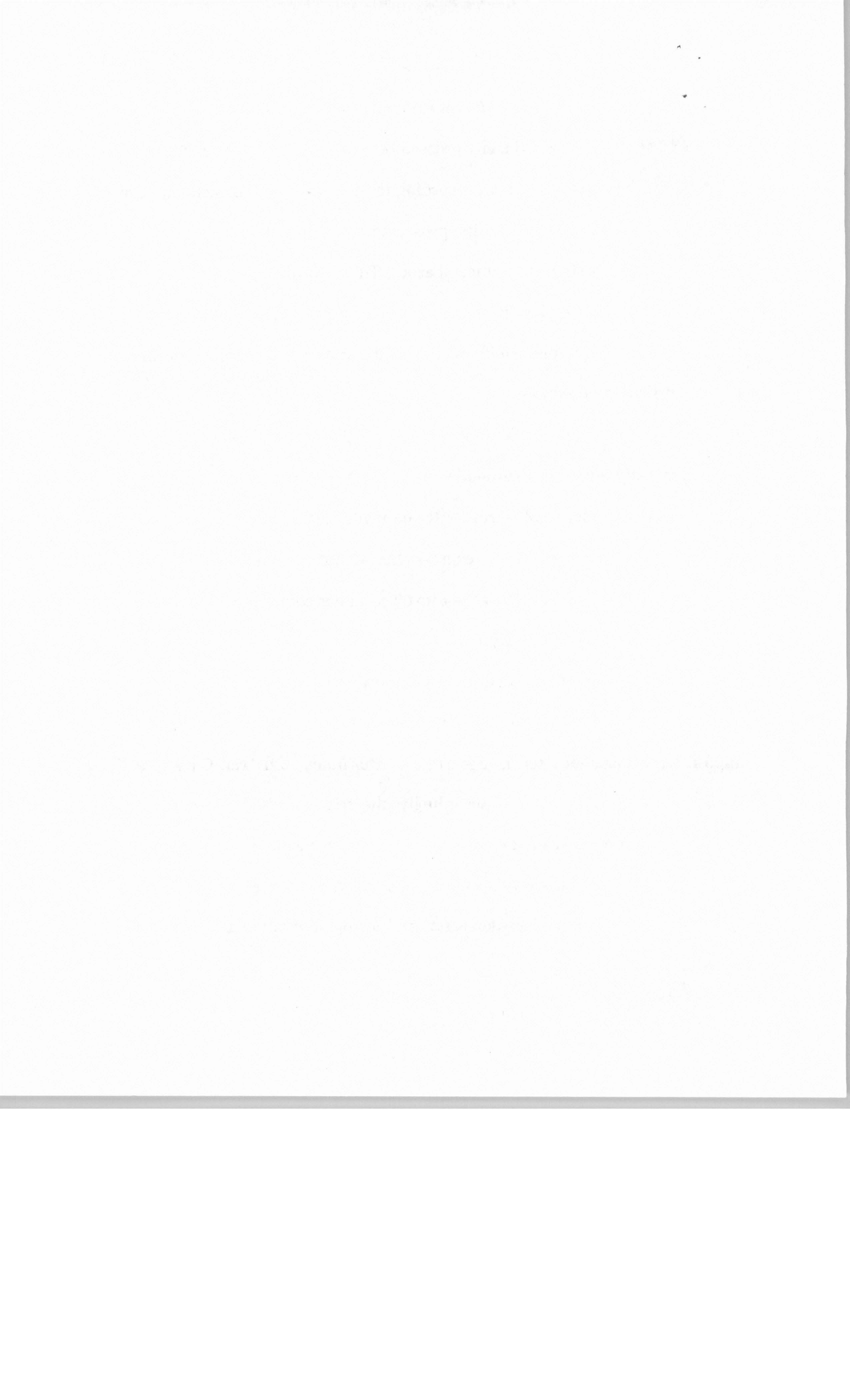


II. Incarceration

{¶ 12} In this case, the city prosecutor requested the trial court to impose jail time for this offense because, according to the prosecutor, Bickerstaff delayed the proceedings, insulted the city prosecutors, and made serious allegations against the court's staff and Officer Lazor. The record reflects that Bickerstaff believed that she was racially profiled when she was initially stopped for the traffic infraction and, then mistreated by the court and the prosecutor during the pendency of the proceedings.

{¶ 13} During sentencing, the trial court, along with a term of community control, initially imposed a suspended jail term of 30 days. The imposition of a five-day unsuspended jail term only occurred after Bickerstaff repeatedly interrupted the trial court to express her dissatisfaction with the court's determination that Bickerstaff was not involved in her community "in the manner that [she] showed here." (Tr. 117.)

{¶ 14} Because the sentence was not journalized, Bickerstaff's sentence was not final and therefor was subject to modification when the trial court decided to impose an unsuspended term. *See State v. McKinney*, 8th Dist. Cuyahoga No. 106377, 2019-Ohio-1118, ¶ 56. Accordingly, the trial court's decision to modify Bickerstaff's sentence was not contrary to law. However, the record demonstrates that the imposition of the unsuspended jail term was not in accordance with the purposes and principles of misdemeanor sentencing, and although this court can



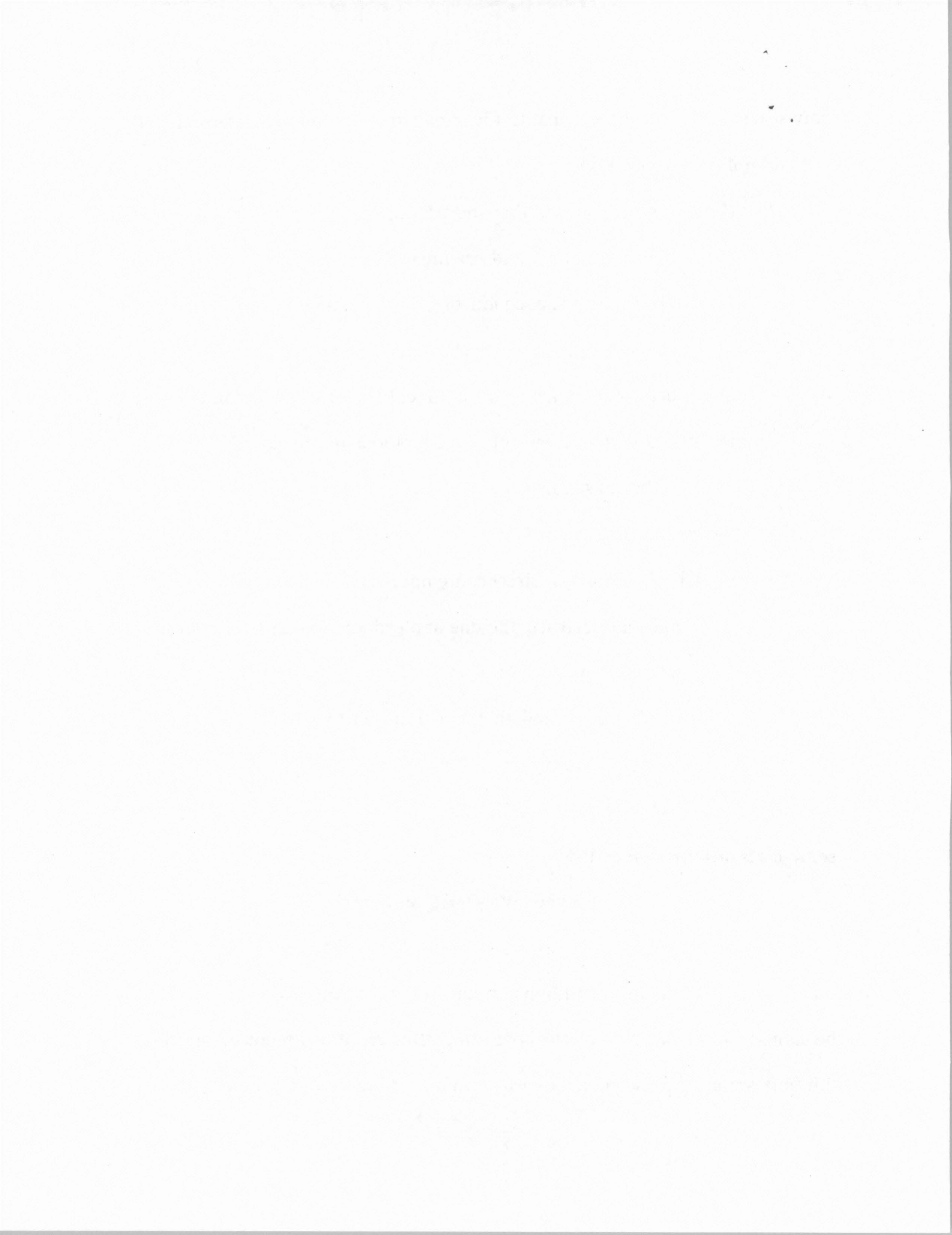
only speculate, it would seem that traffic offenders rarely serve any term in jail for a front license plate violation.

{¶ 15} The record reflects that the trial court was clearly frustrated with Bickerstaff's constant disruptions and argumentative dialogue. The record also reflects the trial court's patience in conducting the trial and sentencing, despite the interruptions and tension between the parties. However, if the court believed that Bickerstaff's conduct posed an actual or imminent threat to the administration of justice, rather than conduct that is only contemptuous on the court's sensibilities, the trial court could have used its contempt power to ensure cooperation with the court's authority. *See State v. Webster*, 1st Dist. Hamilton Nos. C-070027 and C-070028, 2008-Ohio-1636, ¶ 57. Direct contempt is misbehavior that occurs in the court's presence and that obstructs the due and orderly administration of justice. *Id.* at ¶ 56, citing R.C. 2705.01.

{¶ 16} Accordingly, we find that the trial court's decision to impose an unsuspended jail term of five days to be served on weekends was an abuse of discretion. That portion of Bickerstaff's sentence is modified; the entire 30-day jail sentence is ordered suspended.

III. Community Control Sanctions

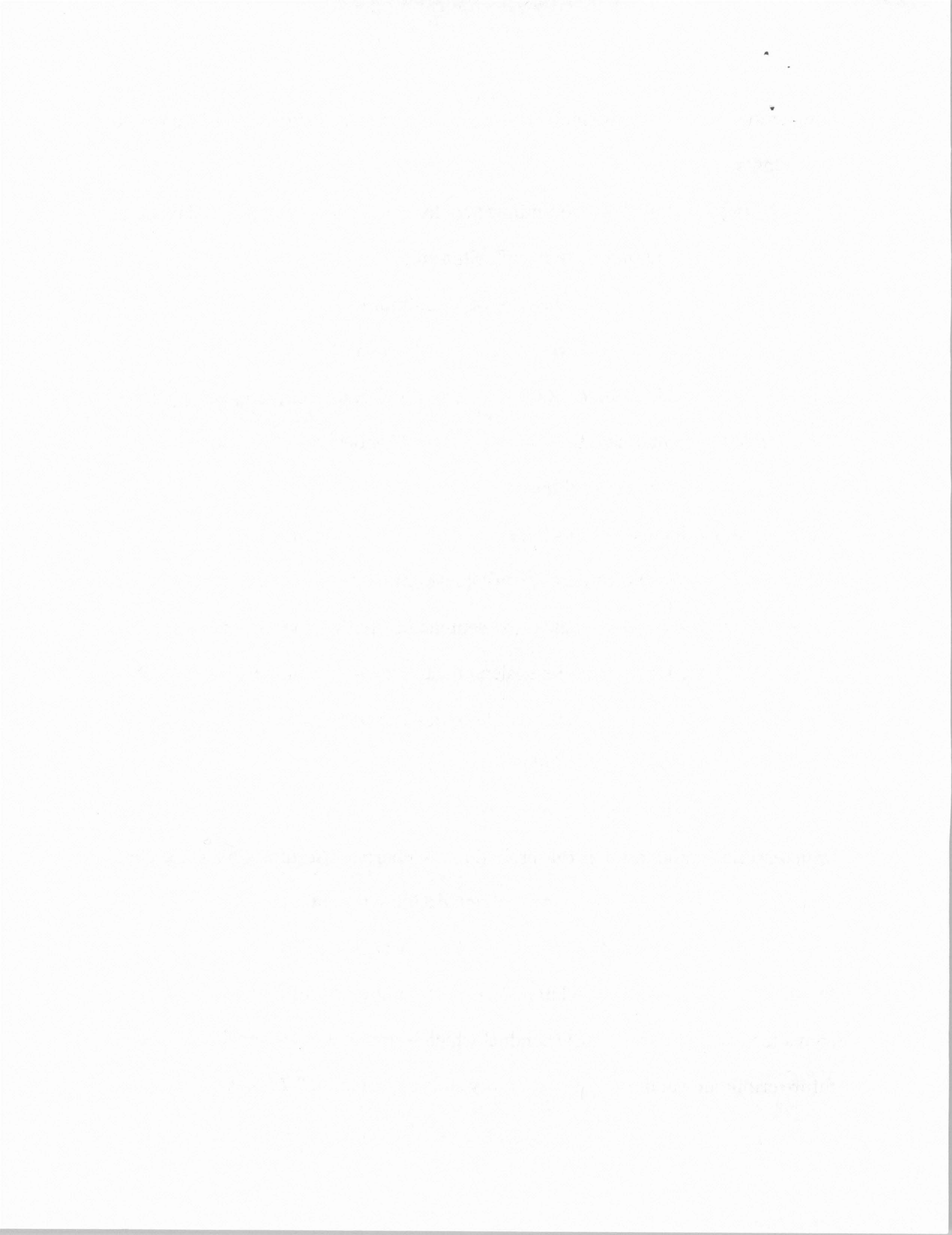
{¶ 17} The trial court also ordered Bickerstaff to serve six months of reporting probation with conditions of performing community work service, and be subject to random drug or alcohol testing. Bickerstaff contends on appeal that the imposition of these sanctions was an abuse of discretion, unreasonable, not



proportional, and inconsistent with sentences imposed for similarly situated defendants.

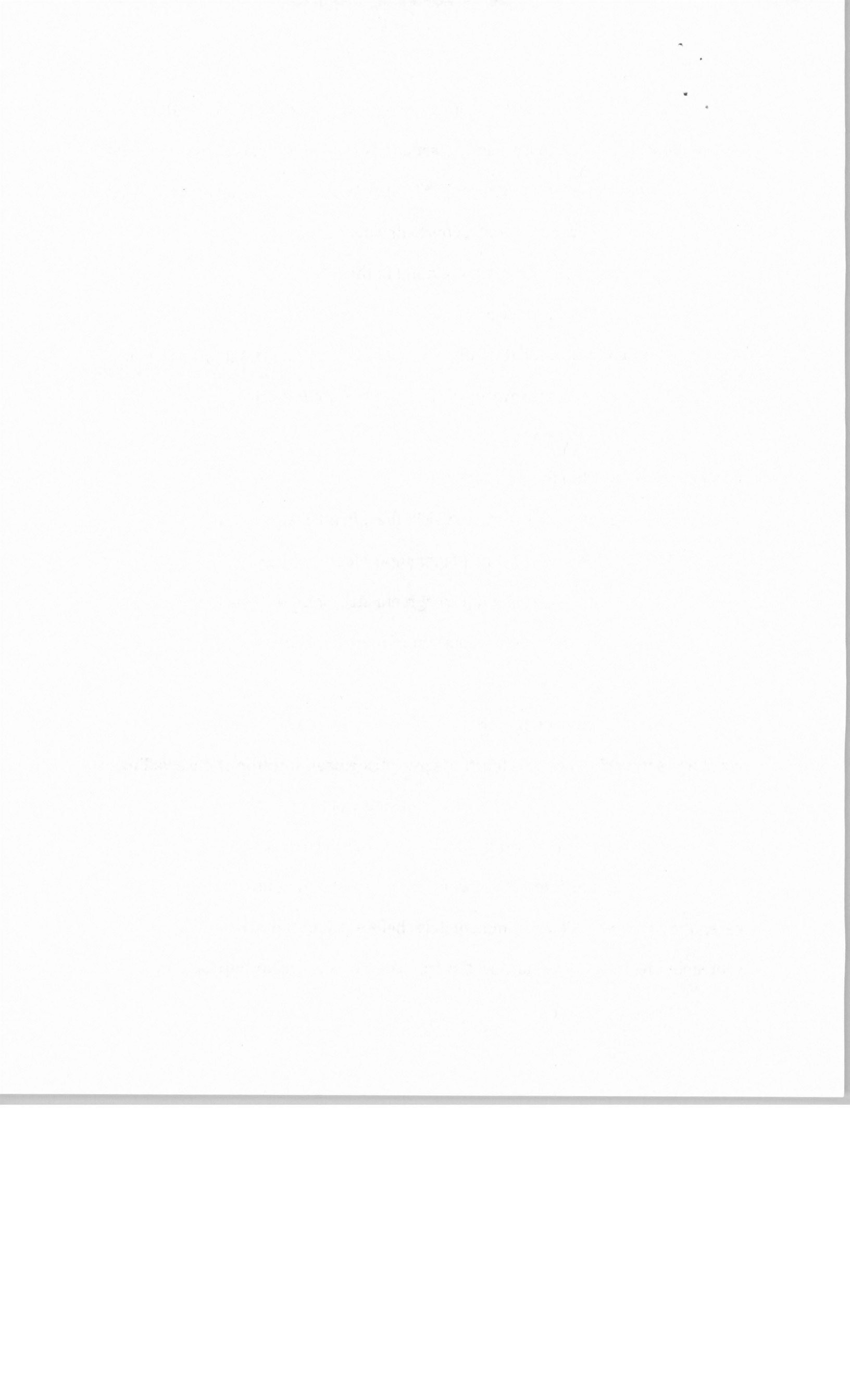
{¶ 18} “The goals of community control are rehabilitation, administering justice, and ensuring good behavior.” *State v. Barnes*, 12th Dist. Clermont No. CA2008-10-090, 2009-Ohio-3684, ¶ 15. Community control sanctions can be residential under R.C. 2929.26, nonresidential under R.C. 2929.27, or financial under R.C. 2929.28. “Under R.C. 2929.27(C), the court may impose any other sanction that is intended to discourage the offender or other persons from committing a similar offense if the sanction is reasonably related to the overriding purposes and principles of misdemeanor sentencing.” *Mayfield Hts. v. Brown*, 8th Dist. Cuyahoga No. 99222, 2013-Ohio-4374, ¶ 24. When considering the statutory purposes and principles of sentencing in the context of community control, the “sanctions should be designed with an eye to changing the offender’s behavior and rehabilitating him.” *State v. Bowser*, 186 Ohio App.3d 162, 2010-Ohio-951, 926 N.E.2d 714, ¶ 12 (2d Dist.).

{¶ 19} However, probation “conditions cannot be overly broad so as to unnecessarily impinge upon the probationer’s liberty.” *State v. Jones*, 49 Ohio St.3d 51, 52, 550 N.E.2d 469 (1990). When deciding probation conditions, “courts should consider whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to the conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation.” *Id.* at 53.



{¶ 20} The community control sanctions are to be related to the *circumstances* of the offense, but the sanctions do not necessarily need to relate only to the conviction itself. *Bowser* at ¶ 12-14. When considering an appropriate sentence, “the circumstances that a court considers encompasses a broad range of information,” including information relating to the offender, herself. *Id.* at ¶ 13-14. It is well established that the court may consider information beyond that strictly related to the conviction of the offense. *See, e.g.,* R.C. 2951.03(A) (information contained in a presentence investigation report); *State v. Davis*, 56 Ohio St.2d 51, 381 N.E.2d 641 (1978) (inadmissible hearsay and evidence unrelated to the crime); *State v. Wiles*, 59 Ohio St.3d 71, 571 N.E.2d 97 (1991) (facts introduced relating to other charges, even charges upon which the offender was acquitted); *State v. Blake*, 2d Dist. Montgomery No. 17355, 1999 Ohio App. LEXIS 2593 (June 11, 1999) (charges dismissed under a plea agreement); *State v. Cooley*, 46 Ohio St.3d 20, 544 N.E.2d 895 (1989) (consideration of mere allegations of crimes for which the offender has never been prosecuted).

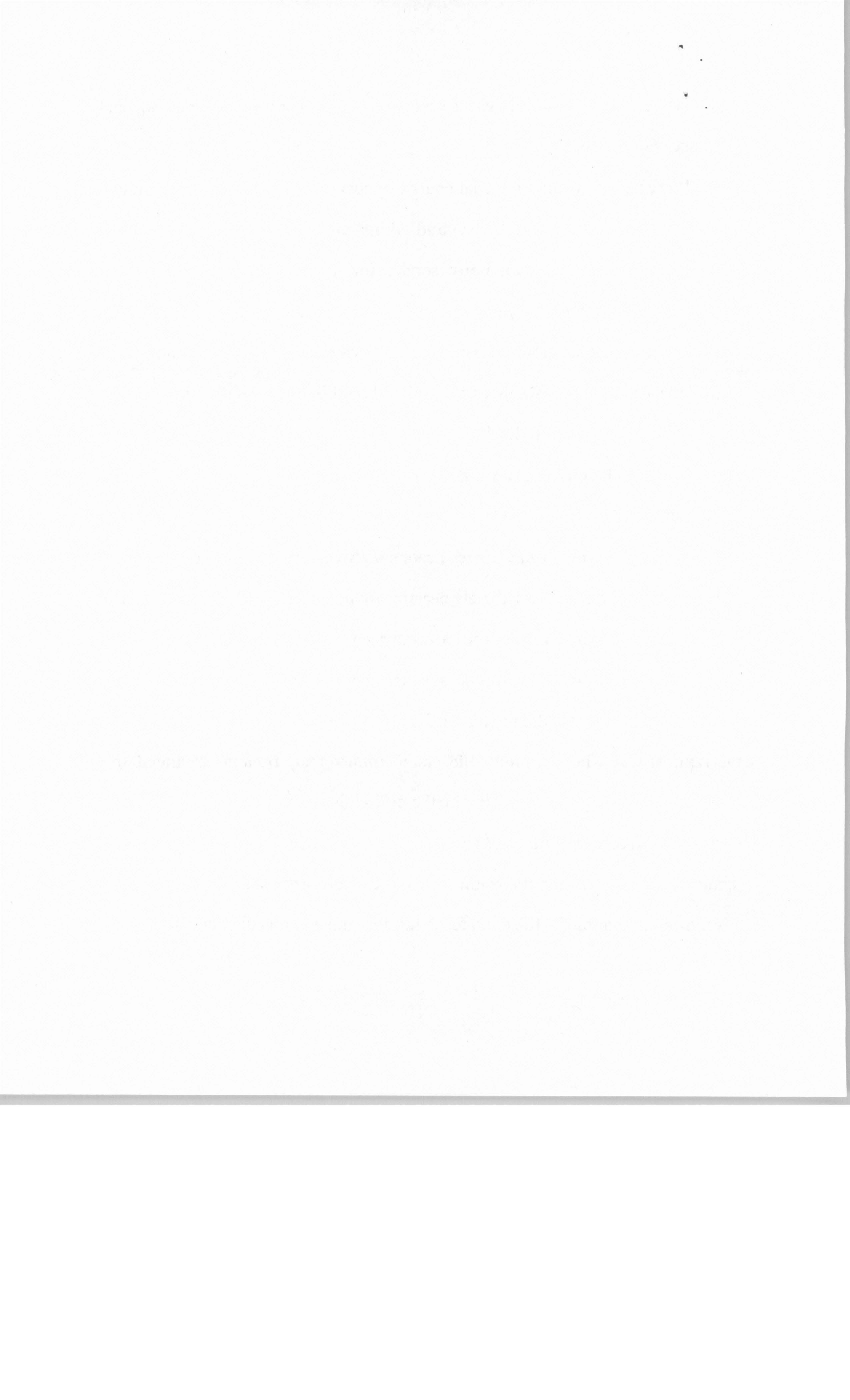
{¶ 21} In reviewing Bickerstaff’s sentence, we must be mindful that the trial court was sentencing her on a fourth-degree misdemeanor traffic offense, failing to display a front license plate, which is a licensing violation, not a moving violation. However, the trial court’s consideration of the overall circumstances of the offense — Bickerstaff’s initial interaction with Officer Lazor, the entire pendency of the case, the pretrial colloquy immediately before trial, the trial itself, and the sentencing hearing — reveal that the trial court’s decision to impose a period of



reporting community control, with certain community control sanctions, was not an abuse of discretion.

{¶ 22} Additionally, the trial court's imposition of 75 hours of community work service was authorized by law and within the court's discretion. *See* R.C. 2929.27(A)(3) (term of community service for a fourth-degree misdemeanor cannot exceed 250 hours). The journal entry is silent as to the type of community work service or where the work service is to be performed, but the trial court stated on the record at sentencing that the service should be performed at the Citizens Police Academy in South Euclid. The entire record, including the evidence presented at trial, demonstrates that the trial court's decision was not an abuse of discretion.

{¶ 23} The video from Officer Lazor's body camera was played at trial and showed that Bickerstaff immediately became argumentative with the officer when he approached her vehicle. Officer Lazor advised her why he conducted the stop, stating that he initiated the stop because (1) she was on her cell phone; (2) not wearing her seatbelt; (3) did not have a front license plate; and (4) failed to yield to the right of way when turning. Bickerstaff immediately became argumentative over the right-of-way violation, despite the officer also citing three other seemingly justifiable reasons why he conducted the stop, and demanded his supervisor's name. At no time during the traffic stop did Officer Lazor raise his voice or give any indication that the justification for the traffic stop was racially motivated.



{¶ 24} Nevertheless, prior to and during trial, Bickerstaff maintained that the justification for the traffic stop was based on racial profiling. Additionally, prior to and on the day of trial, Bickerstaff maintained that she was mistreated by court personnel and the city prosecutor, including that she felt threatened by the prosecutor because she believed that he wanted Officer Lazor to issue her another ticket. Finally, during sentencing, Bickerstaff continuously disrupted and argued with the court over community dynamics and the racial division within the community. Based on Bickerstaff's conduct and responses to the trial court, we find nothing arbitrary, unreasonable, or unconscionable with the trial court's decision to order Bickerstaff to perform 75 hours of community work service.

{¶ 25} However, the trial court's decision subjecting Bickerstaff to random drug and alcohol screens as a community control sanction bears no relation to any of the circumstances surrounding the case. There was no allegation or evidence in the record that alcohol or drug use was a factor. Accordingly, the trial court abused its discretion in making this a condition of community control.

{¶ 26} Accordingly, Bickerstaff's assignments of error are sustained, in part; and overruled in part.

{¶ 27} Judgment affirmed in part, modified in part, and remanded for the trial court to issue a new sentencing entry modifying Bickerstaff's sentence to reflect that the 30-day jail sentence is suspended in its entirety, and to delete the community control sanction requiring Bickerstaff to submit to drug and alcohol screens.

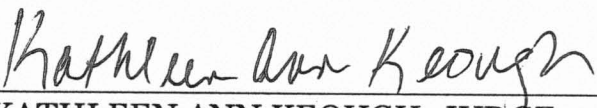
It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution. The defendant's convictions having been affirmed, in part; and modified, in part; any bail pending is terminated. Case remanded to the trial court for execution of sentence, as modified.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FILED AND JOURNALIZED
PER APP.R. 22(C)


KATHLEEN ANN KEOUGH, JUDGE

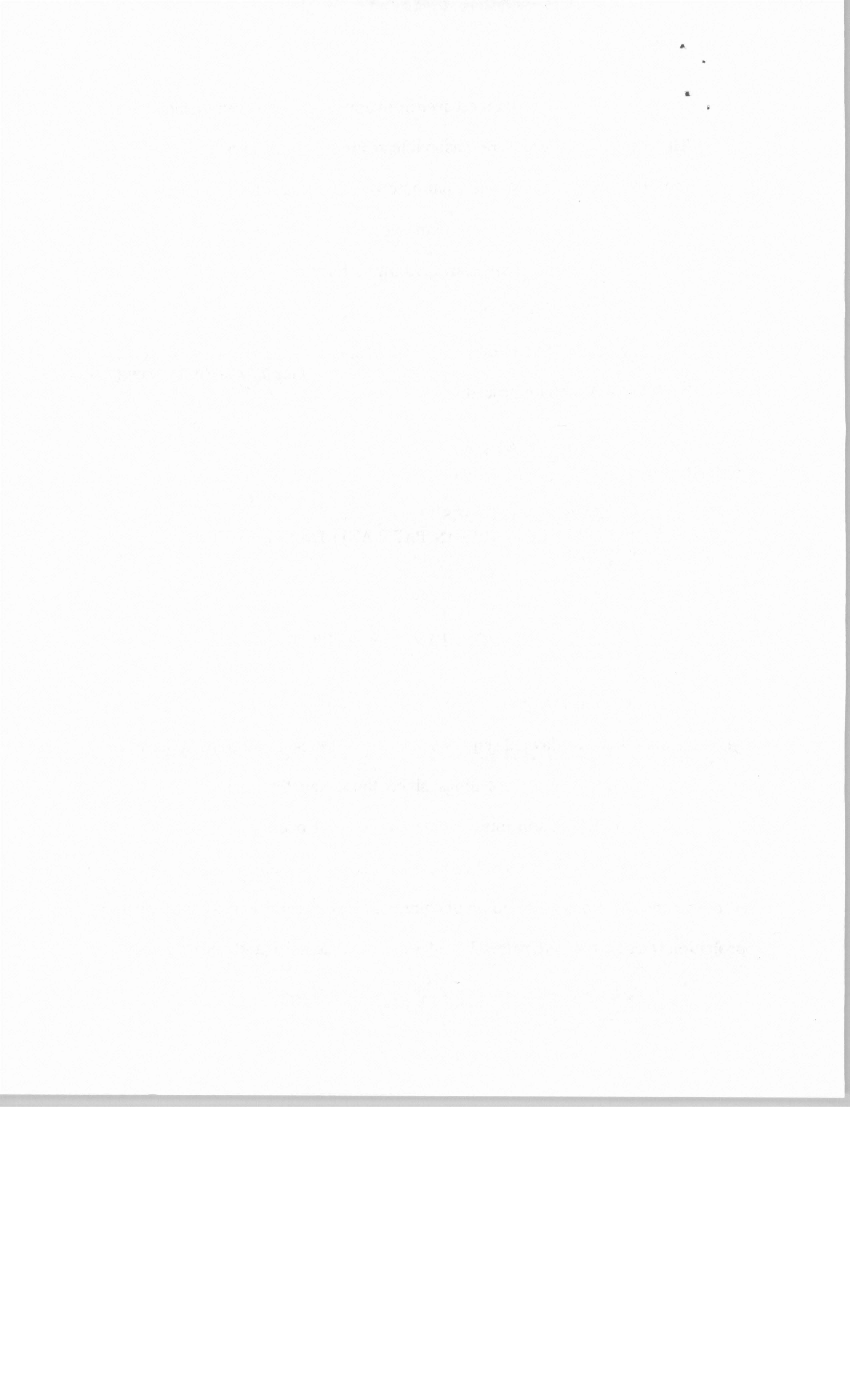
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CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By Greg Hecik Deputy

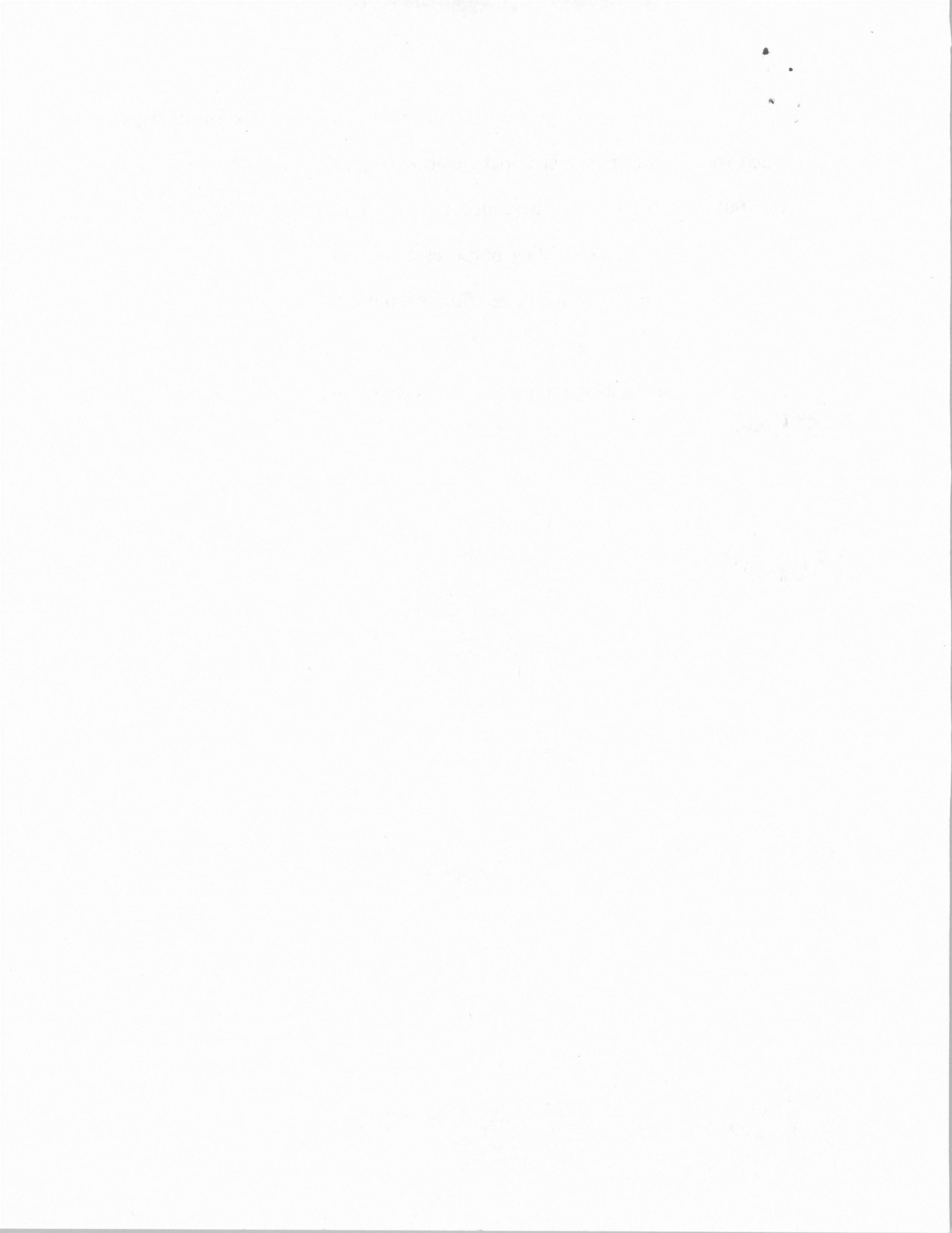
ANITA LASTER MAYS, J., CONCURS;
MARY J. BOYLE, P.J., CONCURS IN PART AND DISSENTS IN PART WITH
SEPARATE OPINION

MARY J. BOYLE, P.J., CONCURRING IN PART AND DISSENTING IN
PART:

{¶ 28} I agree with the majority that the trial court abused its discretion when it imposed a five-day jail sentence and ordered Bickerstaff to be subjected to random drug and alcohol screenings since those sanctions bear “no relation regarding the case[.]” I still must respectfully dissent because I believe the trial court also abused its discretion by imposing any community control sanctions. Although the sanctions of 75 hours of community work service and six months of probation were authorized by law, I think they were excessive and unduly harsh for



failing to display a front license plate, which is a misdemeanor of the fourth degree and which will no longer be a criminal violation beginning on July 1, 2020. *See* 2019 Am.Sub.H.B. No. 62. I believe that ordering Bickerstaff to pay a fine and court costs achieves the “overriding purposes of misdemeanor sentencing [that] are to protect the public from future crime by the offender and others and to punish the offender.” R.C. 2929.21. Therefore, I would find that the trial court’s sentence was unreasonable, arbitrary, and unconscionable and constituted an abuse of its discretion.



The State of Ohio, }
Cuyahoga County. } ss.

I, NAILAH K. BYRD, Clerk of the Court of

Appeals within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio, to be, kept, hereby certify that the foregoing is taken and copied from the Journal entry dated on 6/6/19 CA-107526

of the proceedings of the Court of Appeals within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal entry dated on 6/6/19 CA-107526 and that the same is correct transcript thereof.

In Testimony Whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in the City of Cleveland, in said County, this 6 day of June A.D. 20 19

NAILAH K. BYRD, Clerk of Courts

By Grog Hercik Deputy Clerk



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