[Cite as *State v. Douglas*, 2018-Ohio-732.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

STATE OF OHIO,	:	Case Nos. 17CA6 17CA8
Plaintiff-Appellee,	:	
v.	:	DECISION AND JUDGMENT ENTRY
GERALD R. DOUGLAS, II,	:	
		RELEASED: 02/13/2018
Defendant-Appellant.	:	

APPEARANCES:

Jeremy A. Roth, Columbus, Ohio, for appellant.

Keller J. Blackburn, Athens County Prosecuting Attorney, and Merry M. Saunders, Athens County Assistant Prosecuting Attorney, Athens, Ohio, for appellee.

Harsha, J.

{¶1} Following a trial in consolidated criminal cases, a jury found Gerald Douglas guilty of two counts of aggravated possession of drugs, one count of illegal manufacture of drugs, and one count of illegal assembly or possession of chemicals for the manufacture of drugs. The trial court sentenced Douglas to prison.

{¶2} Initially Douglas contends that his convictions for illegal manufacture of drugs and illegal assembly or possession of chemicals for the manufacture of drugs were not supported by sufficient evidence and were against the manifest weight of the evidence. However, the trial record disproves those contentions. After the deputies executed a search warrant on Douglas's residence, he admitted to them that methamphetamine was made there a couple days earlier and that he owned pseudoephedrine pills in a cellophane wrapper found during the search. He admitted he and his girlfriend had discussed a plan to refute they had acted illegally if authorities showed up at the home. Douglas's ex-wife, Elizabeth McPherson, testified she had

seen him make methamphetamine more than 20 times at his residence and he had given her methamphetamine the day she brought him home from jail in October 2015. And Patricia Hudnell testified she had purchased pseudoephedrine for Douglas a number of times and he was the only person she received methamphetamine from. In Douglas's residence the police found chemicals and materials required for the production of methamphetamine. The residence also included a cattle gate with a lock and chain that Douglas had installed, as well as an extensive video-surveillance security system. Based on this evidence the jury reasonably concluded that the state had established the elements of these offenses beyond a reasonable doubt; it did not clearly lose its way or create a manifest miscarriage of justice.

{¶3} Next Douglas asserts that the trial court erred by rejecting his request to merge his convictions for illegal manufacture of drugs and illegal assembly or possession of chemicals for the manufacture of drugs. We reject his assertion because there is evidence that Douglas had possessed additional chemicals beyond those he had used to actually manufacture the methamphetamine. Thus Douglas committed the crimes separately.

{¶4} Finally Douglas argues that the trial court erred in imposing a maximum 12-month prison sentence for one of his convictions for aggravated possession of drugs because the sentence is contrary to law and was not supported by findings to overcome the presumption of a minimum sentence. However, the sentence was within the permissible statutory range, the court considered the pertinent statutory purposes and guidelines, and the court was not required to make specific findings or give reasons for

maximum or more than minimum sentences. Therefore the sentence is not clearly and convincingly contrary to law.

{¶5} We affirm his convictions and sentence.

I. FACTS

{¶6} In Case No. 16CR0018, the Athens County Grand Jury returned an indictment charging Gerald Douglas with two counts of aggravated possession of drugs "[o]n or about October 25, 2015." The trial court later granted the state's motion to merge the second count into the first count. In Case No. 16CR0129, the Athens County Grand Jury returned an indictment charging Douglas with one count of illegal manufacture of drugs, one count of illegal assembly or possession of chemicals for the manufacture of drugs, and one count of aggravated possession of drugs. The first two counts of Case No. 16CR0129 included a date for the offenses of "[o]n or about October 26, 2015 to March 31, 2016." Douglas pleaded not guilty to the offenses, and the matter proceeded to a jury trial, which produced the following evidence.

Case No. 16CR0018

{¶7} On October 25, 2015 while on routine overnight patrol, Athens County Deputy Sheriff Chris Tomsha observed two vehicles in the rear of a business parking lot; after he approached them and they attempted to exit in opposite directions, he followed one of the vehicles. Deputy Sheriff Tomsha ran the license plate of the pickup truck he followed and stopped it after confirming that the registered owner of the license plate, Douglas, had an active warrant for his arrest. It also turned out the license plate was for a vehicle different from the one Douglas was driving and it had expired. Deputy Sheriff Tomsha informed Douglas of the warrant and arrested him. The officers

conducted an inventory search of the truck and found a small container with white powder on the driver's seat and a bag with hamburger buns containing a white PVC pipe holding a glass pipe with white powder on the front passenger seat. Douglas told the deputy sheriff the white powder in the small container was makeup for his "old lady's face" and that he used the PVC pipe with the glass tube to smoke "tobacco and whatever." A field test of the white powder from the small container tested positive for methamphetamine. A subsequent test by the Ohio Bureau of Criminal Investigation confirmed the white powder from the small container constituted 1.3 grams of methamphetamine, and the pipe contained methamphetamine.

Case No. 16CR0129

{¶8} In March 2016, the Fairfield/Hocking/Athens Major Crimes Unit received information from the National Precursor Exchange System that from October 2015 through March 2016 Patricia Hudnell had made multiple purchases of pseudoephedrine, the primary chemical needed to manufacture methamphetamine, and that she had been blocked from making these purchases several more times. The police arrested her for a misdemeanor charge of attempted unlawful purchase of pseudoephedrine and interviewed her. She told officers that methamphetamine was being produced at Douglas's residence on River Road in Athens County, she had purchased pseudoephedrine for Douglas on numerous occasions, and she received methamphetamine and cash from him. At trial Hudnell testified that every time she bought pseudoephedrine, she took it to Douglas at his residence and that he was her only supplier of methamphetamine.

{¶9} Based on the information Hudnell provided, the Major Crimes Unit obtained a search warrant for Douglas's residence and with the help of the Athens County Special Response Team ("Athens County SRT") executed the warrant on March 31, 2016. When officers arrived at the front entrance of the residence, they had to cut a thick locked chain, which was wrapped around a cattle gate. Bob Ashcraft, Douglas's employer, owned the home but did not reside there. He had allowed Douglas to live there for about two years by that time. He testified that Douglas had put the chain and lock on the gate.

{¶10} While the officers were cutting through the chain, other members of the Athens County SRT approached the residence from a different path. Deputy Joel Banks saw Douglas's head appear from behind the home, so he directed Douglas to put his hands up and walk backwards towards him. Another officer took custody of Douglas and retrieved a glass pipe from his right front pocket. When asked twice about whether the pipe was a meth pipe or a crack pipe, Douglas responded, "it is whatever you want it to be." He later admitted smoking methamphetamine with it.

{¶11} The law enforcement officers found items, including pills containing pseudoephedrine in a cellophane wrapper and two containers containing methamphetamine, under a black plastic trash bag where Douglas had been standing. .

{¶12} The search of Douglas's residence uncovered several items used in the manufacture and use of methamphetamine, including lithium-stripped batteries, burnt aluminum foil, a glass smoking pipe, pipe cutters, lithium battery casings, a scale, Coleman fuel cans, PVC pipes, rock salt, a moisture absorber, pseudoephedrine pills,

lighter fluid, plastic bags, a butane torch, a metal spoon with residue on it, and burn pits with remnants of charred battery casings.

{¶13} The home also had an ingenious security-camera system that included two front porch cameras that were operated by pulleys and connected to video screens in Douglas's bedroom and bathroom. And they found two devices in a bathroom that, according to the state's expert witnesses, could be hydrogen chloride gas generators ("HCL generators") used in manufacturing methamphetamine. However, Douglas claimed that these devices were homemade sex toys and were not used to manufacture drugs.

{¶14} Two state witnesses certified as experts in the identification of methamphetamine labs testified Douglas's residence constituted a methamphetamine lab. Both experts further testified that their conclusion would not change if the two items found in the bathroom were not actually HCL generators.

{¶15} After the officers arrested Douglas their investigation led them to his ex-wife, Elizabeth McPherson, who testified that she had stopped at Douglas's residence in late October 2015, when Douglas was in jail after being arrested following his traffic stop in Case No. 16CR0018. She saw Douglas's girlfriend, Nikki George, preparing to make methamphetamine by crushing up pills in the proximity of lighter fluid, baggies, coffee filters, and a container. McPherson said she picked up Douglas from jail and dropped him back at his home. When McPherson came back later that day, she asked for methamphetamine and Douglas gave it to her. According to McPherson she saw Douglas make methamphetamine more than 20 times thereafter and he eventually showed her how to make it. She further testified that Douglas asked her to buy lighter

fluid, cigar pipes, and lye, and that she often provided Douglas with Sudafed she bought, so he could manufacture meth.

{¶16} Douglas admitted to the officers that he used meth, he owned the pills containing pseudoephedrine in a cellophane wrapper that were found near where he was standing, and two days before the search, meth had been manufactured in his residence. He further told the officers that he and his girlfriend had devised a plan about what to do or say about illegal activity in their home if authorities ever showed up. Douglas claimed that two other people in his home manufactured the methamphetamine. Later at trial Douglas testified that he let Carly Campbell stay at the home for a few days before the search and Ed Hudnell had come over with her.

{¶17} The trial court instructed the jury that Douglas could be guilty of the offenses of illegal manufacture of drugs and illegal assembly or possession of chemicals for the manufacture of drugs as the principal offender or as an accomplice of another individual.

Jury Verdict, Conviction, and Sentence

{¶18} The jury returned verdicts finding Douglas guilty of all charges in Case Nos. 16CR0018 and 16CR0129. In Case No. 16CR0129, the trial court refused Douglas's request to merge the counts of illegal manufacture of drugs and illegal assembly or possession of chemicals for the manufacture of drugs. The trial court sentenced him to an aggregate prison term of ten years. Douglas appealed from his convictions and sentence, and we consolidated his appeals for purposes of briefing and decision.

II. ASSIGNMENTS OF ERROR

{¶19} Douglas asserts the following assignments of error for our review:

I. THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT AGAINST APPELLANT WHEN THERE WAS NOT SUFFICIENT EVIDENCE TO SUPPORT THE GUILTY VERDICTS AND CONVICTIONS OF APPELLANT, AND/OR THE CONVICTIONS WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF HIS DUE PROCESS RIGHTS UNDER THE OHIO AND UNITED STATES CONSTITUTUTIONS.

II. THE TRIAL COURT ERRED IN SENTENCING THE APPELLANT ON BOTH OF THE OFFENSES OF ILLEGAL ASSEMBLY OR POSSESSION OF CHEMICALS FOR THE MANUFACTURE OF DRUGS IN VIOLATION OF R.C. 2925.041(A) AND THE OFFENSE OF ILLEGAL MANUFACTURE OF DRUGS IN VIOLATION OF R.C. 2925.04(A). SUCH SENTENCES WERE ORDERED IN VIOLATION OF THE STATUTORY PROHIBITION AGAINST MULTIPLE SENTENCES FOR CRIMES OF SIMILAR IMPORT SET FORTH IN R.C. 2941.25(A) AND THE CONSTITUTIONAL PROHIBITION AGAINST DOUBLE JEOPARDY SET FORTH IN ARTICLE 1, SECTION 10 OF THE OHIO CONSTITUTION AND THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

III. THE TRIAL COURT ERRED IN IMPOSING A MAXIMUM SENTENCE IN CASE NUMBER 16 CR 0018 FOR A FELONY OF THE FIFTH DEGREE, THE SENTENCE IS CONTRARY TO LAW, AND THE TRIAL COURT DID NOT MAKE THE REQUISITE FINDINGS TO OVERCOME THE PRESUMPTION OF A MINIMUM REQUISITE SENTENCE IN VIOLATION OF THE OHIO AND UNITED STATES CONSTITUTIONS AND R.C. 2953.08.

III. LAW AND ANALYSIS

A. Sufficiency and Manifest Weight of the Evidence

1. Standard of Review

{¶20} In his first assignment of error Douglas asserts that his convictions for illegal manufacture of methamphetamine and illegal assembly or possession of chemicals for the manufacture of methamphetamine were not supported by sufficient evidence and were against the manifest weight of the evidence.

{¶21} "When a court reviews the record for sufficiency, '[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.' " *State v. Maxwell*, 139 Ohio St.3d 12, 2014-Ohio-1019, 9 N.E.3d 930, ¶ 146, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus; *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). A sufficiency assignment of error challenges the legal adequacy of the state's prima facie case, not its rational persuasiveness. *State v. Koon*, 4th Dist. Hocking No. 15CA17, 2016-Ohio-416, ¶ 17. "That limited review does not intrude on the jury's role 'to resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.' " *Musacchio v. United States*, ––– U.S. ––––, 136 S.Ct. 709, 715, 193 L.Ed.2d 639 (2016), quoting *Jackson* at 319, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.

{¶22} By contrast in determining whether a criminal conviction is against the manifest weight of the evidence, we must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 119.

{¶23} Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is against the weight of the evidence. *Thompkins* at 387, 678 N.E.2d 541.

However, we are reminded that generally, it is the role of the jury to determine the weight and credibility of evidence. *See State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d 818, ¶ 132. " 'A jury, sitting as the trier of fact, is free to believe all, part or none of the testimony of any witness who appears before it.' " *State v. Reyes-Rosales*, 4th Dist. Adams No. 15CA1010, 2016-Ohio-3338, ¶ 17, quoting *State v. West*, 4th Dist. Scioto No. 12CA3507, 2014-Ohio-1941, ¶ 23. We defer to the trier of fact on these evidentiary weight and credibility issues because it is in the best position to gauge the witnesses' demeanor, gestures, and voice inflections, and to use these observations to weigh their credibility. *Id*.; *State v. Koon*, 4th Dist. Hocking No. 15CA17, 2016-Ohio-416, ¶ 18.

2. Analysis

{¶24} R.C. 2925.04(A), which criminalizes the illegal manufacture of drugs, prohibits a person from knowingly manufacturing or otherwise engaging in any part of the production of a controlled substance. *State v. Dillard*, 4th Dist. Meigs No. 13CA9, 2014-Ohio-4974, ¶ 23. R.C. 2925.041(A) prohibits persons from knowingly assembling or possessing one of more chemicals that may be used to manufacture a controlled substance. *Id.* at ¶ 24.

{¶25} Douglas claims that there was insufficient evidence to support his convictions because: (1) no evidence established that there was an HCL generator of any kind on the property; and (2) other persons were frequently present on the property.

{¶26} But Douglas ignores the testimony of his ex-wife that she observed him manufacture methamphetamine over 20 times. He also ignores her testimony and that of Patricia Hudnell that they provided pills containing pseudoephedrine, a chemical used

to manufacture methamphetamine, to Douglas so he could manufacture methamphetamine. Both of the state's experts testified that they concluded that Douglas's residence was a methamphetamine lab and that their conclusion would not be impacted even if the two devices found in a bathroom of his residence were not HCL generators. Douglas also had admitted that the pseudoephedrine in a cellophane wrapper that the deputies found was his and that he and his girlfriend had devised a plan on how to respond to officers should they come to their residence and find evidence of illegal activity. Moreover, throughout the residence the officers found the presence of chemicals and other materials that suggest their use in the manufacture of methamphetamine, e.g., Coleman fuel, lighter fluid, remnants of batteries, rock salt, a butane torch/lighter, pipe cutters, drug paraphernalia, measuring cups, plastic bags, PVC pipes, a metal spoon with residue. They also found burn pits with the remains of plastic and charred battery casings. Finally, the trial court instructed the jury that Douglas could be convicted as either a principal offender or as an accomplice for these crimes. A trier of fact could reasonably infer from the evidence that Douglas knew about and participated in the production of methamphetamine.

{¶27} After viewing this evidence in a light most favorable to the state, any rational trier of fact could have found the essential elements of these offenses proven beyond a reasonable doubt. Therefore, there was sufficient evidence to support Douglas's convictions for illegal manufacture of methamphetamine and illegal assembly or possession of chemicals for the manufacture of methamphetamine.

{¶28} Douglas additionally argues that his convictions for these crimes were against the manifest weight of the evidence because the credibility of McPherson and

Hudnell was suspect. But the jury was free to credit those parts of their testimony that the state relied upon. *Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d 818, at ¶ 132; *Reyes-Rosales*, 2016-Ohio-3338, at ¶ 17. Based on their testimony and the evidence noted above, the jury did not clearly lose its way or create a manifest miscarriage of justice warranting the reversal of these convictions. We overrule Douglas's first assignment of error.

B. Allied Offenses of Similar Import

1. General Principles and Standard of Review

{¶29} In his second assignment of error Douglas contends that the trial court erred by denying his request to merge for sentencing his convictions for illegal manufacture of methamphetamine and illegal assembly or possession of chemicals for the manufacture of methamphetamine.

{¶30} The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." This protection applies to Ohio citizens through the Fourteenth Amendment and is additionally guaranteed by Article I, Section 10 of the Ohio Constitution. This constitutional protection prohibits multiple punishments for the same offense in the absence of a clear indication of contrary legislative intent. *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969), overruled on other grounds, *Alabama v. Smith*, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989); *Whalen v. United States*, 445 U.S. 684, 691-692, 100 S. Ct. 1432, 63 L.Ed.2d 715 (1980).

{¶31} The General Assembly enacted R.C. 2941.25 to identify when a court may impose multiple punishments:

> (A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.
>
> (B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

{¶32} Appellate courts apply a de novo standard to review a trial court's determination of whether offenses constitute allied offenses of similar import requiring merger under R.C. 2941.25. *State v. Williams*, 134 Ohio St.3d 482, 2012-Ohio-5699, 983 N.E.2d 1245, ¶ 28; *State v. Cole*, 4th Dist. Athens No. 12CA49, 2014-Ohio-2967, ¶ 7. Merger is a sentencing question where the defendant bears the burden of establishing his entitlement to the protection of R.C. 2941.25. *State v. Washington*, 137 Ohio St.3d 427, 2013-Ohio-4982, 999 N.E.2d 661, ¶ 18.

2. Analysis

{¶33} In *State v. Ruff*, 143 Ohio St.3d 114, 2015–Ohio–995, 34 N.E.3d 892, the Supreme Court of Ohio clarified the appropriate analysis to determine whether two offenses merge under R.C. 2941.25. "In determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, courts must evaluate three separate factors—the conduct, the animus, and the import." *Id.* at paragraph one of the syllabus. "Under R.C. 2941.25(B), a defendant whose conduct supports multiple offenses may be convicted of all the offenses if any one of the following is true: (1) the conduct constitutes offenses of dissimilar import, (2) the conduct shows that the

offenses were committed separately, or (3) the conduct shows that the offenses were committed with separate animus." *Id*. at paragraph three of the syllabus.

{¶34} Douglas was convicted of illegal manufacture of methamphetamine and illegal assembly or possession of chemicals for the manufacture of methamphetamine; the dates of both offenses were on or about October 21, 2015 and March 31, 2016, i.e., from around the time that he was released on bond from his arrest in Case No. 16CR0018, until the task force executed its search warrant and arrested him for the offenses in Case No. 16CR0129. He claims that based on *State v. Carr*, 2016-Ohio-9, 57 N.E.2d 262 (5th Dist.), these offenses were allied offenses of similar import because like the defendant in that case, he could not have illegally manufactured methamphetamine without possessing or assembling the chemicals required to do so.

{¶35} Douglas's reliance on *Carr* is misplaced. The court in *Carr* emphasized at ¶ 34-38 that the offenses merged because a key chemical ingredient to make methamphetamine—pseudoephedrine—was not present when the police searched the home:

> {¶ 34} In the case at bar, it was clear when the police entered the home that methamphetamine had been manufactured inside the home. Carr admitted to manufacturing methamphetamine.
>
> {¶ 35} Plastic tubing, baggies, envelopes, plastic bottles, batteries, cold compact bags, aquarium rocks and coffee filters are not "chemicals" as required under R.C. 2925.041. None of the active ingredient such as pseudoephedrine was found; rather, only the discarded boxes were recovered from the trash. In his statement to the police, Carr stated that other parties provided the necessary ingredients.
>
> {¶ 36} Just as a baker would need flour to "assemble" or "manufacture" a cake, it is scientifically impossible to manufacture methamphetamine without the raw chemical ingredients, such as pseudoephedrine. In other words, every time a person commences a "cook" he or she must necessarily possess the requisite raw chemical ingredients necessary to

> manufacture the end product of crystal methamphetamine. Thus, a defendant must always "knowingly assemble or possess one or more chemicals that may be used to manufacture" methamphetamine with the "intent to manufacture."
>
> {¶ 37} If the police had entered the home and found, for example, 50 boxes of pseudoephedrine and nothing more, a case could be made for illegal assembly. It is not illegal to possess pseudoephedrine, but the unexplained possession of such a large amount would be circumstantial evidence. If the state can establish the mens rea of "with the intent to manufacture" a defendant can be convicted of assembly or possession in violation of R.C. 2925.041.

{¶36} Conversely, here the officers found a large quantity of pills containing pseudoephedrine in their search of Douglas's residence, and he admitted possessing those pills found in a cellophane wrapper. Consequently, *Carr* is distinguishable because the unexplained possession by Douglas of a large amount of pseudoephedrine, along with the other constituents necessary to produce the drug, support his separate commission of the offenses.

{¶37} This result is consistent with precedent. In cases "involving charges of illegal assembly or possession, as well as manufacturing of methamphetamine, and which stemmed from a single encounter with law enforcement, * * * the two counts did not merge where the record indicated * * * 'law enforcement found an abundance of additional ingredients scattered throughout the residence 'over and above' what was used for the * * * cook.' " *See State v. Angus*, 4th Dist. Ross No. 15CA3507, 2017-Ohio-1100, ¶ 37, quoting *State v. Evans-Goode*, 4th Dist. Meigs No. 15CA10, 2016-Ohio-5361, ¶ 31; *see also State v. Sluss*, 4th Dist. Highland No. 13CA24, 2014-Ohio-4156, ¶ 31 (Harsha, J., concurring) where Sluss had chemicals used to manufacture methamphetamine "over and above" what he used in the two "cooks" on June 13 and 27. We adopted this rationale in *Evans-Goode* at ¶ 33.

{¶38} Here the officers found pseudoephedrine over and above that used to support the illegal manufacture charge. Therefore, the trial court correctly denied Douglas's request to merge the offenses because they involved different conduct, i.e., they were committed separately. We overrule Douglas's second assignment of error.

C. Maximum Sentence

1. Standard of Review

{¶39} In his third assignment of error Douglas claims that the trial court erred in imposing a maximum sentence for his felony conviction of aggravated possession of methamphetamine because it was contrary to law and the court did not make the requisite findings to overcome the presumption of a minimum sentence.

{¶40} When reviewing felony sentences we apply the standard of review set forth in R.C. 2953.08(G)(2), which provides that an appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either that "the record does not support the sentencing court's findings" under the specified statutory provisions or "the sentence is otherwise contrary to law." *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1.

2. Analysis

{¶41} Douglas claims that the trial court's imposition of the 12-month maximum sentence for his conviction of aggravated possession of drugs in Case No. 16CR0018 is clearly and convincingly contrary to law because although he had a drug problem, he had never been to prison before, and the court did not make the requisite findings to overcome the statutory presumption for a minimum sentence.

{¶42} " '[A] maximum sentence is not contrary to law when it is within the statutory range and the trial court considered the statutory principles and purposes of sentencing as well as the statutory seriousness and recidivism factors.' " *See State v. Walden*, 2d Dist. Clark No. 2014-CA-84, 2016-Ohio-47, ¶ 7, quoting *State v. Martin*, 2d Dist. Clark No. 2014-CA-69, 2015-Ohio-697, ¶ 8; *see also State v. Sawyer*, 4th Dist. Meigs No. 16CA2, 2017-Ohio-1433, ¶ 20.

{¶43} We reject Douglas's claims because his sentence was within the statutory range, maximum sentences do not require specific findings, the trial court considered the factors in R.C. 2929.11 and 2929.12 at the sentencing hearing; and it was not obligated to make specific findings concerning these factors. *See, e.g., State v. Mullins*, 4th Dist. Scioto No. 15CA3716, 2016-Ohio-5486, ¶ 26-27. The trial court stated that it had "considered the principles and purposes of felony sentencing balancing the seriousness and recidivism factors." The court emphasized at the sentencing hearing that the maximum sentence was appropriate because Douglas had been on community control at the time he committed the aggravated possession offense in Case No. 16CR0018. Finally, trial courts are not required to give their reasons for imposing more than minimum sentences. *See State v. Elmore*, 122 Ohio St.3d 472, 2009-Ohio-3478, 912 N.E.2d 582, ¶ 41, citing *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶ 100; *State v. Neal*, 4th Dist. Lawrence Nos. 14CA31 & 14CA32, 2015-Ohio-5452, ¶ 61. We overrule his third assignment of error.

IV. CONCLUSION

{¶44} Douglas has not established any prejudicial error by the trial court in convicting and sentencing him. Having overruled his assignments of error, we affirm his convictions and sentence.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Hoover, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.