

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. John W. Wise, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Earle E. Wise, Jr., J.
-vs-	:	
	:	
TRAVIS E. MASON	:	Case No. 2017 CA 0015
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. 2017-CR-0049

JUDGMENT: Affirmed

DATE OF JUDGMENT: March 21, 2018

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Wise, Earle, J.

{¶ 1} Defendant-Appellant, Travis E. Mason, appeals his November 15, 2017 sentence by the Court of Common Pleas of Coshocton County, Ohio. Plaintiff-Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On May 25, 2017, the victim's stepfather checked on the victim's home as the victim was out of town. Upon entering the home, the stepfather observed a stranger lying on the sofa. The stepfather exited the home and called police. Appellant also exited the home and walked away. Police arrived on the scene and discovered appellant hiding in the woods. A search of appellant's person produced a checkbook belonging to the victim, a loaded magazine for a .45 caliber handgun, a baggie of crystal methamphetamine, hunting equipment, and two knives. Appellant admitted to being the stranger in the home. A .45 caliber handgun was missing from the home, but appellant denied taking it. A search of the woods the next day produced the missing firearm near where appellant had been apprehended. The firearm was loaded with one round in the chamber ready to fire. Appellant admitted to taking the firearm.

{¶ 3} On June 23, 2017, the Coshocton County Grand Jury indicted appellant on one count of aggravated burglary with a one year firearm specification in violation of R.C. 2911.11 and 2941.141, one count of grand theft of a firearm in violation of R.C. 2913.02, two counts of theft in violation of R.C. 2913.02 (one a felony, one a misdemeanor), one count of aggravated possession of drugs in violation of R.C. 2925.11, one count of possessing criminal tools in violation of R.C. 2923.24, and one count of tampering with evidence in violation of R.C. 2921.12.

{¶ 4} On October 16, 2017, appellant pled guilty pursuant to a plea agreement. Appellant pled guilty to the aggravated burglary count with the firearm specification, the grand theft count, the felony theft count, and the aggravated possession of drugs count. In exchange, appellee agreed to enter a nolle prosequi on the remaining counts and recommend a sentence of nine years on the aggravated burglary count plus one year for the firearm specification, with the other sentences to run concurrent for an aggregate term of ten years in prison.

{¶ 5} A sentencing hearing was held on November 8, 2017. By judgment entry filed November, 15, 2017, the trial court sentenced appellant to eleven years (the maximum) on the aggravated burglary count plus one year for the firearm specification, and ran the remaining sentences concurrent for an aggregate term of twelve years in prison.

{¶ 6} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶ 7} "THE TRIAL COURT ERRED IN IMPOSING THE MAXIMUM SENTENCE FOR COUNT I."

I

{¶ 8} In his sole assignment of error, appellant claims the trial court erred in sentencing him to the maximum sentence on the aggravated burglary count.¹ We disagree.

¹Appellant is not claiming a breach of the plea agreement.

{¶ 9} R.C. 2953.08 governs appeals based on felony sentencing guidelines. *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231. Subsection (G)(2) sets forth this court's standard of review as follows:

(2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

{¶ 10} "Clear and convincing evidence is that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be

established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶ 11} " 'An appellate court will not find a sentence clearly and convincingly contrary to law where the trial court considers the principles and purposes of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, properly imposes postrelease control, and sentences the defendant within the permissible statutory range.' " *State v. Garrison*, 5th Dist. Muskingum No. CT2017-0018, 2018-Ohio-463, ¶ 47, quoting *State v. Ahlers*, 12th Dist. Butler No. CA2015-06-100, 2016-Ohio-2890, ¶ 8.

{¶ 12} As noted by this court in *State v. Taylor*, 5th Dist. Richland No. 17CA29, 2017-Ohio-8996, ¶ 16:

A trial court's imposition of a maximum prison term for a felony conviction is not contrary to law as long as the sentence is within the statutory range for the offense, and the court considers both the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors set forth [in] R.C. 2929.12. *State v. Keith*, 8th Dist. Cuyahoga Nos. 103413 and 103414, 2016–Ohio–5234, ¶ 10, 16.

{¶ 13} "Trial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences." *State v. Foster*,

109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph seven of the syllabus; *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 11.

{¶ 14} The trial court sentenced appellant to eleven years on a felony of the first degree. Felonies of the first degree are punishable by "three, four, five, six, seven, eight, nine, ten, or eleven years." R.C. 2929.14(A)(1). Clearly the sentence is within the statutory range.

{¶ 15} R.C. 2929.11 governs the overriding purposes of felony sentencing. Subsection (A) states the following:

A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

{¶ 16} R.C. 2929.12 sets forth the seriousness and recidivism factors for a trial court to consider in determining the most effective way to comply with the purposes and principles of sentencing pursuant to R.C. 2929.11. The statute provides a long list of

factors, including any other relevant factors, a trial court must consider when determining the seriousness of the offense and the likelihood that the offender will commit future offenses.

{¶ 17} In considering these factors, "[t]he trial court has no obligation to state reasons to support its findings. Nor is it required to give a talismanic incantation of the words of the statute, provided that the necessary findings can be found in the record and are incorporated into the sentencing entry." *State v. Wilson*, 5th Dist. Richland No. 17CA31, 2018-Ohio-396, ¶ 61; *State v. Bell*, 5th Dist. Muskingum No. CT2016-0050, 2017-Ohio-2621, ¶ 40.

{¶ 18} During the sentencing hearing, appellee recommended "a prison term of nine years plus a one-year on the gun specification" for an aggregate term of ten years. November 8, 2017 T. at 3. Thereafter, the victim's mother addressed the court. She stated the stolen firearm belonged to her, and she stored the firearm unloaded, separate from the magazines. *Id.* at 4-5. She noted when her husband entered the home and discovered appellant lying on the sofa, "there was a gun on the floor" near appellant. *Id.* at 5. She continued (*Id.* at 5-6):

I know that when Mr. Mason was arrested, he had one mag on him and the gun was missing.

And the final fact that I find most horrifying is that when my gun was found, the mag was in the gun and the round was chambered.

The final fact is what haunts me on a daily basis. My son or my husband could have been shot or even our neighbor Jake, who was a part of this situation as well. You don't chamber a round without intent.

I can't get past this and my husband actually plays this in his mind over and over again. He actually couldn't make it today because he just didn't think he could face Mr. Mason. Just not understanding the situation fully. And I have got to tell you it's pretty heart-breaking because as a mom and wife this isn't something that I can kiss or hug or give words to wash away.

I do have trust that you make the decision and the decision that you make will forever impact our healing process.

Please know that we're not seeking revenge. I'm looking for a way that no family member or a member of our community will have to feel this helpless due to another repeat of Mr. Mason's actions.

{¶ 19} She opined "I do feel with his past that he does see our system as a joke." *Id.* at 6. She requested a "fair but firm" sentence, and hoped appellant would "see some type of rehabilitation for his addiction." *Id.* at 7.

{¶ 20} The trial court noted appellant would be able to participate in rehabilitation programs while in prison if he chose to do so. *Id.* at 7-8. The trial court also noted the offense appellant was convicted of "is not a low tier felony" and "[t]his is a very serious matter." *Id.* at 8. The victims' "peace, their sense of peace, their peace of mind has now evaporated" because of appellant's actions. *Id.* at 9. The trial court stated (*Id.*):

Thank you Mr. Mason. Because you have destroyed the sense of peace and because of the grave danger you placed others - - and I believe the statement of the victim - - and because the gun was found with a magazine in it and a round chambered and it had previously been unloaded, the court finds that this is the worst form of the offense of aggravated burglary, a felony of the first degree.

{¶ 21} The trial court then reviewed appellant's criminal history which consisted of "convictions for felony of the third degree, corruption of a minor; felony of the fifth degree, receiving stolen property; felony of the fourth degree, gross sexual imposition; felony of the fifth degree, failure to register as a sex offender or report a change of address; and felony of the fifth degree, drug possession." *Id.* at 10.

{¶ 22} Taking into account the statutory factors, the mother's statement, and appellant's criminal history, the trial court imposed the maximum sentence on the aggravated burglary count and stated the following (*Id.* at 10-11):

The court finds that the offense was the worst form of the offense based on the statements of the victim in which another person was present in the home and the fact that a firearm was taken and that that firearm was - - could have been used by the offender based on the offender's actions in placing a magazine and chambering a round into that firearm.

{¶ 23} In the sentencing judgment entry, the trial court noted it considered the factors set forth in R.C. 2929.12 and 2929.13 "and all other matters pertinent to the sentence to be imposed," and found "that only a prison term is consistent with the purposes and principles of sentencing in R.C. §2929.11." The trial court reiterated "that the offense as committed by the Defendant is the worst form of the offense." Postrelease control was properly included in the judgment entry.

{¶ 24} Upon review, we find the sentence imposed is not clearly and convincingly contrary to law. The sentence is within the statutory range for a felony of the first degree, and the trial court considered the R.C. 2929.11 and 2929.12 factors and properly imposed postrelease control.

{¶ 25} The sole assignment of error is denied.

{¶ 26} The judgment of the Court of Common Pleas of Coshocton County, Ohio is hereby affirmed.

By Wise, Earle, J.

Wise, John, P.J. and

Hoffman, J. concur.

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