

[Cite as *State v. McCourt*, 2017-Ohio-9371.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO	)	CASE NO. 16 MA 0144
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	OPINION
	)	
STEPHANIE McCOURT	)	
	)	
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from the Court of Common Pleas of Mahoning County, Ohio Case No. 2013 CR 1002 A
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JUDGMENT:	Affirmed.
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APPEARANCES:

For Plaintiff-Appellee:	Atty. Paul J. Gains Mahoning County Prosecutor Atty. Ralph M. Rivera Assistant Prosecuting Attorney 21 West Boardman Street, 6 th Floor Youngstown, Ohio 44503
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For Defendant-Appellant:	Atty. John D. Falgiani, Jr. P. O. Box 8533 Warren, Ohio 44484
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JUDGES:

Hon. Cheryl L. Waite
Hon. Mary DeGenaro
Hon. Carol Ann Robb

Dated: December 19, 2017

{¶1} Appellant Stephanie McCourt appeals her sentence entered by the Mahoning County Common Pleas Court on three counts of burglary in violation of R.C. 2911.12(A)(2), (C), felonies of the second degree. The sole issue raised on appeal is whether the trial court erred in sentencing Appellant to a six-year sentence. Based on the foregoing analysis, the trial court did not err. Appellant's assignment of error is without merit and the judgment of the trial court is affirmed.

Factual and Procedural Background

{¶2} The record before us does not contain specific details regarding the underlying offenses, however, it reflects that Appellant's convictions stem from a series of home burglaries committed by Appellant and her brother. Appellant drove the vehicle during these burglaries and her brother broke into the homes and removed property.

{¶3} On January 23, 2014, the Mahoning County Grand Jury indicted Appellant on five counts of burglary in violation of R.C. 2911.12(A)(2), (C). All were felonies of the second degree. Appellant was incarcerated at the time of the indictment for offenses committed in another jurisdiction. The state filed an amended disclosure of evidence and intent to use evidence on October 16, 2014. This document outlined Appellant's lengthy criminal record, including multiple felonies dating back to 2007. Among her convictions were instances of forgery, drug trafficking, and fleeing and eluding. In this matter, Appellant ultimately entered a guilty plea on February 13, 2015 to three counts of burglary in violation of R.C. 2911.12(A)(2), (C). The state recommended a sentence of two years of incarceration

on each count, to run concurrently, and agreed to remain silent on judicial release after six months. Sentencing was set for April 10, 2015, however, Appellant failed to appear. A warrant was issued against her and her bond was revoked.

{¶4} Once Appellant was apprehended, a sentencing hearing was held on November 17, 2015. She was sentenced to six years in prison on each count to be served concurrently, for a total prison term of six years on all three counts. Appellant was given 172 days of jail time credit. Her prison term was to be followed by a mandatory period of postrelease control of three years.

{¶5} Appellant sent a *pro se* letter to the trial court on April 15, 2016 asking the court to reconsider her sentence. The letter was construed as a motion for judicial release and denied in a judgment entry dated June 24, 2016.

{¶6} On September 9, 2016, Appellant filed a *pro se* notice of appeal. We granted Appellant's delayed appeal. Appellant raises a single assignment of error.

ASSIGNMENT OF ERROR

THE TRIAL COURT FAILED TO ISSUE A SENTENCE THAT IS PROPORTIONAL TO AND CONSISTENT WITH SENTENCES GIVEN FOR SIMILAR OFFENSES BY SIMILAR OFFENDERS THEREBY DEPRIVING APPELLANT OF HER STATE AND FEDERAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION AND MAKING SAID SENTENCE BOTH AN ABUSE OF DISCRETION AND/OR CONTRARY TO LAW.

{¶7} Appellant asserts the trial court erred in imposing a six-year sentence, as it was disproportionate to the sentence received by her co-defendant, (her brother) and claims that the court did not adequately consider the sentencing criteria found in R.C. 2929.11 and R.C. 2929.12.

{¶8} In reviewing felony sentences, an appellate court must apply the standard of review set forth in R.C. 2953.08(G)(2) and not an abuse of discretion standard. In reviewing a felony sentence, “an appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court's findings under relevant statutes or that the sentence is otherwise contrary to law.” *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1.

{¶9} “The trial court has full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum or more than minimum sentences.” *State v. King*, 2013-Ohio-2021, 992 N.E.2d 491, ¶ 45 (2d Dist.). In exercising that discretion a trial court must consider the statutory principles that apply in felony cases, including R.C. 2929.11 and R.C. 2929.12. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, ¶ 38. Although the trial court is required to consider the statutory factors, it is not required to discuss those factors on the record or even state that they were considered. *State v. Pyles*, 7th Dist. No. 13 BE 11, 2014-Ohio-4146, ¶ 6.

{¶10} Appellant was sentenced to six years on each count of burglary to be served concurrently, which is within the statutory range for a felony of the second

degree. R.C. 2929.14(A)(2). R.C. 2929.11 governs principles and purposes of sentencing, while R.C. 2929.12 relates to seriousness of the offense and recidivism factors.

{¶11} R.C. 2929.11 mandates that trial courts be guided by the overriding principles of felony sentencing, including “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.” R.C. 2929.11(A). The trial court must “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.” *Id.*

{¶12} R.C. 2929.11(B) also states:

A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing * * * commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

{¶13} R.C. 2929.12(B) enumerates nine factors which indicate that an offender’s conduct is more serious than conduct normally constituting the offense. These factors include whether the physical or mental injury to the victim was exacerbated because of the physical or mental condition of the victim; serious physical, psychological, or economic harm suffered by the victim as a result of the

offense; whether the offender's relationship with the victim facilitated the offense; and whether the offender committed the offense for hire or as part of an organized criminal activity.

{¶14} R.C. 2929.12(C) sets forth four factors which indicate the offender's conduct is less serious than conduct normally constituting the offense. These factors include whether the offender acted under strong provocation; whether, in committing the offense, the offender did not cause or expect to cause physical harm to any person or property; and the existence of substantial grounds to mitigate the offender's conduct, although these grounds are not enough to constitute a defense.

{¶15} Appellant argues that the trial court erred in sentencing her without regard to consistency and that trial counsel raised the issue of consistency and proportionality of sentences as regards Appellant and her brother. Appellant's brother was sentenced to a term of four years after pleading guilty to more criminal counts. At sentencing, trial counsel noted Appellant's role in the crimes was minimal, stating, "[t]he facts and circumstances of the offenses indicate that [Appellant] never went into any of the homes, never had a weapon, never received any of the property or benefited from any of the circumstances." (11/17/15 Sentencing Hrg. Tr., p. 4.)

{¶16} Appellant contends the trial court impermissibly considered that she absconded from the jurisdiction prior to sentencing and did not properly consider the R.C. 2929.11 and R.C. 2929.12 factors prior to sentencing.

{¶17} The record reveals that the state had initially recommended a two year sentence. At hearing, the prosecutor noted that, as Appellant absconded and

sentencing had to be delayed until she was apprehended and brought to sentencing, the state did not “believe two years is warranted.” (*Id.* at p. 3.) Counsel for Appellant argued for the record certain mitigating factors to explain Appellant’s decision to abscond, including her heroin addiction, the death of her mother, and the illness of her sister. (*Id.* at pp. 3-7.) Counsel also noted that the state initially offered not to charge Appellant in exchange for testimony against her brother which Appellant refused. Only after this refusal was Appellant charged with the burglary offenses. (*Id.* at p. 5.) When the court provided Appellant with an opportunity to make a statement, she apologized for her role in these crimes. Victims were present in court, but did not wish to make statements. In sentencing Appellant, the court stated it had considered the record, statements and principles and purposes of sentencing pursuant to R.C. 2929.11, and the seriousness and recidivism factors found in R.C. 2929.12 before entering her sentence.

{¶18} The judgment entry of sentence also states that the court considered the record, oral statements, the presentence investigation report and the factors found in R.C. 2929.11 and R.C. 2929.12. Appellant presents no evidence in support of the contention that the trial court based sentencing on the fact that Appellant had absconded. Moreover, although Appellant argues her sentence was improper because of the lesser sentence given to her co-defendant brother, Appellant disregards her lengthy criminal record for multiple felonies, including a previous conviction for fleeing and eluding, which were included in the state’s disclosure of evidence. Appellant cites to no clear and convincing evidence that her sentence is

contrary to law and can cite to no portion of the record that supports her contention the trial court's sentence was the result of a failure to consider the statutory factors. The trial court noted both at the sentencing hearing and in the sentencing entry that it considered all relevant statutory factors and was not required to discuss those factors for the record. *Pyles, supra*, at ¶ 6.

{¶19} Thus, the trial court's sentence is not clearly and convincingly contrary to law. Appellant's six-year sentence was within the statutory range for second degree felonies and the court was not required to make specific findings under R.C. 2929.11 and R.C. 2929.12 before it imposed sentence. Appellant's assignment of error is without merit and the judgment of the trial court is affirmed.

DeGenaro, J., concurs.

Robb, P.J., concurs.