

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 107675
 v. :
 :
 RICHARD SCHOENHOLZ, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED AND REMANDED
RELEASED AND JOURNALIZED: June 20, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-18-626593-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Denise J. Salerno, Assistant Prosecuting
Attorney, *for appellee*.

Thomas A. Rein, *for appellant*.

RAYMOND C. HEADEN, J.:

{¶ 1} Defendant-appellant Richard Schoenholz (“Schoenholz”) appeals his sentence following a guilty plea. For the reasons that follow, we affirm and remand for further proceedings.

Procedural and Substantive History

{¶ 2} This appeal stems from Schoenholz's sentence in three separate cases. The identifying numbers of the three cases are Cuyahoga C.P. No. CR-18-626470-A, Cuyahoga C.P. No. CR-18-626593-A, and Cuyahoga C.P. No. CR-18-629131-A. In connection with CR-18-626470-A, on March 9, 2018, the Cuyahoga County Grand Jury indicted Schoenholz on two counts of drug possession in violation of R.C. 2925.11(A) with further specifications alleging that Schoenholz had previously been convicted of a drug abuse offense.

{¶ 3} On March 19, 2018, in CR-18-626593-A, the Cuyahoga County Grand Jury indicted Schoenholz on one count of aggravated burglary in violation of R.C. 2911.11(A)(1), one count of aggravated robbery in violation of R.C. 2911.01(A)(1), one count of aggravated robbery in violation of R.C. 2911.01(A)(3), one count of felonious assault in violation of R.C. 2903.11(A)(1), one count of felonious assault in violation of R.C. 2903.11(A)(2), and one count of domestic violence in violation of R.C. 2919.25(A). These charges resulted from an incident in which Schoenholz attacked his grandfather with a vase, resulting in serious injuries.

{¶ 4} Finally, on June 26, 2018, the grand jury indicted Schoenholz on one count of burglary, in violation of R.C. 2911.12(A)(3), in CR-18-629131-A. This charge arose from an incident that occurred while Schoenholz was in jail. He told another inmate that his grandfather's house was vacant, and the inmate then sent another individual to the house to burgle it.

{¶ 5} All three cases were resolved with a plea agreement. On August 2, 2018, Schoenholz pleaded guilty to one count of drug possession as charged, one count of aggravated burglary as charged, one count of felonious assault as charged, one count of domestic violence as charged, and one amended count of breaking and entering.

{¶ 6} The court referred Schoenholz to the probation department for preparation of a presentence investigation report. On August 30, 2018, the court held a sentencing hearing. The court heard from two of Schoenholz's relatives, including his grandfather, who had been the victim of the felonious assault and burglary. Schoenholz's aunt asked the court to impose the maximum sentence. She also described how Schoenholz had impacted their entire family. The court also heard from the prosecutor, defense counsel, and Schoenholz. The court commented on the nature of Schoenholz's crimes and stated that it considered the record, the statements made at sentencing, the PSI, and the plea negotiations. The court sentenced Schoenholz to a term of 12 months on the breaking and entering, 10 years on the aggravated burglary, four years on the felonious assault, six months on the domestic violence, and 12 months on the drug possession. The court made the requisite findings to impose consecutive sentences and ordered that the sentences for each of the three cases be served consecutively for a total of 15 years. After a brief sidebar with the prosecutor and defense counsel, the court amended the sentence and ordered all that all counts run concurrent, for a total sentence of 10 years. The

court also stated that it was going to waive court costs and declined to impose any fines.

{¶ 7} The sentencing journal entry reflected the 10-year sentence outlined above, but it also stated that the court “hereby enters judgment against the defendant in an amount equal to the costs of this prosecution.”

{¶ 8} Schoenholz appeals, presenting two assignments of error for our review.

Law and Analysis

{¶ 9} In his first assignment of error, Schoenholz argues that the record clearly and convincingly fails to support the imposition of more than a minimum sentence.

{¶ 10} Pursuant to R.C. 2953.08(G)(2), a reviewing court may increase, reduce, or otherwise modify a felony sentence if it clearly and convincingly finds that either (a) the record does not support certain required statutory findings or, (b) the sentence is otherwise contrary to law. A sentence is contrary to law if the court fails to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12.

{¶ 11} R.C. 2929.11(A) establishes that the overriding purposes of felony sentencing are to protect the public from future crime by the offender and to punish the offender using the minimum sanctions that the court determines will accomplish those purposes. While sentencing courts have discretion to determine how best to comply with these purposes, R.C. 2929.12 provides a list of factors that courts must

consider in felony sentencing. Courts must carefully consider these purposes and factors, but “it is not necessary for the trial court to articulate its consideration of each individual factor as long as it is evident from the record that the principles of sentencing were considered.” *State v. Gonzalez*, 8th Dist. Cuyahoga No. 102579, 2015-Ohio-4765, ¶ 6, citing *State v. Roberts*, 8th Dist. Cuyahoga No. 89236, 2008-Ohio-1942, ¶ 10.

{¶ 12} A review of the record in this case shows that the trial court considered the relevant factors in R.C. 2929.12 and the purposes of felony sentencing in R.C. 2929.11. At sentencing, the court discussed the circumstances of each of the three cases and commented on the atrocious nature of the conduct. Further, the court commented that the third case, in which Schoenholz facilitated a burglary of his grandfather’s house while he was in jail for brutally attacking his grandfather, indicated a lack of remorse. The court also explicitly stated that it considered the purposes and principles of felony sentencing as follows:

I’m formulating this decision based upon the overriding purposes and principles of felony sentencing; namely, to protect the public from future crime by you, sir, and to punish you using the minimum sanctions that the Court determines accomplishes those purposes without imposing an unnecessary burden on state or local government resources. I have considered the need for incapacitation, deterrence, rehabilitation, there’s been no request for restitution in this case.

Further, the sentencing journal entry states that “the court considered all required factors of the law” and “finds that prison is consistent with the purpose of R.C. 2929.11.”

{¶ 13} Schoenholz argues that the record here clearly and convincingly shows that the trial court gave no consideration to the factors in R.C. 2929.12. Schoenholz's argument simultaneously appears to challenge the way in which the trial court considered the R.C. 2929.12 factors — particularly the offender's lack of remorse for the offense. This argument lacks merit. Although the court did not specifically reference R.C. 2929.12, it was not required to do so. *State v. Keith*, 8th Dist. Cuyahoga Nos. 103413 and 103414, 2016-Ohio-5234, ¶ 11. This court has consistently held that a sentencing court's consideration of R.C. 2929.11 and 2929.12 is mandatory, but proof of this consideration is not required. *State v. Esner*, 8th Dist. Cuyahoga No. 90740, 2008-Ohio-6654, ¶ 10. Further, in light of the trial court's statements at sentencing, the record shows that the court considered the injuries suffered by the victim, the offender's relationship to the victim, the offender's drug abuse, and the offender's remorse or lack thereof for the offenses.

{¶ 14} Finally, to the extent that Schoenholz is challenging the weight the trial court chose to afford to various factors, we note that a felony sentence is not contrary to law merely because a defendant or an appellate court disagrees with the way in which the trial court considered a particular factor. *State v. Ledbetter*, 8th Dist. Cuyahoga No. 104077, 2017-Ohio-89, ¶ 11. R.C. 2953.08 provides that appellate courts may review felony sentences to determine whether the sentencing court considered the required factors; it does not empower us to reconsider how exactly the trial court considered these factors.

{¶ 15} Because Schoenholz's sentence is within the statutory range and we do not clearly and convincingly find that the record does not support the relevant findings, we affirm his 10-year prison sentence.

{¶ 16} In his second assignment of error, Schoenholz argues that the trial court erred by issuing a journal entry ordering him to pay court costs when the court stated at sentencing that it was waiving court costs. We agree. At the sentencing hearing, the trial court clearly stated that it was not imposing fines or court costs against Schoenholz. The sentencing journal entry, however, imposes court costs. This error does not invalidate Schoenholz's sentence. It is instead a clerical error that may be corrected by the court through a nunc pro tunc entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 30. Because a court speaks through its journal entry, we remand this case for the sole purpose of issuing a nunc pro tunc entry to reflect what occurred at sentencing.

{¶ 17} Judgment affirmed and remanded to the trial court for further proceedings.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending is terminated. Case remanded to the trial court for correction of the journal entry.

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

RAYMOND C. HEADEN, JUDGE

EILEEN A. GALLAGHER, J., CONCURS;

EILEEN T. GALLAGHER, P.J., CONCURS IN JUDGMENT ONLY