

[Cite as *State v. Thomas*, 2019-Ohio-538.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107075

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

KEYRON THOMAS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-17-615644-A

BEFORE: E.T. Gallagher, P.J., Celebrezze, J., and Headen, J.

RELEASED AND JOURNALIZED: February 14, 2019

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EILEEN T. GALLAGHER, P.J.:

{¶1} Defendant-appellant, Keyron Thomas, appeals his sentence and claims the following error:

1. The sentence imposed is contrary to law or not supported by the record and this Court must take action under *State v. Jones*, 2018-Ohio-498 (En Banc).

{¶2} We find no merit to the appeal and affirm the trial court's judgment.

I. Facts and Procedural History

{¶3} In Cuyahoga C.P. No. CR-17-614529-A, Thomas was charged with one count of aggravated robbery, with one- and three-year firearm specifications, and one count of having weapons while under disability. He was subsequently charged, in Cuyahoga C.P. No. CR-17-615644-A, with one count of aggravated robbery, three counts of robbery, one count of kidnapping, and one count of misdemeanor theft. All of these counts, except the misdemeanor

theft, included one- and three-year firearm specifications. The charges arose from robberies that occurred at a Family Dollar store on Miles Road in Cleveland and a Metro PCS store on Cleveland's west side.

{¶4} Pursuant to a plea agreement, Thomas pleaded guilty to one count of aggravated robbery in CR-17-614529-A. He also pleaded guilty to one count of aggravated robbery and one count of kidnapping in CR-17-615644-A. The remaining counts were nolle, and Thomas agreed to pay restitution in the amount of \$3,564.83 to Metro PCS and \$142 to Family Dollar.

{¶5} At sentencing, the state conceded that Thomas's aggravated robbery and kidnapping convictions in CR-17-615644-A were allied offenses that merged for sentencing purposes and elected to proceed on the aggravated robbery charge. The trial court noted that Thomas was on community control sanctions in four other cases involving theft, robbery, and attempted drug trafficking offenses. In those cases, Thomas had been entered into an intervention in lieu of conviction program, but he violated the terms of the program, was found guilty, and placed on community control. He later violated the terms of community control on four occasions, but had not yet been sentenced.

{¶6} The court sentenced Thomas to six years in prison on the aggravated robbery charge in CR-17-615644-A, and six months in prison on the aggravated robbery charge in CR-17-614529-A, to be served concurrently. The court imposed five years of mandatory postrelease control in each case and ordered Thomas to pay restitution and court costs. The trial court also sentenced Thomas in the four cases in which he violated community control. After granting credit for time served, the sentences on three of the four cases were complete. However, in the fourth case, Cuyahoga C.P. No. CR-15-598177-A, the court sentenced Thomas to 18 months in prison, less 362 days for time served, to be served consecutive to his sentences in

CR-17-614529-A and CR-17-615644-A, for an aggregate six- and one-half year prison term. Thomas now appeals his sentence.

II. Law and Analysis

{¶7} In the sole assignment of error, Thomas argues his sentences should be reversed because the trial court failed to comply with relevant sentencing provisions and failed to consider his mental illness when it imposed more than the minimum prison terms on his convictions.

{¶8} When reviewing felony sentences, we apply the standard of review set forth in R.C. 2953.08(G)(2). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231. R.C. 2953.08(G)(2) 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 or the sentence is otherwise “contrary to law.”

{¶9} In *State v. Jones*, 2018-Ohio-498, 105 N.E.3d 702 (8th Dist.), this court held that R.C. 2953.08(G)(2) requires an appellate court to modify or vacate a sentence if it finds, by clear and convincing evidence, that the record does not support the findings required by relevant sentencing statutes, including R.C. 2929.11 and 2929.12. *Id.* at ¶ 9, citing *Marcum* at ¶ 19. Thus, we may “take action” if we find, after reviewing the court’s findings, that the sentence is contrary to law or not supported by the record. *Id.* at ¶ 19.

{¶10} When sentencing a defendant, the court must consider the purposes and principles of felony sentencing set forth in R.C. 2929.11, and the serious and recidivism factors in R.C. 2929.12. *State v. Hodges*, 8th Dist. Cuyahoga No. 99511, 2013-Ohio-5025, ¶ 7. R.C. 2929.11 provides that the overriding purposes of felony sentencing are “to protect the public from future crime by the offender and others, to punish the offender, and to promote the effective

rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.”¹ To achieve these purposes, R.C. 2929.11(A) directs sentencing courts to “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.” R.C. 2929.11(B) further provides that a sentence for a felony conviction must be “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.”

{¶11} R.C. 2929.12 sets forth a nonexhaustive list of factors that the court must consider in relation to the seriousness of the underlying crime and likelihood of recidivism, including “(1) the physical, psychological, and economic harm suffered by the victim, (2) the defendant’s prior criminal record, (3) whether the defendant shows any remorse, and (4) any other relevant factors.” *State v. Kronenberg*, 8th Dist. Cuyahoga No. 101403, 2015-Ohio-1020, ¶ 26, citing R.C. 2929.12(B) and (D).

{¶12} Trial courts are not required to make factual findings under R.C. 2929.11 or 2929.12 before imposing the maximum sentence. *Id.* at ¶ 27. “Consideration of the factors is presumed unless the defendant affirmatively shows otherwise.” *State v. Seith*, 8th Dist. Cuyahoga No. 104510, 2016-Ohio-8302, ¶ 12, citing *State v. Keith*, 8th Dist. Cuyahoga Nos. 103413 and 103414, 2016-Ohio-5234. A trial court’s statement in its sentencing journal entry that it

¹ In June 2018, the Ohio Legislature amended R.C. 2929.11 in S.B. 66, which became effective on October 29, 2018. One of the amendments added a third purpose for felony sentencing. In addition to protecting the public from future crime by the offense and punishing the offender, the statute now provides that a sentencing court must consider the promotion of “the effective rehabilitation of the offender[.]” *See* 2018 Am.Sub.S.B. No. 66.

considered the required statutory factors is sufficient to fulfill its obligations under R.C. 2929.11 and 2929.12. *State v. Paulino*, 8th Dist. Cuyahoga No. 104198, 2017-Ohio-15, ¶ 37.

{¶13} At the sentencing hearing, the trial court stated on the record that it reviewed “the entire case file, the presentence investigation report, Revised Code Section 2929.11 for the purposes and principles of sentencing, [and] Revised Code 2929.12 for the seriousness and recidivism factors.” (Tr. 39-40.) The sentencing entry provides that “[t]he court considered all required factors of the law” and that “[t]he court finds prison is consistent with purpose of R.C. 2929.11.” Thus, the trial court considered the relevant sentencing provisions as well as personal facts about Thomas set forth in the presentence investigation report when it sentenced Thomas to the six and one-half year prison term.

{¶14} Although the trial court imposed more than the minimum sentence, the record shows that the court previously gave Thomas the opportunity to participate in an intervention in lieu of conviction program, but he violated the terms of the program. The court also previously placed Thomas on community control, but he violated its terms four times. Based on Thomas’s criminal history, the court reasonably concluded that Thomas was not amenable to community control sanctions and that prison was consistent with the purposes for felony sentencing outlined in R.C. 2929.11, and the record supports the court’s conclusion.

{¶15} Furthermore, the trial court has “full discretion to impose a prison sentence within the statutory range” and is not required to make findings or give its reasons for imposing more than the minimum sentence. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶ 100. Thomas was convicted of two counts of aggravated robbery, in violation of R.C. 2911.01(A)(1), with one- and three-year firearm specifications. Both counts were first-degree felonies. The statutory range for prison terms on first-degree felonies is between three and 11

years, in yearly increments. *See* R.C. 2929.14(A)(1). Therefore, Thomas's six and one-half year sentence was within the statutory range and was not contrary to law.

{¶16} The sole assignment of error is overruled.

{¶17} Judgment affirmed.

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 out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

EILEEN T. GALLAGHER, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
RAYMOND C. HEADEN, J., CONCUR