

[Cite as *State v. Walker*, 2019-Ohio-996.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107368

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CAMERIN WALKER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-17-614246-A

BEFORE: E.T. Gallagher, P.J., Keough, J., and E.A. Gallagher, J.

RELEASED AND JOURNALIZED: March 21, 2019

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EILEEN T. GALLAGHER, P.J.:

{¶1} Defendant-appellant, Camerin Walker, appeals his sentence and claims the following three errors:

1. Appellant's right to due process was violated when the sentencing court did not consider the factors outlined in R.C. 2929.12.
2. It was error not to make findings during sentencing pursuant to R.C. 2929.12.
3. There was insufficient evidence to support the within sentence.

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

I. Facts and Procedural History

{¶3} In November 2016, Walker, at age 19, was involved in a physical altercation with an inmate while he was incarcerated in a juvenile correction facility. Guards intervened to separate the youths and placed Walker in handcuffs. As the guards were escorting Walker out of the

room, Walker bit one of the guards on the arm. The guard later received medical treatment to ensure that Walker did not transmit any diseases since he bit the guard's bare skin.

{¶4} Three weeks after Walker's release, he was charged with one count of assault in violation of R.C. 2903.13(A). Because Walker was institutionalized in the department of youth services facility at the time of the offense, the offense was a third-degree felony under R.C. 2903.13(C)(3). Pursuant to a plea agreement, Walker pleaded guilty to an amended charge of harassment by an inmate in violation of R.C. 2921.38(A), a fifth-degree felony. During the plea hearing, the trial court advised Walker that the potential prison term for a fifth-degree felony was anywhere from six to 12 months, in monthly increments. The court also informed Walker that he could be subject to a fine up to \$2,500.

{¶5} After accepting Walker's guilty plea, the court sentenced Walker to six months in prison to be served in the county jail and credited him 29 days for time served. (Tr. 20.) Walker now appeals his sentence.

II. Law and Analysis

A. Sentencing Factors

{¶6} In the first assignment of error, Walker argues his sentence is contrary to law because the trial court failed to consider the seriousness and recidivism factors set forth in R.C. 2929.12. In the second assignment of error, he argues his sentence is contrary to law because the court failed to make findings pursuant to R.C. 2929.12. We discuss these assigned errors together because they are closely related.

{¶7} We review felony sentences under the standard 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 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."

{¶8} A sentence is not contrary to law if the trial court considered the purposes and principles of sentencing under R.C. 2929.11 and the seriousness and recidivism factors listed in R.C. 2929.12, properly applied postrelease control, and imposed a sentence within the applicable statutory range. *State v. Lenard*, 8th Dist. Cuyahoga No. 105998, 2018-Ohio-3365, ¶ 79, citing *State v. A.H.*, 8th Dist. Cuyahoga No. 98622, 2013-Ohio-2525, ¶ 10.

{¶9} Although the trial court must consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors listed in R.C. 2929.12, the court is not required to make findings or give reasons for its sentence. *State v. Pavlina*, 8th Dist. Cuyahoga No. 99207, 2013-Ohio-3620, ¶ 15, citing *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. A trial court's general statement that it considered the required statutory factors, without more, is sufficient to fulfill its obligations under the sentencing statutes. *Id.*, citing *State v. Wright*, 8th Dist. Cuyahoga No. 95096, 2011-Ohio-733, ¶ 4.

{¶10} Further, this court has held that a trial court's statement in its sentencing journal entry that it considered the required statutory factors, without more, 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. And because courts have full discretion to impose sentences within the statutory range, a sentence imposed within the statutory range is "presumptively valid" if the court considered the applicable sentencing factors. *Id.*, citing *State v. Collier*, 8th Dist. Cuyahoga No. 95572, 2011-Ohio-2791, ¶ 15.

{¶11} Walker argues his sentence is contrary to law because the trial court failed to consider the seriousness and recidivism factors set forth in R.C. 2929.12. However, at the sentencing hearing, the court stated on the record:

Mr. Walker, the court has considered all this information, all the principals and purposes of felony sentencing, all the appropriate recidivism and seriousness factors, and this is a serious matter assaulting an institutional guard or in this case a juvenile detention officer.

(Tr. 20.) The court’s journal entry further states that “[t]he court considered all required factors of the law.” Thus, the record shows the court considered all relevant sentencing provisions. And earlier in the sentencing hearing, the state informed the court that Walker had prior juvenile delinquency adjudications for robbery and having a weapon while under disability. Therefore, the court concluded that because Walker committed a serious assault on a prison guard and had a history of violent crime, he was not amenable to community control sanctions.

{¶12} Furthermore, Walker’s sentence falls within the statutory range. Walker pleaded guilty to, and was convicted of, a fifth-degree felony. R.C. 2929.14(A)(5) provides that “[f]or a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.” Therefore, Walker’s sentence falls within the statutory range for fifth-degree felonies and is not contrary to law.

{¶13} The first and second assignments of error are overruled.

B. Sufficiency of the Evidence

{¶14} In the third assignment of error, Walker argues there is insufficient evidence to justify his six-month sentence. He contends he was not charged with a “serious crime,” and he did not cause the victim serious harm. He also contends his six-month prison sentence is disproportionate to his crime because he was only 19 years old at the time of the offense, he had

no prior felony convictions as an adult, and he was charged with a fifth-degree felony. (Appellant's brief at 10.)

{¶15} However, Walker was not charged with a fifth-degree felony; he was charged with a third-degree felony and pleaded guilty to a fifth-degree felony. R.C. 2929.11 provides that sentences imposed on felony convictions must be commensurate with the defendant's *conduct* as opposed to the defendant's actual conviction. R.C. 2929.11(B). Walker was charged with third-degree felony assault because he bit the bare skin of a prison guard in a department of youth services facility. Such conduct is more serious than Walker's harassment by an inmate conviction because it could transmit diseases or cause an infection to the victim. Indeed, the guard underwent medical treatment to be sure he did not contract an illness as a result of the assault.

{¶16} Walker also argues his prior criminal conduct is irrelevant because his assault conviction in this case was his first offense as an adult. However, as previously explained, the trial court must consider the seriousness and recidivism factors outlined in R.C. 2929.12, including the offender's criminal record. In considering the offender's criminal record, R.C. 2929.12(D)(2) provides that a prior delinquency adjudication is a factor "indicating that the offender is likely to commit future crimes."

{¶17} Walker had prior juvenile delinquency adjudications for robbery and having weapons while under disability. Thus, Walker's juvenile delinquency record was a relevant factor in support of the court's decision to impose a six-month prison term, and there was evidence in the record to support Walker's six-month sentence.

{¶18} Moreover, Walker’s six-month prison sentence is not inconsistent with sentences imposed on other defendants in Cuyahoga County for similar offenses.¹ In *State v. Pierce*, 2017-Ohio-8578, 100 N.E.3d 860 (8th Dist.), the defendant was sentenced to one year in prison on each of two counts of harassment by an inmate after he attempted to bite and spit on two officers as they were trying to arrest him. *Id.* at ¶ 4, 8. In *State v. Grenon*, 8th Dist. Cuyahoga No. 101670, 2015-Ohio-1027, the defendant pleaded guilty to attempted harassment by an inmate, a lesser charge than Walker’s conviction, and was sentenced to six months in prison. *Id.* at ¶ 1-2.

{¶19} Similarly, in *State v. Johnson*, 8th Dist. Cuyahoga No. 97579, 2012-Ohio-2508, the defendant, who was convicted of harassment by an inmate, was sentenced to 11 months in prison because he spat on and attempted to kick officers. In *State v. Lundy*, 8th Dist. Cuyahoga No. 90229, 2008-Ohio-3359, the defendant spat on two officers and was subsequently convicted of two counts of harassment by an inmate and sentenced to ten months on each count, to be served consecutively. Thus, not only is Walker’s six-month prison term supported by the record, it is also consistent with sentences imposed on similar offenders for similar crimes.

{¶20} The third assignment of error is overruled.

{¶21} 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,

¹ R.C. 2929.11(B) requires that felony sentences be “consistent with sentences imposed for similar crimes committed by similar offenders.”

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

KATHLEEN ANN KEOUGH, J., and
EILEEN A. GALLAGHER, J., CONCUR