

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 12AP-1009
Plaintiff-Appellee,	:	(C.P.C. No. 12CR05-2363)
v.	:	
	:	No. 12AP-1010
Thomas Davidek,	:	(C.P.C. No. 12CR07-3550)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 5, 2013

Ron O'Brien, Prosecuting Attorney, and *Michael P. Walton*,
for appellee.

Connor, Evans & Hafenstein LLP, and *Dennis P. Evans*, for
appellant.

APPEALS from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} In these two appeals, defendant-appellant, Thomas Davidek, appeals from two judgments of conviction and sentence entered by the Franklin County Court of Common Pleas. Because appellant's nine-year sentence is not contrary to law, we affirm that judgment.

I. Factual and Procedural Background

{¶ 2} In May 2012, a Franklin County Grand Jury indicted appellant in Case No. 12AP-1009 with two counts of operating a vehicle under the influence of alcohol or drugs ("OVI") in violation of R.C. 4511.19. In July 2012, another grand jury indicted appellant in case No. 12AP-1010 with another count of operating a vehicle under the influence of

alcohol or drugs in violation of R.C. 4511.19. As indicted, each OVI count was a third-degree felony. Each count also contained a repeat OVI offender specification pursuant to R.C. 2941.1413, which alleged that appellant had five or more equivalent offenses in the past twenty years.

{¶ 3} Appellant initially entered a not-guilty plea to all the charges. He subsequently withdrew that plea, however, and entered a guilty plea in each case to one count of OVI and the repeat OVI offender specification. The trial court accepted his guilty plea in each case, found him guilty, and sentenced him to concurrent prison terms of nine years in case No. 12AP-1009 (four years for the OVI conviction and a consecutive five years for the specification) and five years in case No. 12AP-1010 (four years for the OVI conviction and a consecutive year for the specification) for a total prison term of nine years. The trial court also suspended appellant's driver's license for life and ordered him to participate in alcohol and drug programs.

{¶ 4} Appellant appeals his sentence and assigns the following error:

The Trial Court abused its discretion and violated the Defendant-Appellant's rights, under the 14th Amendment right to due process under both the Ohio and United States Constitution, and ORC 2929.11 and ORC 2929.12 when it sentenced the Defendant to a total of 9 years in prison.

II. Appellant's Nine-Year Prison Sentence was not Contrary to Law

{¶ 5} Appellant argues that the trial court abused its discretion by sentencing him to a total prison term of nine years, in light of his efforts at treatment and the fact that he has never injured anyone while driving intoxicated. We disagree.

{¶ 6} First, we reject appellant's request for this court to review the trial court's sentence for an abuse of discretion. That is not our level of review. Instead, we must determine whether clear and convincing evidence establishes that a felony sentence is contrary to law. A sentence is contrary to law when the trial court failed to apply the appropriate statutory guidelines. *State v. Worth*, 10th Dist. No. 10AP-1125, 2012-Ohio-666, ¶ 83; *State v. Burton*, 10th Dist. No. 06AP-690, 2007-Ohio-1941, ¶ 19.

{¶ 7} Having established the proper review to apply, we conclude that the nine-year sentence imposed on appellant is not contrary to law. First, the trial court noted in both of its sentencing entries that it considered the purposes and principles of sentencing

set forth in R.C. 2929.11 and the factors in R.C. 2929.12. Such language in a judgment entry belies a claim that the trial court failed to consider statutory guidelines. *State v. Vaughn*, 10th Dist. No. 09AP-73, 2009-Ohio-4970, ¶ 21; *State v. Saur*, 10th Dist. No. 10AP-1195, 2011-Ohio-6662, ¶ 40. Additionally, the trial court noted at sentencing its role to protect the public and to punish appellant because he could not stop drinking and driving. The trial court also noted that, even with previous time in jail and multiple previous attempts at treatment, appellant continues to drink and drive. Second, a nine-year sentence is authorized for appellant's convictions for a felony of the third degree and the repeat OVI specifications. See R.C. 2929.14(A)(3) (maximum sentence of five years for felony of the third degree) and R.C. 2941.1413 (additional prison term of one to five years). Therefore, appellant's sentence is not clearly and convincingly contrary to law. *Vaughn* at ¶ 22; *State v. Hernton*, 11th Dist. No. 2008-L-104, 2009-Ohio-1487, ¶ 19 (sentence not contrary to law where trial court considered all statutory guidelines and sentence was within statutory range); *State v. Gray*, 7th Dist. No. 07 MA 156, 2008-Ohio-6591, ¶ 20-22 (same).

{¶ 8} Appellant has not demonstrated that his nine-year sentence is contrary to law. Accordingly, we overrule appellant's assignment of error.

III. Conclusion

{¶ 9} Having overruled appellant's sole assignment of error, we affirm the judgments of the Franklin County Court of Common Pleas.

Judgments affirmed.

SADLER and McCORMAC, JJ., concur.

McCORMAC, J., retired, of the Tenth Appellate District,
assigned to active duty under authority of Ohio Constitution,
Article IV, Section 6(C).
