

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2011-L-095
JOHN JUDE,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 11 CR 000166.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Karen A. Sheppert*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, John Jude, Jr., appeals his seven-year sentence for Escape in the Lake County Court of Common Pleas. The issue before this court is whether the trial court abused its discretion in imposing the seven-year sentence by failing to consider the proportionality of the sentence and by improperly weighing the seriousness and mitigating factors. For the following reasons, we affirm the decision of the court below.

{¶2} On April 4, 2011, the Lake County Grand Jury returned an Indictment against Jude charging him with Escape, a felony of the second degree in violation of R.C. 2921.34(A)(1). According to the Indictment: “At the time of the commission of the offense, **JOHN JUDE** was under detention [parole] for Murder.”

{¶3} On April 12, 2011, Jude waived his right to be present at his arraignment and entered a plea of not guilty to the charge.

{¶4} On May 23, 2011, Jude entered a Written Plea of Guilty to Escape as charged in the Indictment.

{¶5} On June 16, 2011, the sentencing hearing was held. Defense counsel recommended the minimum sentence of two years in prison. In support of the recommendation, defense counsel argued as follows:

{¶6} John committed the offense [of] escape when he walked away from his parole in late March of last year. He did so after relapsing and using alcohol and prescription drugs. The triggering event this time was learning that his long time girlfriend, while he was away at prison, had sold all his belongings. In addition, she had cashed his social security and VA checks while [he was] incarcerated. * * * During the time he was away from parole * * *, John lived mostly in the woods and did odd jobs to survive. And also to, you know, support his drinking habit. In early April of this year he went to his girlfriend's house in Ashtabula and asked her to call the police and let them know where he was. Judge, for this he was charged with a felony to escape, and it's my feeling that that's [an] extremely

serious offense. One would say even a harsh offense for the conduct involved here. And apparently the legislature agrees. * * *

[I]n House Bill 86 which recently passed the general assembly, the same conduct that was involved in this case that John did here will be amended to a Felony 4 * * *. This time next year a person in John's position would likely be facing 18 months in prison versus the 8 years John is facing here today. I'm not gonna stand here and tell you that John's lived a perfect life by any means. * * *

However, * * * he's not the same person he was in the early 70's [Jude was convicted of Murder in 1973]. And I would attest that he's not even the same person he was in 1991 when he was convicted of the burglary. He's gonna be 68 years old in less than a month. He hasn't committed a true offense of violence in over 38 years. Since he was paroled in 2000 his only criminal convictions are misdemeanors for OVI and resisting arrest. * * *

All the other times John has been incarcerated Judge, since he was paroled in 2000[,] were for doing exactly what he did here, which is walked [sic] away from parole. Usually after relapsing on drugs and alcohol. I believe John could have benefitted from being charged with escape very early after he was first paroled and absconded. Then he would have understood the seriousness of this offense. Instead he was minimally sanctioned by the APA, which really did him no favors. * * *

But I feel that sentencing somebody to prison

for many years for what amounts to a failure to act * * * is extremely harsh.

{¶7} Defense counsel confirmed that Jude has had his parole revoked eight times previously and that on each occasion his sanction was a nine-month period of incarceration.

{¶8} Jude addressed the court as follows:

{¶9} I'll tell ya, I'm my worst enemy. I am not the same person I was years ago. I have no desire to hurt anyone. Mentally, physical, anything. And I am a bad alcoholic. And I wish I'da done things different. And I'm sorry to everyone I've hurt in my life. * * * The woman I lived with for years, truthfully I shouldn't be with her. * * * But I care for her. Deeply. But every time I'm with her all I want to do is drink. To get away from her. * * * I've been drinking since I was like 12. No, I don't want to keep drinking. I intend when I get out of prison this time, I'll get some help for my drinking.

{¶10} The prosecutor recommended a prison sentence of five years.

{¶11} The trial court sentenced Jude to a prison term of seven years.

{¶12} On June 27, 2011, the trial court issued its written Order and Journal Entry, memorializing Jude's sentence.

{¶13} On July 20, 2011, Jude filed his Notice of Appeal. On appeal, Jude raises the following assignment of error:

{¶14} "[1.] The trial court erred by sentencing the defendant-appellant to an excessive term of imprisonment."

{¶15} “[A]ppellate courts must apply a two-step approach when reviewing felony sentences. First, they must examine the sentencing court’s compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court’s decision in imposing the term of imprisonment is reviewed under the abuse-of-discretion standard.” *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 26.

{¶16} The overriding purposes of felony sentencing in Ohio “are to protect the public from future crime by the offender * * * and to punish the offender.” R.C. 2929.11(A). “A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, 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.” R.C. 2929.11(B).

{¶17} It is well-recognized that a sentencing court “has discretion to determine the most effective way to comply with the purposes and principles of sentencing.” R.C. 2929.12(A). The Ohio Supreme Court has described a sentencing court’s discretion as “full discretion to impose a prison sentence within the statutory range.” *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, paragraph three of the syllabus; *State v. Ries*, 11th Dist. No. 2008-P-0064, 2009-Ohio-1316, ¶ 13 (“[s]uch discretion is plenary”). “[T]he trial court is not obligated, in the exercise of its discretion, to give any particular weight or consideration to any sentencing factor.” *State v. Holin*, 174 Ohio App.3d 1, 2007-Ohio-6255, 880 N.E.2d 515, ¶ 34 (11th Dist.).

{¶18} Jude does not contend that his sentence is contrary to law. Rather, Jude argues his sentence is inconsistent under R.C. 2929.11(A) in that it fails to recognize “the differences inherent in escaping from actual confinement versus ‘escaping’ while on parole.” Jude maintains that such a distinction was recognized by the legislature as part of the amendments enacted by House Bill 86. Under the current Escape statute, Jude would have been considered to be under “supervised release detention,” as defined in R.C. 2921.34(D). Escape, when committed by breaking supervised release detention for Murder, is now classified as a felony of the fourth degree, for which the maximum sentence is eighteen months imprisonment. R.C. 2921.34(C)(3) and 2929.14(A)(4).

{¶19} We disagree. At the time of Jude’s sentencing, a trial court had “full discretion to impose a prison sentence within the statutory range.” *Mathis* at paragraph three of the syllabus. It was within the trial court’s discretion to consider the fact that Jude’s escape was from parole rather than actual confinement, but it was not obligated to do so. A court is not bound to apply a statute until its effective date. As will be evident below, the court’s decision to impose a seven-year sentence was motivated by the nature of the offense for which Jude was paroled, rather than the nature of the Escape.

{¶20} Jude further asserts that the trial court failed properly to weigh the mitigating factors in this case, such as the absence of a victim and/or property damage. Jude also objects to the court’s consideration of “the crime for which he was placed on parole and for which he served a full sentence.”

{¶21} Again, we find no abuse of discretion. As noted above, the trial court is not required to give any particular weight to a given sentencing factor. Moreover, the court “may consider any other factors that are relevant to achieving those purposes and principles of sentencing,” beyond those set forth in the statute. R.C. 2929.12(A).

{¶22} Consideration of Jude’s underlying crime was not improper. Contrary to Jude’s position, he has not served his full sentence, which is life imprisonment. As the Ohio Supreme Court has observed: “Parole is not a full release, nor is it a form of leniency. Rather, it is the conditional extension of certain freedoms, under the supervision of a parole officer, to a person who has already served a period of time in a correctional institution.” *State ex rel. McKee v. Cooper*, 40 Ohio St.2d 65, 68, 320 N.E.2d 286 (1974).

{¶23} In the present case, the trial court emphasized several factors in rendering its decision. One was the seriousness of the underlying crime: “This is an escape on a murder charge. It’s not jaywalking.” The court also demonstrated concern with what it considered the lax supervision of the Adult Parole Authority given the number of prior parole violations. The court characterized the failure to impose more than a nine-month sentence for eight prior parole violations as “jeopardizing public safety.” Finally, the court demonstrated a concern with Jude’s failure to address his problem with drinking, observing that, in addition to the present offense, “you [Jude] committed murder because you were drinking.”

{¶24} It is not the role of this court to weigh the relative merits of the seriousness factors relevant to Jude’s sentence. The trial court adduced several valid reasons in

support of its sentence, thus, it cannot be characterized as unreasonable or arbitrary or an abuse of its discretion.

{¶25} The sole assignment of error is without merit.

{¶26} For the foregoing reasons, the judgment of the Lake County Court of Common Pleas, sentencing Jude to a seven-year prison sentence, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.