

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

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-T-0116
DANIEL JOSEPH KREPP,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 2010 CR 894.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

David L. Engler, 100 DeBartolo Place, #315, Boardman, OH 44512 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Daniel Joseph Krepp, appeals from the judgment entry on sentence of the Trumbull County Court of Common Pleas. At issue is whether the trial court erred in sentencing appellant to four years imprisonment after accepting his plea of guilty to, inter alia, felony-two burglary. We affirm the trial court's judgment.

{¶2} Appellant was arrested after a female observed him exiting her first-floor apartment from a sliding glass door. Officers later found the victim's underwear in a

drawer at appellant's home. Appellant's ex-wife later contacted police after finding an additional 55 pairs of women's underwear in appellant's unlocked gun cabinet.

{¶3} Appellant was subsequently indicted on one count of burglary, a felony of the second degree, in violation of R.C. 2911.12(A)(2) and (C) and one count of receiving stolen property, a misdemeanor of the first degree, in violation of R.C. 2913.51(A) and (C). Appellant initially pleaded not guilty, but later entered a plea of guilty to the indictment.

{¶4} At the sentencing hearing, three individuals gave statements on appellant's behalf. Appellant's ex-wife, his mother, and his mother's friend each opined that despite the charges, appellant was a good person who is not a danger to society. Defense counsel further noted that appellant had endured public humiliation due to the charges. Counsel also claimed that appellant's actions were prompted by his addiction to pornography which, counsel argued, is not a "gateway" to violent sexual crime or violence against women. Counsel therefore asserted appellant was an appropriate candidate for community control sanctions rather than prison. Finally, during his elocution, appellant apologized to the victim and emphasized that his actions were prompted by his need to get a "fix" to feed his pornography addiction. Appellant submitted that he needed help to overcome his addiction. Appellant further told the court he did not believe the help he needed could be found in prison.

{¶5} In response, the prosecutor asserted appellant's burglary was not only a second degree felony, but involved an invasion of privacy. Given the circumstances of the case, therefore, the state recommended a five-year term of imprisonment.

{¶6} After considering each side's respective positions, as well as all relevant aspects of the record and the relevant felony sentencing factors, the trial court sentenced

appellant to a prison term of four years. Appellant now appeals and alleges the following assignment of error:

{¶7} “The trial court erred in its sentencing of defendant-appellant as same was contrary to law.”

{¶8} In *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, the Ohio Supreme Court established a two-step analysis for considering the propriety of a felony sentence. Under the first step, an appellate court considers whether the trial court “adhered to all applicable rules and statutes in imposing the sentence.” *Id.* at ¶14. “As a purely legal question, this is subject to review only to determine whether it is clearly and convincingly contrary to law, the standard found in R.C. 2953.08(G).” *Id.* Next, a reviewing court considers, with reference to the general principles of felony sentencing and the seriousness and recidivism factors set forth in R.C. 2929.11 and 2929.12, whether the trial court abused its discretion in selecting the defendant's sentence. *Id.* at ¶19.

{¶9} With respect to the first prong of *Kalish*, the Supreme Court did not provide specific guidance regarding the “laws and rules” an appellate court must consider to ensure sentencing clearly and convincingly conforms with Ohio law. *State v. Burrell*, 11th Dist. No. 2009-P-0033, 2010-Ohio-6059, ¶17. Thus, “if a sentence falls within the statutory range for the felony of which a defendant is convicted, it will be upheld as clearly and convincingly consistent with the law.” *State v. Kozel*, 11th Dist. No. 2011-L-044, 2011-Ohio-4306, ¶5. “If the sentence is within the purview of the applicable ‘laws and rules,’ we then consider whether the trial court acted within its discretion in fashioning the sentence at issue.” *Id.*

{¶10} This court has held that, while a trial court must consider the seriousness and recidivism factors set forth under R.C. 2929.12, it is not required to make factual

findings pursuant to those factors. See *e.g. State v. O'Neill*, 11th Dist. No. 2010-P-0041, 2011-Ohio-2202, ¶34. In fact, absent some evidence to the contrary, a reviewing court will presume all statutory standards were met even if the record is silent. See *e.g. State v. Kish*, 11th Dist. No. 2010-L-138, 2011-Ohio-4172, ¶8.

{¶11} Under his sole assignment of error, appellant contends that the trial court failed to give adequate consideration to the purposes and principles of felony sentencing. Appellant specifically argues the court essentially ignored evidence indicating he was not a danger to society and would not likely reoffend. We do not agree.

{¶12} In this case, appellant was sentenced to a term of imprisonment of four years after pleading guilty to a second degree felony. Statutorily, an offender convicted of a second degree felony is subject to a term of imprisonment between two and eight years. Because the court's sentence fell within the applicable statutory range, it is clearly and convincingly consistent with the law.

{¶13} Furthermore, in imposing the four-year term of imprisonment, the trial court indicated it had considered the relevant factors under the law, appellant's PSI, as well as the statements offered in mitigation. The court further observed that it had considered the victim's impact statement and the recommendations of both parties. The court noted that it had dealt with multiple cases involving pornography. And, even though defense counsel cited an unnamed study from 1996 as a basis for his argument that pornography addicts do not necessarily evolve into violent criminals, the court maintained it is not difficult to find a study on that issue that "says what you like to hear." The court therefore concluded that appellant's alleged pornography addiction would not be considered in fashioning a sentence.

{¶14} Given these points, the court underscored that its sentencing determination was premised primarily upon the circumstances of the felony-two burglary to which appellant pleaded guilty. The court specifically stated that appellant's criminal behavior was particularly severe and deserving of prison time because

{¶15} it isn't just a matter of going into someplace, it isn't a closed gas station, it isn't an empty warehouse, it's somebody's home, it's their abode, it's their castle. It's a place that they have the right to be secure in. * * * And in this case, more severe because half the burglaries or more that we have here that involve a home, the victim was never at the house at the time that the burglary occurred. This is even one step above that, and that is simply this; that it doesn't end the day they made an arrest, it doesn't end the fear, doesn't end the day there is a conviction, it doesn't rest the day that somebody gets probation or goes to prison or when they're released from parole. In her statement, which is very typical, that's why I always say it is, every time she comes home and she thinks something is out of order or she thinks she hears a noise, she is terrorized by the fact that somebody can be in her home.

{¶16} Pursuant to R.C. 2929.11(A) a court sentencing an offender for a felony must be guided by the purposes and principles of sentencing; namely, to protect the public from future crime and punish the offender. *Id.* Further, pursuant to R.C. 2929.13(D)(1), felony-two burglary carries a presumption in favor of imprisonment. That presumption may be overcome if the court expressly finds that community control sanctions would adequately punish the offender as well as protect the public and such

sanctions would not demean the seriousness of the offense. R.C. 2929.13(D)(2)(a) and (b).

{¶17} The court, in this case, determined that the presumption favoring imprisonment had not been overcome. And, the court's statements regarding the severity of the crime support this conclusion. Moreover, even though the court heard statements from three individuals regarding appellant's purported harmlessness, these representations were not entitled to any special deference. After considering the information before it, the court determined the purposes and principles of felony sentencing would be best served by imposing a four-year term of imprisonment. And, given the points discussed on record by the court at the hearing, we conclude the trial judge acted within its sound discretion in rendering its sentencing order.

{¶18} Appellant's sole assignment of error lacks merit.

{¶19} For the reasons discussed in this opinion, the judgment of the Trumbull County Court of Common Pleas is affirmed.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.