

**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. 2012-L-026
WARREN L. PUTNAM,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 11 CR 000703.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Alana A. Rezaee*, 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, Warren L. Putnam, appeals from the Judgment Entry of Sentence of the Lake County Court of Common Pleas, sentencing him to an aggregate term of six years in prison for Attempted Engaging in a Pattern of Corrupt Activity and three counts of Receiving Stolen Property. The issue to be decided by this court is whether a trial court's discussion of all relevant sentencing factors constitutes

Careful and substantial deliberation of the statutory considerations for sentencing. For the following reasons, we affirm the decision of the court below.

{¶2} On February 16, 2012, Putnam pled guilty, by way of information, to one count of Attempted Engaging in a Pattern of Corrupt Activity, a felony of the third degree, in violation of R.C. 2923.02 and 2923.32(A)(1), and three counts of Receiving Stolen Property, felonies of the fifth degree, in violation of R.C. 2913.51(A). The Written Plea of Guilty and Judgment Entry was filed on February 23, 2012.

{¶3} A sentencing hearing in this matter was also held on February 16, 2012. During the hearing, defense counsel stated that Putnam expressed remorse and that he had cooperated with authorities. The State also gave a statement, noting Putnam's extensive criminal record. The trial court listened to the arguments and made various findings for the record. The court noted that it considered the statements of both sides and other evidence before it, the purposes of felony sentencing pursuant to R.C. 2929.11, and the factors under R.C. 2929.12. The court found that consecutive sentences are necessary to protect the public and punish Putnam, and that they would not be disproportionate to the conduct and the danger posed by him.

{¶4} Putnam was sentenced to a term of three years imprisonment for Attempted Engaging in a Pattern of Corrupt Activity and one year for each count of Receiving Stolen Property. Each sentence was ordered to be served consecutively, for a total term of imprisonment of six years. Putnam was also ordered to pay restitution to four separate victims. The sentence was memorialized in a Judgment Entry of Sentence, dated February 23, 2012. That Entry also stated that the court had considered "the principles and purposes of sentencing under R.C. 2929.11, and has balanced the seriousness and recidivism factors under 2929.12."

{¶5} Putnam timely appeals and raises the following assignment of error:

{¶6} “The trial court erred by sentencing the defendant-appellant to maximum, consecutive terms of imprisonment.”

{¶7} Subsequent to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, appellate courts have applied a two step approach in reviewing felony sentences. First, courts “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.

{¶8} A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. “The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.” R.C. 2929.11(A). A court imposing a sentence for a felony “has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code.” R.C. 2929.12(A). “In the exercise of this discretion, a court ‘shall consider’ the non-exclusive list of seriousness and recidivism factors set forth in R.C. 2929.12(B), (C), (D), and (E).” *State v. Sanders*, 11th Dist. No. 2006-L-222, 2007-Ohio-3207, ¶ 15; R.C. 2929.12(A).

{¶9} There is no “mandate” for the sentencing court to engage in any factual finding under these statutes. Rather, “[t]he court is merely to ‘consider’ the statutory factors.” *Foster* at ¶ 42. This standard continues to be applicable after the recent

enactment of H.B. 86, which now requires fact-finding in applying consecutive sentences under R.C. 2929.14(C)(4), but did not amend R.C. 2929.12. See *State v. Alexander*, 1st Dist. Nos. C-110828 and C-110829, 2012-Ohio-3349, ¶ 24 (R.C. 2929.12 is “not [a] fact-finding statute[] like R.C. 2929.14”) (citation omitted).¹

{¶10} In his sole assignment of error, Putnam notes that he “does not assert that his sentence was contrary to law” or dispute that the trial court followed the applicable rules and statutes, as required by the first prong of the *Kalish* test. Rather, he argues only that the trial court failed to give “careful and substantial deliberation to the relevant statutory considerations” set forth in R.C. 2929.12. Specifically, he argues that there were no physical or mental injuries suffered by the victims and that, under R.C. 2929.12(C), Putnam’s conduct was less serious than conduct normally constituting the offenses. Putnam also argues that the court did not consider whether he was likely to commit future crimes under R.C. 2929.12(D), and notes that he showed remorse and cooperated with the State, which are mitigating factors that must be considered in his favor.

{¶11} Regarding the likelihood of Putnam committing future crimes under R.C. 2929.12(D), the trial court did take into consideration several factors related to the risk of Putnam committing future crimes. It noted that Putnam “just got out of prison when these crimes were committed” and further stated that the crimes were committed while he was under parole or postrelease control. Evidence was also before the court regarding Putnam’s past criminal history, which included several felonies and various

1. We note that H.B. 86 took effect on September 31, 2011 and, therefore, any pertinent provisions would be applicable to the present case. H.B. 86 reenacted consecutive sentencing provisions of the former R.C. 2929.14(E)(4) in the new R.C. 2929.14(C)(4), and now requires that certain factual findings be made in order to give a defendant consecutive sentences. *State v. Frasca*, 11th Dist. No. 2011-T-0108, 2012-Ohio-3746, ¶ 56. However, Putnam does not assert that the trial court failed to follow the mandates of R.C. 2929.14(C)(4) as amended by H.B. 86, and, therefore, we need not consider this issue.

robbery and burglary charges. After reviewing the evidence, the court stated that Putnam “poses the greatest likelihood of recidivism.”

{¶12} Regarding the issue of remorse as a mitigating factor to committing future crime, defense counsel noted at the sentencing hearing that Putnam did not try to “run * * * from these charges” and that he took full responsibility. It was also explained that Putnam attempted to cooperate with police in further investigation of related crimes. The State confirmed that Putnam did provide some information in an investigation regarding other related crimes, but noted that he provided an incorrect address of potential suspect and the information given “does not seem to have [led] any place further.” The trial court listened to this argument on remorse and ultimately concluded that Putnam tried to run and that “he had to be chased.” The court found that it was not presented with “anything concrete that would show a sufficient amount of remorse or cooperation with the government” and Putnam expressed “no genuine remorse.” As this court has held, “a reviewing court must defer to the trial court as to whether a defendant’s remarks are indicative of genuine remorse because it is in the best position to make that determination.” *State v. Davis*, 11th Dist. No. 2010-L-148, 2011-Ohio-5435, ¶ 15, citing *State v. Dudley*, 11th Dist. No. 2009-L-019, 2009-Ohio-5064, ¶ 22. Based on the foregoing, the record indicates that the trial court carefully and substantially deliberated the risk of Putnam committing future crimes, pursuant to R.C. 2929.12(D) and (E).

{¶13} Putnam further argues that the trial court did not give careful and substantial deliberation to the factors under R.C. 2929.12(B) and (C), that Putnam’s conduct was less serious than normally constitutes the offense, especially since Putnam did not cause any physical or mental harm to the victims. The State noted, however,

that victims expressed that they were “very upset” about what happened. Although the court did not make a finding that physical or mental harm occurred, the court recognized that all of the victims experienced financial harm to some extent, since it ordered restitution payments to four separate victims. Moreover, the physical and emotional harm factor is only one factor to be considered by the court in determining the seriousness of the crime and the appropriate sentence. See *State v. Holin*, 174 Ohio App.3d 1, 2007-Ohio-6255, 880 N.E.2d 515, ¶ 34 (11th Dist.) (“the trial court is not obligated, in the exercise of its discretion, to give any particular weight or consideration to any sentencing factor”) (citations omitted). When reviewing all of the factors considered by the trial court in conjunction, we cannot find that the trial court abused its discretion in considering the factors under R.C. 2929.12 and sentencing Putnam to an aggregate sentence of six years, or that the sentence is inconsistent with the mitigating factors argued by Putnam.

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

{¶15} For the foregoing reasons, the judgment of the Lake County Court of Common Pleas, sentencing Putnam to an aggregate prison term of six years for Attempted Engaging in a Pattern of Corrupt Activity and three counts of Receiving Stolen Property, is affirmed. Costs to be taxed against appellant.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.