

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-10-217
- vs -	:	<u>OPINION</u>
	:	5/18/2015
SHAWNA A. MASON,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2014-05-0864

Michael T. Gmoser, Butler County Prosecuting Attorney, Lina N. Alkamdawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Fred S. Miller, Baden & Jones Bldg., 246 High Street, Hamilton, Ohio 45011, for defendant-appellant

RINGLAND, J.

{¶ 1} Defendant-appellant, Shawna Mason, appeals her sentence from the Butler County Court of Common Pleas for aggravated possession of drugs.

{¶ 2} On July 16, 2014, Mason was indicted on charges of aggravated possession of drugs and aggravated trafficking in drugs. After reaching a plea agreement wherein the aggravated trafficking in drugs charge was merged, Mason pled guilty to aggravated

possession of drugs in violation of R.C. 2925.11, a felony of the second degree. The trial court subsequently sentenced Mason to eight years in prison.

{¶ 3} Mason now appeals from that sentence, raising one assignment of error for our review.

{¶ 4} Assignment of Error No. 1:

{¶ 5} THE TRIAL COURT ERRED TO THE PREJUDICE OF [MASON] WHEN IT SENTENCED HER TO A MAXIMUM TERM OF IMPRISONMENT.

{¶ 6} Within this assignment of error, Mason argues that "when a court sentences a defendant to a maximum term of imprisonment, the court is required to state that it has considered the circumstances of the case, the principals and purposes of sentencing, and that it has balanced the seriousness and recidivism factors."

{¶ 7} This court has recently established that "the standard of review set forth in R.C. 2953.08(G)(2) shall govern all felony sentences." *State v. Crawford*, 12th Dist. Clermont No. CA2012-12-088, 2013-Ohio-3315, ¶ 6, quoting *State v. A.H.*, 8th Dist. Cuyahoga No. 98622, 2013-Ohio-2525, ¶ 7. Pursuant to R.C. 2953.08(G)(2), when hearing an appeal of a trial court's felony sentencing decision, "the appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing." However, as explicitly stated in R.C. 2953.08(G)(2), "[t]he appellate court's standard for review is not whether the sentencing court abused its discretion."

{¶ 8} Instead, an appellate court may take any action authorized by R.C. 2953.08(G)(2) only if the court "clearly and convincingly finds" that either: (1) "the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant," or (2) "[t]hat the sentence is otherwise contrary to law."

In making such a determination, it is "important to understand that the clear and convincing standard used by R.C. 2953.08(G)(2) is written in the negative." *Crawford* at ¶ 8, quoting *State v. Venes*, 8th Dist. Cuyahoga No. 98682, 2013-Ohio-1891 at ¶ 21. "It does not say that the trial judge must have clear and convincing evidence to support its findings." *Id.* Instead, "it is the court of appeals that must clearly and convincingly find that the record does not support the court's findings." *Id.* Simply stated, the language in R.C. 2953.08(G)(2) establishes an "extremely deferential standard of review," as "the restriction is on the appellate court, not the trial judge." *Id.*

{¶ 9} A sentence is not clearly and convincingly contrary to law where the trial court considers the purposes and principles of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, and sentences the accused within the permissible statutory range. *Crawford* at ¶ 9; *State v. Elliott*, 12th Dist. Clermont No. CA2009-03-020, 2009-Ohio-5926, ¶ 10.

{¶ 10} In the present case, the judgment entry evidences that the trial court thoroughly considered the underlying facts of the case and expressly states that the court considered "the principles and purposes of sentencing under [R.C.] 2929.11, and has balanced the seriousness and recidivism factors of [R.C.] 2929.12 * * *." While Mason belittles the meaning of that portion of the court's entry, we note that a trial court speaks through its entries. *E.g., State v. Grundy*, 12th Dist. Warren No. CA2011-09-099, 2012-Ohio-3133, ¶ 51, fn. 1.

{¶ 11} In addition, the trial court specifically considered at the sentencing hearing that, (1) Mason was caught with approximately \$7,000 worth of methamphetamines, (2) Mason had been engaging in the conduct for an extended period, making weekly trips to Columbus to purchase drugs and resell them locally for nearly two years, and (3) Mason was on probation for a significant portion of the time she was participating in those criminal activities. Those findings relate directly to the seriousness of the crime and the likelihood of recidivism.

R.C. 2929.12(D)(1).

{¶ 12} While the trial court did not use the words "purposes and principles" or "seriousness and recidivism" at the sentencing hearing, we find such specific language unnecessary as long as it is clear from the record that such considerations were made. As evidenced above, the trial court took those factors into consideration. Accordingly, we cannot find that the trial court's sentence was clearly and convincingly contrary to law.

{¶ 13} Judgment affirmed.

S. POWELL, P.J., and HENDRICKSON, J., concur.