

[Cite as *State v. Bodkins*, 2011-Ohio-1274.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 10-CA-38
Plaintiff-Appellee	:	
	:	Trial Court Case No. 09-CR-794
v.	:	
	:	
RYAN BODKINS	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 18th day of March, 2011.

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HALL, J.

{¶ 1} Ryan Bodkins appeals from his conviction and sentence following a guilty plea to one count of possessing between five and twenty kilograms of marijuana, a third-degree felony.

{¶ 2} In his sole assignment of error, Bodkins contends the trial court erred in

imposing a statutory maximum five-year prison sentence. He claims the sentence is contrary to law and constitutes an abuse of discretion.

{¶ 3} The record reflects that Bodkins pled guilty to the foregoing charge in exchange for the State's dismissal of a marijuana trafficking charge and the return of a Chevy Camaro that had been seized. As part of the plea agreement, Bodkins consented to the forfeiture of numerous other items identified in his indictment. At sentencing, defense counsel asked for community control, primarily relying on Bodkins' lack of a prior criminal record. In response, the State asked the trial court to impose at least a three-year prison term. Based on its review of the record, including a pre-sentence investigation report, the trial court elected to impose a five-year prison term.

{¶ 4} In support of its sentence, trial court made the following remarks to Bodkins:

{¶ 5} "Well, let me first address the issue of no prior criminal record. I agree with the prosecutor that just because you don't have a prior record doesn't mean that you haven't been committing crimes.

{¶ 6} "It would be inappropriate for me or anybody to speculate as to whether or not you committed other crimes.

{¶ 7} "But in this particular case I don't have to speculate because you essentially told the officer on July 16th of last year when the search warrant was being executed at 120 Rockaway, you spoke to a detective and you told him that pretty much everything in your trailer, including the trailer itself, was purchased with money that you had obtained from drug trafficking, and that you hadn't been gainfully employed for at least two years.

{¶ 8} "So I think implicit in your statement to the police is that you have been

dealing marijuana for at least two years.

{¶ 9} “So it’s not as though you have been living a law-abiding life and then all of a sudden you had a lapse of judgment or something occurred and you committed a crime. You had been engaged in criminal behavior for some time.

{¶ 10} “I have got to tell you when I read the statement you made to the police, I was pretty shocked. You told him that you make more money selling marijuana than you would working at McDonald’s.

{¶ 11} “He asked if you had put any applications in for jobs at any locations and you asked him, ‘Why would I?’ You went on to explain that you made enough money selling marijuana and detailing cars.

{¶ 12} “Incidentally, your legitimate work of detailing cars turns out to not be so legitimate anyway because you weren’t declaring that as income and you weren’t paying taxes.

{¶ 13} “And then, this is what really shocked me is that you said you weren’t a large drug dealer. You were only trying to survive in today’s poor financial economy, as if you are some kind of victim in all of this.

{¶ 14} “And then you tried to downplay the extent of your drug dealing by saying that you only made a couple hundred dollars a week, which in and of itself is bad enough, but I did some calculations there; and \$200 a week is approximately \$800 a month, which is going to come out to approximately \$9,600 a year.

{¶ 15} “So I’ll just round that off and say according to you, you were making approximately \$10,000 a year selling marijuana.

{¶ 16} “But then you went on to tell the detective that you bought the trailer for

\$20,000 in 2007, and that you paid it off within four months.

{¶ 17} “So those figures certainly are not meshing because if you were able to pay \$20,000 in four months, but yet you’re only making \$10,000 a year, something is not adding up.

{¶ 18} “Incidentally, \$20,000 in four months would translate to something a little more akin to \$60,000 a year in trafficking proceeds. These are your words. This isn’t speculation. This is what you told the police. So for you to say that you were not a large drug dealer is not credible, not to mention the fact that you have now been convicted of possessing marijuana in an amount greater than 5 kilos.

{¶ 19} “Then on top of that the police found at least two firearms, a Glock .23 with a fully-loaded magazine, and another handgun at your residence on Michaels Drive and two bulletproof vests, plus all the property that you had.

{¶ 20} “A 42-inch flat screen, a wii video game, a whirlpool, a front loader washing machine, another 40-inch flat screen, a Honda Civic, \$3,700 in U.S. currency. All of this stuff you purchased with proceeds from drug trafficking.

{¶ 21} “My job is to punish you and to protect the public. As far as punishing you, you have been engaged in criminal activity. You have distributed a lot of marijuana in our community. Who knows how many lives have been destroyed because of that.

{¶ 22} “You might be sitting here thinking, oh, well, if they didn’t buy it from me, they would have been buying it from somebody else. Yes, but they didn’t. They bought it from you. And you were profiting as a result of that.

{¶ 23} “You were cheating everybody in this courtroom because you weren’t paying

taxes. Everybody else here works and pays taxes, but you don't. You were detailing cars and not reporting it as income and not paying taxes. So you do need to be punished.

{¶ 24} “And as far as protecting the community, I'm assuming you had these firearms because you know that drug dealing is a dangerous business.

{¶ 25} “* * *

{¶ 26} “I'm looking at the plea agreement right here. It says plead guilty to Count Two, dismiss Count One, agree to forfeit all items in indictment except 1992 Chevy Camaro.

{¶ 27} “There [are] fifteen items in the indictment including the firearms. So the parties have agreed to forfeit the firearms. And whether they belonged to your dad or somebody else, you were in possession of them.

{¶ 28} “* * *

{¶ 29} “* * * [T]here was a handgun at the Michaels Drive address too, so you are not fooling me, Mr. Bodkins, that you had possession of at least one firearm; and I'm willing to bet that [is] because you know that drug dealing is a dangerous business.

{¶ 30} “In fact, I know that you know that firsthand because you have some familiarity with the Nick McQuirt case, so you know that drug dealing is dangerous.

{¶ 31} “You basically thought you had it all figured out. You were going to live with the finer things in life, not having to work, selling drugs. You don't have to pay taxes.

{¶ 32} “You weren't going to stoop so low to be like those chumps at McDonald's that work for minimum wage. Oh, and by the way, those chumps at McDonald's are hard-working, honest people that work and pay taxes, and live law-abiding lives.

{¶ 33} “Your attorney did a nice job for you on this case. He got a trafficking offense

dismissed and saved eighteen months of your life.

{¶ 34} “I’m tired of drug dealers. You were just trying to survive in tough financial times just like everybody else, only you chose to go about it in a criminal way. So now you’re going to pay the price for that.

{¶ 35} “It’s the order of the court that you be sentenced to five years in the Ohio State Penitentiary, a \$10,000 fine, a five-year driver’s license suspension and court costs.

{¶ 36} “All items in the indictment will be forfeited except for item number one, the Chevy Camaro.” (Sentencing transcript at 9-15).

{¶ 37} This court has recognized that a trial court enjoys “full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum, consecutive, or more than minimum sentences.” *State v. Saunders*, Greene App. No. 2009 CA 82, 2011-Ohio-391, ¶10 (citation omitted). “Nevertheless, in exercising its discretion, the trial court must consider the statutory policies that apply to every felony offense, including those set out in R.C. 2929.11 and 2929.12.” *Id.*

{¶ 38} Under R.C. 2929.11(A), “[t]he overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender.” That section grants a trial court discretion to determine the most effective way to comply with those twin purposes. In turn, R.C. 2929.12(B) and (C) identify factors to be considered when weighing the seriousness of an offender’s conduct; and R.C. 2929.12(D) and (E) enumerate factors to be considered when assessing the likelihood of recidivism.

{¶ 39} Our task when reviewing a felony sentence is two-fold. First, we consider

whether the trial court complied with all applicable rules and statutes, including R.C. 2929.11 and 2929.12, to determine whether the sentence is contrary to law. *Saunders* at ¶12. Second, if the sentence is not clearly and convincingly contrary to law, we review it under an abuse-of-discretion standard. *Id.* A trial court does not abuse its sentencing discretion unless a sentence is “grossly unsound, unreasonable, illegal, or unsupported by the evidence.” *Id.*

{¶ 40} With the foregoing guidelines in mind, we find that Bodkins’ sentence is neither contrary to law nor an abuse of discretion. Although he contends the trial court did not properly weigh the statutory seriousness and recidivism factors, he does not dispute that it considered them. Indeed, in its termination entry, the trial court expressly noted that it had “balanced the seriousness and recidivism factors under Ohio Revised Code Section 2929.12.” This court has recognized that nothing more is required. *State v. Watkins*, 186 Ohio App.3d 619, 2010-Ohio-740, ¶39 (noting that a trial court need not make any findings regarding the seriousness and recidivism factors to demonstrate its consideration of them). Furthermore, with regard to R.C. 2929.11, the trial court stated that it had considered the principles and purposes of sentencing under R.C. 2929.11. (Doc. #12). This assertion is confirmed by the sentencing hearing transcript, which reflects that the trial court specifically took into account the purposes of sentencing when imposing Bodkins’ sentence. (Sentencing transcript at 12-13). Finally, we note that Bodkins’ five-year prison sentence is within the applicable statutory range for a third-degree felony. Having reviewed the record, we find no evidence that the trial court failed to comply with all applicable rules and statutes.

{¶ 41} In arguing to the contrary, Bodkins contends his sentence is contrary to law, and constitutes an abuse of discretion, because the trial court considered matters other than

those set forth in R.C. 2929.12. He suggests that a sentencing court cannot look beyond the factors contained in the statute. Bodkins reasons that, “[i]nstead of relying solely on the sentencing guidelines, as required by statute, the trial court focused on improper judicial findings, uncharged and purely speculative criminal conduct, and a past encounter the judge had with [him].” Specifically, Bodkins contends the trial court improperly based his sentence on (1) an unsupported belief that he had engaged in drug-related misconduct far beyond his offense of conviction, (2) a belief that he had committed tax evasion, and (3) bias against him for testifying as a defense witness in a prior case.

{¶ 42} Upon review, we reject Bodkins’ argument that the trial court inappropriately based his sentence on the first two considerations or that it showed evidence of bias against him. As an initial matter, we note that the seriousness and recidivism factors found in R.C. 2929.12 are non-exclusive. *State v. Bates*, 118 Ohio St.3d 174, 2008-Ohio-1983, ¶7. Therefore, a trial court is not confined to those factors when determining an appropriate sentence. The language of R.C. 2929.12(A) itself makes this clear, providing that a court also “may consider any other factors that are relevant to achieving those purposes and principles of sentencing.”

{¶ 43} As for the particular factors the trial court considered in Bodkins’ case, we see no error. This court has recognized that a trial court may rely on “a broad range of information” at sentencing. *State v. Bowser*, 186 Ohio App.3d 162, 2010-Ohio-951, ¶13. “The evidence the court may consider is not confined to the evidence that strictly relates to the conviction offense because the court is no longer concerned * * * with the narrow issue of guilt.” *Id.* at ¶14. Among other things, a court may consider hearsay evidence, prior arrests,

facts supporting a charge that resulted in an acquittal, and facts related to a charge that was dismissed under a plea agreement. *Id.* at ¶15-16. “[B]ased on how the court perceives true facts in a case, it may believe that the offender committed a crime other than, or in addition to, the one to which he pleaded.” *Id.* at ¶20. Notably, a court may consider “allegations of uncharged criminal conduct found in a PSI report[.]” *Id.* at ¶15.

{¶ 44} In the present case, Bodkins’ PSI report contained a summary of an interview he had with a Greene County detective. In the interview, which took place during the execution of a search warrant, Bodkins waived his *Miranda* rights and admitted that he had been selling marijuana for about a year. He stated that he usually purchased between one and five pounds at a time. Bodkins acknowledged having a regular drug supplier. He insisted, however, that he only earned about \$200 per week. He also told the detective that he had not filed the prior year’s tax return and did not report as income money he earned detailing cars. Bodkins further admitted purchasing a \$20,000 trailer and its contents, as well as two automobiles, with cash earned from his drug sales. He also admitted owning a handgun and possessing two bulletproof vests. Finally, he made the comments about working at McDonald’s that the trial court attributed to him.

{¶ 45} In short, the information contained in the PSI confirms the trial court’s belief Bodkins had engaged in drug-related conduct far beyond his offense of conviction and had committed tax evasion. The trial court was permitted to take this uncharged conduct into consideration when evaluating his character and social history to determine an appropriate sentence. *Id.* at ¶15. Under R.C. 2951.03(B)(2), Bodkins was entitled to comment on the negative information in the PSI and to seek to introduce contrary evidence. He did not do so.

Therefore, the trial court properly relied on the information when imposing his sentence.

{¶ 46} Finally, we find no evidence that the trial court was biased against Bodkins because he had testified as a defense witness in a prior case. This argument concerns the following comment the trial court made to Bodkins at sentencing: “* * * [Y]ou have some familiarity with the Nick McQuirt case, so you know that drug dealing is dangerous.” (Sentencing transcript at 14). Bodkins infers from this statement that the trial court harbored animosity against him for his participation in the McQuirt case and imposed a maximum sentence for that reason.

{¶ 47} Having reviewed the trial court’s statement in context, we believe the inference Bodkins draws is an unreasonable one. The trial court first expressed its belief that he possessed a handgun because he knew drug dealing was dangerous. It then cited his familiarity with the “Nick McQuirt case,” which apparently involved drug dealing, as evidence that he knew the dangers of drug dealing firsthand. We see nothing in the trial court’s comment to suggest that it imposed a five-year sentence based on lingering animosity against Bodkins stemming from the McQuirt case.

{¶ 48} For the reasons set forth above, we conclude that the trial court neither acted contrary to law nor abused its discretion when it sentenced Bodkins. Accordingly, we overrule his assignment of error and affirm the judgment of the Clark County Common Pleas Court.

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FROELICH and BROGAN, JJ, concur.

(Hon. James A. Brogan, retired from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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