

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

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| STATE OF OHIO | : | |
| | : | Appellate Case No. 26417 |
| Plaintiff-Appellee | : | |
| | : | Trial Court Case No. 2013-CR-1470 |
| v. | : | |
| | : | (Criminal Appeal from |
| BRYON K. MANSLEY, II | : | Common Pleas Court) |
| | : | |
| Defendant-Appellant | : | |

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OPINION

Rendered on the 10th day of July, 2015.

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FAIN, J.

{¶ 1} Defendant-appellant Bryon K. Mansley, II, appeals from his concurrent and
merged ten-year sentence for two counts of Kidnapping, four counts of Felonious Assault

and one count of Extortion. Mansley contends that his sentence must be reversed because the trial court failed to consider that Mansley pled guilty, accepted full responsibility and was a first-time offender. Mansley also asserts that the sentence was disproportionate to other sentences imposed in this district considering the circumstances.

{¶ 2} We conclude that the trial court did not abuse its discretion and the sentence is neither clearly and convincingly unsupported by the record nor contrary to law. Accordingly, the judgment of the trial court is affirmed.

I. Mansley's Bullying Conduct Leads to his Conviction for Kidnapping, Assault and Extortion

{¶ 3} Mansley was charged with seven felonies as a result of alleged conduct against a single victim that he repeatedly abused, intimidated and bullied. Mansley and his victim were friends, and at the initiation of the victim, Mansley agreed to provide mentoring to help him become more successful. The victim helped Mansley in at least two business enterprises, and Mansley drafted a written contract, agreed to by the victim, that included a point system for the imposition of physically and financially abusive penalties. At sentencing, the trial court reviewed the demerit system created by Mansley that included the "potential loss of the victim's shirts and/or pants and underwear, permanently," along with other financial and abusive penalties. As one penalty, Mansley forced the victim to remove his clothes and streak through the neighborhood naked. (Transcript at pg. 56). This incident resulted in the victim being arrested for Public Indecency. *Id.* at 57. Mansley also threatened to make him swim the Miami River,

knowing that his victim could not swim. *Id.* at 56. Mansley physically abused his victim, causing physical injuries requiring medical care. Mansley brutally beat his victim in the groin area, causing days of bleeding, struck him with metal pipes, shoved a pipe down his throat, pinched him with pliers, jabbed a screwdriver in his chest, kicked him, and attempted water-board torture in the shower. *Id.* at 55-58. The victim suffered significant personal injuries, including broken ribs, a dislocated finger, bruises and lacerations to his head, torso, arms, leg and penis. *Id.* at 55. Mansley broke two pair of his victim's eyeglasses, which had to be replaced. The cut on his arm required plastic surgery, incurring a large amount of medical expenses. The victim also suffered mental abuse, and stated to the court that he "was so mentally broken down and emotionally unstable from verbal abuse and manipulation that I let him do it." The trial court concluded that Mansley's conduct toward his victim was "not designed to help him improve as a person, but rather a program that was maliciously designed to impose control * * * through degradation, humiliation and fear of physical abuse." *Id.* at 57. The trial court also noted that Mansley's attempt to dominate and manipulate his victim continued even after he was incarcerated, sending his victim a series of letters, "playing on his religious beliefs and his overall fear of Mr. Mansley in an effort to somehow secure a dismissal of these charges." *Id.* at 58.

{¶ 4} Mansley pled guilty as charged, and admitted to the facts recited in the indictments. For sentencing purposes, the trial court merged two of the Felonious Assault convictions with one Kidnapping conviction, merged the other two Felonious Assault convictions with the other Kidnapping conviction, and imposed a sentence of ten years imprisonment for each of the merged convictions, and a sentence of 36 months for the

extortion conviction. The trial court ordered the sentences to run concurrently, resulting in a sentence totaling ten years in prison. Mansley appeals from his sentence.

II. Standard of Review

{¶ 5} In *State v. Rodeffer*, 2013-Ohio-5759, 5 N.E.3d 1069 (2d Dist.), we held that the abuse of discretion standard was no longer applicable for reviewing the propriety of felony sentences. Instead, we referred to the statutory provisions found in R.C. 2929.11, R.C. 2929.12, and R.C. 2953.08, and concluded that a felony sentence will be upheld as long as it is neither clearly nor convincingly unsupported by the record nor contrary to law. See also *State v. Johnson*, 2d Dist. Clark No. 2013-CA-85, 2014-Ohio-2308.

{¶ 6} Our recent opinions suggest an unresolved debate within this court over the issue of whether appeals from sentences, generally, are subject to an abuse-of-discretion standard of review as well as the clear-and-convincingly-contrary-to-law standard. See *State v. Overholser*, 2d Dist. Clark No. 2014-CA-42, 2015-Ohio-1980, including Judge Welbaum's dissent; *State v. Adams*, 2d Dist. Clark No. 2014-CA-13, 2015-Ohio-1160, including Judge Hall's dissent; *State v. Polhamus*, 2d Dist. Miami No. 2013-CA-3, 2014-Ohio-145, ¶ 46, fn.8 (Donovan, J., dissenting in part); *State v. Fahl*, 2d Dist. Clark No. 2013-CA-5, 2014-Ohio-328, ¶ 22; *State v. Johnson*, 2d Dist. Clark No. 2013-CA-85, 2014-Ohio-2308, ¶ 9, fn 1; and *State v. Garcia*, 2d Dist. Greene No. 2013-CA-51, 2014-Ohio-1538, ¶ 9, fn 1. Recently, the Seventh District Court of Appeals, which had chosen to employ both an abuse-of-discretion standard and the clear-and-convincingly-contrary-to-law standard, reversed its position and no longer applies the abuse-of-discretion standard to sentencing appeals. *State v. Wellington*, 7th

Dist. Mahoning No. 14-MA-115, 2015-Ohio-1359.

{¶ 7} A review of our decisions reveals a consistent approach that we must affirm a sentence unless it is contrary to law or we find that the record does not clearly and convincingly support required statutory findings or consideration of statutory factors. However, in determining whether these two standards are met sometimes calls for an abuse-of-discretion review, or involves the application of principles developed within an abuse-of-discretion review. Reviewing the record to determine if the trial court considered all factors or made sufficient findings required by some of the sentencing statutes often calls for a review of the trial court's exercise of discretion. For example, we have found that a trial court errs when it fails to make specific findings identifying particularized reasons for disapproving placement in a program of shock incarceration or intensive program prison. See, *e.g.*, *State v. Berry*, 2d Dist. Greene No. 2013-CA-34, 2014-Ohio-132. This type of error equates to an abuse of discretion that occurs when the trial court provides no sound reasoning process to support its decision.

{¶ 8} In felony sentencing, the trial court is required to weigh all relevant factors invoked by the facts of the case, and the act of balancing different factors and deciding which factors outweigh others necessarily involves the exercise of judicial discretion (for example, whether the trial court's determination that the imposition of community control sanctions would demean the seriousness of the offense outweighs other factors, such as the offender's unlikelihood of recidivism). See, *e.g.*, *State v. Hodge*, 2d Dist. Miami No. 2013 CA 27, 2014-Ohio-1860. Discretion is also required when the trial court chooses a sentence within a statutory range. "The trial court has 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 or more than minimum sentences. * * *

However, the trial court must comply with all applicable rules and statutes, including R.C. 2929.11 and R.C. 2929.12.” *State v. Johnson*, 2d Dist.Clark No. 2013-CA-85, 2014-Ohio-2308, ¶ 8, citing *State v. King*, 2013-Ohio-2021, 992 N.E.2d 491, ¶ 45 (2d. Dist.).

{¶ 9} In two recent sentencing reviews, we cautioned against applying the proper review standard in a way that is too formalistic, that could result in an oversight of important factors:

“Formalism” has been described as scrupulous or excessive adherence to outward form at the expense of inner reality or content. We are concerned that our sentencing jurisprudence has become a rubber stamp for rhetorical formalism. It appears that consecutive sentences will be upheld on appellate review as long as the aggregate sentence is within the arithmetic long-addition established by the statutes and the trial judge and the entry state that this calculation is necessary to protect the public from future crime or to punish the offender, (2) not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and (3) one or more of the offenses was committed while awaiting trial or sentencing. Here, the minimally-required statutory phrases were uttered, and a 22-year-old non-psychopathic addict, with only a previous juvenile suspended DYS commitment and no adult felony record, will spend the next twenty years in prison at the expense of the taxpayers,

not to mention the damage to him and to the community where he will be released.

State v. Overholser, supra at ¶28, citing *State v. Adams, supra* at ¶ 30.

{¶ 10} Therefore, we will review the sentence in the case before us to determine whether it is clearly and convincingly unsupported by the record, or contrary to law, recognizing that reviewing the trial court's proper application of law involving the use of discretion is a part of the sentencing review process.

**III. Mansley's Sentence Is Neither an Abuse of Discretion,
Unsupported by the Record, nor Contrary to Law**

{¶ 11} Mansley's sole assignment of error asserts:

THE TRIAL COURT ERRED IN IMPOSING A NEARLY-MAXIMUM
SENTENCE UPON A FIRST TIME OFFENDER DESPITE THE
PRESENCE OF SEVERAL MITIGATING FACTORS

{¶ 12} The sentences imposed for each of Mansley's convictions were within the statutory range for the applicable offense. Mansley's conviction for two counts of Felonious Assault were violations of R.C. 2903.11(A)(1), and the other two counts of Felonious Assault were in violation of R.C. 2903.11(A)(2), all felonies of the second degree. If a prison term is not mandatory, the trial court has discretion to sentence an offender for a conviction of Felonious Assault to community control sanctions or to a term of imprisonment ranging from two to eight years, pursuant to R.C. 2929.14(A)(2). Mansley's conviction for one count of Kidnapping, in violation of R.C. 2905.01(A)(3), is a felony of the first degree. If a prison term is not mandatory, the trial court has discretion

to sentence an offender for a conviction of Kidnapping to community control sanctions or to a term of imprisonment ranging from two to eleven years, pursuant to R.C. 2929.14(A)(1). Mansley's conviction for one count of Extortion, in violation of R.C. 2905.11(A)(2) is a felony of the third degree. If a prison term is not mandatory, the trial court has discretion to sentence an offender for a conviction of Extortion to community control sanctions or to a term of imprisonment ranging from nine to thirty-six months, pursuant to R.C. 2929.14(A)(3)(b) . None of Mansley's convictions call for a mandatory prison sentence. Mansley was informed of the maximum possible sentences, and signed the waiver and plea forms acknowledging the maximum penalty for each offense. We find that the term of imprisonment imposed by the trial court for Mansley's convictions were within the statutory ranges established by statute.

{¶ 13} A proper exercise of a trial court's discretion in choosing a sentence from a range of options requires the trial court to apply the law, and we will affirm the trial court's judgment as long as it is not contrary to law. R.C. 2929.11 provides these guidelines:

(A) 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. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future

crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) 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.

(C) A court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

{¶ 14} R.C. 2929.12 specifically grants the trial court “discretion” to determine the most effective way to comply with the purposes and principles of sentencing set forth in R.C. 2929.11, and requires the trial court to exercise that discretion by considering relevant factors. Thirteen factors are provided to guide the trial court’s discretion when considering the seriousness of the offense. R.C. 2929.12 (B) and (C). Ten factors are listed to guide the trial court’s discretion when considering the likelihood of recidivism. R.C. 2929.12 (D) and (E). Additional factors are provided in R.C. 2929.14(C) (4)(a)-(c), to help guide a trial court when deciding whether sentences should run consecutively instead of concurrently, “if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the

danger the offender poses to the public.”

{¶ 15} In the case before us, Mansley is arguing that the trial court failed to follow the law by failing to consider and properly weigh the factors that should have led the trial court to conclude that Mansley’s offenses were less serious than conduct normally constituting the offense, because the victim induced or facilitated the offenses. Mansley also argues that the record supports a finding that Mansley is unlikely to commit future offenses because he showed genuine remorse for the offenses, and was a first-time offender, as he had committed no prior offenses. The record demonstrates that the trial court considered these factors, and concluded that the seriousness of the offenses outweighs factors in mitigation. The trial court specifically cited R.C. 2929.12(B)(2) for its conclusion that the seriousness of the offense guided the appropriate sentence, finding that the victim of Mansley’s offenses suffered serious physical, psychological and economic harm. The trial court also found that the victim only consented because of Mansley’s manipulation, intimidation and threats of abuse. The trial court afforded little weight to Mansley’s expressed remorse, based on the fact that even after he was incarcerated he continued to attempt to manipulate the victim through written letters.

{¶ 16} Mansley’s final argument is that his sentence is inconsistent and/or disproportionate to other sentences for other felony convictions in this area. Federal courts have recognized that appellate courts can reverse a sentence where the severity of the sentence shocks the judicial conscience or greatly exceeds penalties usually exacted for similar offenses or defendants, and the record fails to justify and to explain the imposition of the sentence. *Woosley v. United States*, 478 F.2d 139, 147 (8th Cir.1973).

See also *State v. Graffice*, 5th Dist. Ashland No. 14-COA-020, 2015-Ohio-1782, ¶ 20.

To determine whether a sentence is disproportionate, the court considers whether the sentence is manifestly disproportionate to the offense committed or the character of the offender. *Woosley* at 147. A record supports a conclusion that a sentence is proportionate to the offense and the offender when all the applicable factors listed in R.C. 2929.12 are considered. As discussed above, we have concluded that the record in the case before us does support a conclusion that the trial court considered all relevant factors.

{¶ 17} A claim of inconsistent sentences seeks a comparison of the sentences imposed on different defendants who have been convicted of similar offenses. We have recognized that consistency of sentences is mandated by R.C. 2929.11(B). *State v. Summers*, 2d Dist. Darke No. 2013 CA 16, 2014-Ohio-2441, ¶ 16. As explained by the Tenth District Court of Appeals, consistency in sentencing does not necessarily equate with uniformity, “rather consistency has a goal of similar sentences for similar offenses.” *State v. Murphy*, 10th Dist. Franklin No. 12AP-952, 2013-Ohio-5599, ¶ 14, citing *State v. Battle*, 10th Dist. Franklin No. 06AP-863, 2007-Ohio-1845. The court explained:

As a result, consistency includes a range of sentences, taking into consideration a trial court's discretion to weigh the relevant statutory factors. [*State v. Battle*]. Even though offenses may be similar, “distinguishing factors may justify dissimilar sentences.” *Id.* at ¶ 24.

In addition, consistency in sentencing does not result from a case-by-case comparison, but by the trial court's proper application of the statutory sentencing guidelines. *State v. Hall*, 179 Ohio App.3d 727,

2008-Ohio-6228, ¶ 10 (10th Dist.). An offender cannot simply present other cases in which an individual convicted of the same offense received a lesser sentence to demonstrate that his sentence is disproportionate. [*State v.*] *Hayes*, [10th Dist. Franklin No. O8AP-233, 2009-Ohio-1100] at ¶ 10, citing *Battle* at ¶ 23. Rather, to demonstrate that a sentence is inconsistent, an offender must show that the trial court did not properly consider applicable sentencing criteria found in R.C. 2929.11 and 2929.12. [*State v.*] *Holloman*, [10th Dist. Franklin No. 07AP-875, 2008-Ohio-2650] at ¶ 19; *Battle* at ¶ 21–22.

Murphy at ¶s 14-15.

{¶ 18} Mansley first invokes the much shorter sentence imposed on the co-defendant, but the record reveals that the co-defendant was only charged and convicted of one third-degree felony. First-, second-, and third-degree felonies carry significantly different penalties. Mansley also cites two other local cases, *State v. Spears*, Montgomery C.P. Case No. 14-CR-3204, and *State v. Williams*, Montgomery C.P. Case No. 13-CR-2195, that are also factually distinguishable. The defendant in *Williams* was convicted of Felonious Assault and Kidnapping, along with three other felony offenses of lesser degree, and was sentenced to serve a total of four years in prison. The defendant in *Spears* was convicted of Involuntary Manslaughter, a first-degree felony, and Tampering with Evidence, a third-degree felony, and was sentenced to serve a total of eight and one-half years in prison.

{¶ 19} Although both *Williams* and *Spears* involved serious harm to a victim, both cases involved a single event, not a continuing course of mental and physical abuse over

a period of years. Therefore, we conclude that these convictions Mansley cites do not involve similar offenses or defendants. We also conclude that Mansley's sentence is not so excessive as to shock the conscience. The trial court followed the law by considering all relevant factors and the record does not clearly or convincingly lack support for the trial court's sentencing decision. Accordingly, Mansley's sole assignment of error is overruled.

IV. Conclusion

{¶ 20} Mansley's sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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FROELICH, P.J., concurs.

HALL, J., concurs in judgment.

Copies mailed to:

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