

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

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| The State of Ohio, | : | |
| Plaintiff-Appellee, | : | Case No. 03CA49 |
| vs. | : | <u>DECISION AND JUDGMENT</u> |
| | | <u>ENTRY</u> |
| Michael O. Garrie, | : | |
| | | FILE-STAMPED DATE: 3-11-04 |
| Defendant-Appellant. | : | |

APPEARANCES:

Luis Delos Santos, OFFICE OF OHIO PUBLIC DEFENDER, Columbus, Ohio, for appellant.

Alison L. Cauthorn, Assistant Prosecuting Attorney, Marietta, Ohio, for appellee.

Kline, P.J.:

{¶1} Michael O. Garrie appeals the Washington County Court of Common Pleas' sentencing entry. This court earlier had reversed and remanded this case to the trial court because the trial court did not state its reasons for consecutive and maximum sentences. Garrie contends that the trial court erred when it did not hold a full sentencing hearing to carry out its obligations upon the remand. We disagree

because we did not vacate the prior judgment, instead we reversed and remanded.

Accordingly, we affirm the judgment of the trial court.

I.

{¶2} The Washington County Grand Jury indicted Garrie on rape (two counts), aggravated burglary, robbery and burglary charges. A jury rendered verdicts of guilty. The trial court found Garrie guilty of each offense and sentenced him accordingly. Part of the trial court's sentence involved maximum, consecutive sentences.

{¶3} On appeal to this court, we stated, “[W]e find that Garrie’s sentence is contrary to law because the trial court did not comply with R.C. 2929.19(B)(2)(c) and (d)[,]” which require the trial court to state its reasons for imposing maximum, consecutive sentences. We concluded by stating, “[W]e * * * reverse the trial court’s imposition of maximum, consecutive sentences, and remand this case to the trial court.” *State v. Garrie*, Washington App. No. 01CA21, 2002-Ohio-5788. (“*Garrie I*”).

{¶4} On remand, the trial court indicated on the record at the sentencing hearing that he did not think that he had to do a full resentencing hearing. He stated that he just needed to state his reasons for the maximum, consecutive sentence. Garrie’s counsel agreed, but later changed his mind and told the court that he

thought that a full hearing was required. The judge said that he could “do it either way” and finished the hearing. However, there is a dispute as to whether the sentencing hearing was a full hearing or a partial hearing.

{¶5} Garrie appeals from the trial court’s sentencing entry and assigns the following error, “Mr. Garrie was denied due process when the trial court failed to conduct a new sentencing hearing after remand and when it failed to approach resentencing as an independent proceeding required by R.C. 2929.19(B)(1).”

II.

{¶6} Garrie argues in his sole assignment of error that the trial court had to conduct a full hearing. Garrie relies on *State v. Bolton*, 143 Ohio App.3d 185 and *State v. Steimle*, Cuyahoga App. Nos. 79154 & 79155, 2002-Ohio-2238 for the proposition that a trial court must conduct a new sentencing hearing on remand. We disagree.

{¶7} R.C. 2953.08(A)(4) provides that a defendant who is convicted of a felony may pursue an appeal on the ground that the sentence is contrary to law. The record on appeal must include any pre- sentence or psychiatric reports, the trial record, and all oral or written statements made at the sentencing hearing. R.C. 2953.08(F). We may modify the trial court's sentence upon clearly and convincingly finding that: (1) the record does not support the sentence; (2) the trial

court imposed a prison term contrary to the procedures of R.C. 2929.13(B) because either the court failed to make the preliminary findings before imposing a prison sentence for a fourth or fifth degree felony, or, there was an insufficient basis for imposing a prison term; or (3) the sentence imposed was contrary to law. See R.C. 2953.08(G)(1)(a)-(d); *State v. Dunwoody* (Aug. 5, 1998), Meigs App. No 97CA11.

{¶8} In applying this standard of review, we neither substitute our judgment for that of the trial court nor defer to the trial court's discretion to the extent we did in the past. Rather, we look to the record to determine whether the sentencing court: (1) considered the statutory factors; (2) made the required findings; (3) relied on substantial evidence in the record supporting those findings; and, (4) properly applied the statutory guidelines. *Dunwoody, supra*; see, also, *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165; Griffin & Katz, Ohio Felony Sentencing Law (1998) 495, Section 9.16.

{¶9} R.C. 2929.19(A)(1) states in part, “The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was convicted of or pleaded guilty to a felony and before resentencing an offender who was convicted of or pleaded guilty to a felony and whose case was remanded pursuant to R.C. 2953.07 or 2953.08 of the Revised Code.” R.C. 2953.07 states in

part, “The appellate court may remand the accused for the sole purpose of correcting a sentence imposed contrary to law[.]”

{¶10} The *Steimle* court, citing R.C. 2929.19(A)(1) stated, “An order vacating a sentence and remanding for resentencing requires a judge to conduct a new sentencing hearing at which all relevant factors are again considered, victims are notified, the defendant is present and allowed to speak, and the appropriate sentence is considered and imposed anew.” See, also, *Bolton*, *supra*.

{¶11} Here, the trial court did hold a sentencing hearing to correct its prior mistakes before imposing the sentence as required by R.C. 2929.19(A)(1). Unlike the *Steimle* and *Bolton* cases, we reversed and remanded in *Garrie I*. The courts in *Steimle* and *Bolton* vacated the sentence and ordered resentencing, instead of just reversing. Vacate means “[t]o nullify or cancel; make void; invalidate[.]” Black’s Law Dictionary (7 Ed.1999), at 1546. Hence, we find that the trial court did comply with the applicable law. Consequently, we cannot say clearly and convincingly that Garrie’s sentence is contrary to law.

{¶12} Assuming *arguendo* that a full hearing was required, after a review of the record, we agree with the state that the trial court did conduct a full hearing.

{¶13} Accordingly, we overrule Garrie’s sole assignment of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

Abele, J. and Harsha, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Presiding Judge