

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	Case No. 14CA5
MARY F. HUNT,	:	<u>DECISION AND</u>
Defendant-Appellant.	:	<u>JUDGMENT ENTRY</u>
		RELEASED 12/30/2014

APPEARANCES:

Timothy Young, Ohio Public Defender, and Peter Galyardt, Assistant Ohio Public Defender, Columbus, Ohio, for Appellant.

Colleen S. Williams, Meigs County Prosecuting Attorney, and Jeremy L. Fisher, Meigs County Assistant Prosecuting Attorney, Pomeroy, Ohio, for Appellee.

Hoover, J.

{¶ 1} Defendant-appellant, Mary F. Hunt, appeals from the prison sentence she received in the Meigs County Common Pleas Court following her guilty plea to one count of escape.

{¶ 2} First, Hunt contends that her trial counsel was ineffective because the attorney failed to secure her placement in the Hannah House drug rehabilitation program. Hunt alleges the placement in Hannah House was necessary to ensure the trial court's acceptance of an agreed community control sentence. A review of the record reveals, however, that placement in Hannah House was not necessary to ensure the trial court's acceptance of the state's recommended community control sentence. Rather, the trial court and the state agreed that placement in a long-term, inpatient drug rehabilitation facility similar to Hannah House, but not necessarily Hannah House itself, would be acceptable to the state and trial court. And because trial counsel did

present to the trial court at sentencing two long-term inpatient facilities willing to accept Hunt, we cannot say that his performance was deficient. Moreover, given Hunt's behavior while released on bond pending sentence, Hunt also cannot establish a reasonable probability that, but for counsel's purported error, the result of the proceeding would have been different.

{¶ 3} Next, Hunt contends that the trial court's sentence is contrary to law because it is allegedly not consistent with the principles and purposes of sentencing listed in R.C. 2929.11 or the seriousness and recidivism factors listed in R.C. 2929.12. Hunt's claim is meritless because the trial court expressly stated that it considered R.C. 2929.11 and 2929.12, as well as a pre-sentence investigative report ("PSI"), and other relevant factors when sentencing Hunt. The sentence is also within the range of sentences permitted by statutory law.

{¶ 4} Therefore, we overrule Hunt's assignments of error and affirm the judgment of the trial court.

I. FACTS

{¶ 5} A Meigs County grand jury indicted Hunt on one count of escape in violation of R.C. 2921.34(A)(1), a felony of the third degree. At her arraignment hearing, Hunt entered a plea of not guilty and was found to be indigent. Attorney David Baer was appointed to represent her. It was also revealed that Hunt was currently on house arrest with global positioning system ("GPS") monitoring for a separate criminal matter in the Meigs County Common Pleas Court. The trial court allowed her to sign a recognizance bond, but ordered that the bond run concurrently to the house arrest and GPS monitoring bond set in the other criminal matter.

{¶ 6} Less than a month later, the state filed a motion to revoke Hunt's bond on the basis that she had tested positive for Buprenorphine and Methamphetamine after submitting to a court ordered drug test. The trial court revoked the bond and ordered Hunt's arrest and detention until

she could appear before it. At a subsequent pretrial hearing, the state moved to modify bond and asked that Hunt be released on her own recognizance with the following conditions: 1) that she be placed on house arrest but with no GPS monitoring; 2) that she be subject to random drug and alcohol screenings; and 3) that she be subject to random home visits. The trial court granted the motion.

{¶ 7} About a month later, the state filed its second motion to revoke Hunt's bond. The state made its revocation motion on the basis that Hunt had failed to remain at her place of residence. The trial court revoked the bond and ordered Hunt's arrest and detention until she could appear before it. Later, the trial court ordered that Hunt be released on a recognizance bond subject to home confinement with GPS monitoring at her mother's house.

{¶ 8} Shortly thereafter, Hunt filed a request for intervention in lieu of conviction. The trial court ordered that the case be stayed until the time that Hunt could obtain an evaluation report to determine her eligibility for treatment in lieu of conviction from the Health Recovery Services ("HRS"). At a subsequent pretrial hearing, defense counsel indicated that HRS had evaluated Hunt and recommended intervention in lieu of conviction due to her chemical dependency and substance abuse issues. However, defense counsel was still waiting for an official and signed report from HRS. The state also indicated at the hearing that it believed Hunt to be a good candidate for intervention in lieu of conviction. Defense counsel also noted at the hearing that the GPS monitoring was financially burdensome on Hunt and her family and requested that the GPS monitoring be lifted and that she remain on unmonitored house arrest as a condition of her bond. The trial court denied Hunt's request to remove GPS monitoring as a condition of bond and ordered a PSI be completed in anticipation that Hunt would be placed in an intervention program.

{¶ 9} Two weeks later the trial court held another preliminary hearing in which it was verified that HRS had completed a report on Hunt's eligibility for intervention in lieu of conviction. However, because neither the parties nor the trial court had sufficient time to review the report the hearing was continued.

{¶ 10} Hunt failed to appear at the next scheduled preliminary hearing; and the trial court issued a bench warrant for her arrest. Hunt was eventually arrested and a bond hearing was scheduled. At the bond hearing, the trial court denied Hunt's request for intervention in lieu of conviction. The bond hearing transcript also reveals that following her arrest for failing to appear, Hunt was released from jail; placed back on house arrest with GPS monitoring; and then arrested again after she removed the GPS monitor. Ultimately, the trial court set a \$10,000 appearance bond, with a 10% provision allowing cash to be posted.

{¶ 11} Thereafter, a third party posted bond and Hunt was released from jail. Hunt then entered into a negotiated plea agreement with the state. The plea agreement was announced at the plea hearing as follows:

[State's] Attorney Hall: Your honor, the agreement is that the defendant will be placed on five years community control with a three-year underlying prison sentence, thirty-six months, with the added condition that the defendant successfully complete the Hannah House program. We agree not to seek a new indictment for escape if she does complete the Hannah House program. I do need something corrected on the plea agreement. It says dismissal of count 13 CR 092. That should read dismissal of case 13 CR 062. * * *

That would be the full and complete agreement, Your Honor.¹ [Plea Hearing Tr., p. 12-13.]

The trial court then asked defense counsel if the state's representation of the plea agreement was accurate. The following colloquy took place:

The Court: Okay. Thank you very much, Counsel. Mr. Baer does that seem right, accurate?

Attorney Baer: It's accurate, Judge. The only little caveat would be ... I've discussed it with Mrs. Williams. The challenge is Hannah's House. I may try to come up with some alternatives to that. The only specifics that Madame Prosecutor suggested that I pay attention to when I'm out looking for programs is that she would like a long term program and Hannah House I think is about the only one that Mrs. Williams knows about. So while that's in play, I do have some resources and have some ideas on some others and we'll just bring that to the Court at sentencing so you have all the different choices before you. But the general idea is that we're going to find some long term drug treatment program, inpatient type of program for Miss Hunt so that she can work on her issues and come out of that experience hopefully very healthy and ready to go back to work and do some positive things in the community. So that's the gist. One case is going to be dismissed entirely. That case involved her parents and they are in agreement with this type of arrangement. They're wanting their daughter to also get the drug treatment that we're talking about here today.

The Court: Okay. Great. Okay. State, is that accurate?

¹ This is the agreement that is memorialized in the "Guilty Plea & Finding of Guilty" filed with the trial court and signed by the parties.

Attorney Hall: Yes, Your Honor. [*Id.* at 13-15.]

The trial court then informed the parties that it intended to accept the state's recommended sentence, specifically stating: "I'm going to go along with what the recommendation here is."

[*Id.* at 15.] The court continued: "I will tell you and be up front about this. I like the idea of Hannah's House." [*Id.* at 17.] Hunt's trial counsel then stated: "We understand that as well, Your Honor. As I say, I think there are some other programs that would be also appropriate." [*Id.*] The trial court responded: "We'll certainly listen. We'll listen to those. Absolutely." [*Id.*]

{¶ 12} The trial court then found Hunt guilty upon the parties' stipulation of fact, but continued sentencing so that an updated PSI could be completed. At the conclusion of the plea hearing, the trial court addressed Hunt and stated: "The Court's going to defer sentencing until we get the update[d] PSI. I think defense counsel wants to look into some alternatives. Unless, Mary, something blows up or you do something maybe you shouldn't, the Court's going to go along with this plea bargain agreement. So your counsel has done an excellent job for you." [*Id.* at 22.] The trial court further ordered that Hunt apply to the Meigs County Community Corrections Program and submit to an evaluation and assessment by TASC, HRS, and MONDAY. Bond was also continued as previously set.

{¶ 13} Two weeks later, the trial court held a sentencing hearing. At the hearing defense counsel stated that he "dropped yet another ball" and that neither he nor Hunt had contacted Hannah House for an evaluation. [3-5-14 Sentencing Tr., p. 3.] Specifically, defense counsel stated that he was "unaware that Mary herself had to contact Hannah's House[.]" and thought instead that the court or probation department would make a referral during the PSI process. [*Id.* at 3-4.] The trial court agreed to continue sentencing so that defense counsel could determine whether Hunt was eligible for Hannah House or a similar drug treatment program.

{¶ 14} Shortly thereafter, the state filed a motion to revoke Hunt’s bond² on the basis that Hunt “had drug paraphernalia in her possession per the Syracuse [Ohio] Police Department.” The trial court granted the motion and ordered the issuance of a bench warrant commanding Hunt’s arrest and detention until further disposition.

{¶ 15} A second sentencing hearing was held 10 days after Hunt’s bond was revoked. At the second sentencing hearing, defense counsel again sought a continuance so that Hunt could “be evaluated by a couple different treatment facilities.” [3-24-14 Sentencing Tr., p. 4.] The trial court granted the continuance.

{¶ 16} A third and final sentencing hearing was held 9 days later. In accordance with the parties’ plea agreement, the state recommended “five years community control and an order to successfully complete the Hannah House program, which is a one-year treatment facility, treatment program” with an underlying 3-year prison term. [4-2-14 Sentencing Tr., p. 4.] Hunt’s mother, who was a victim in the dismissed case, requested that Hunt receive no prison time but that she receive help for her chemical dependency and substance abuse problems. Hunt’s trial counsel, attorney Baer, argued that Hunt was amenable to community control. He noted that Hunt was not evaluated by Hannah House but that she was evaluated by two other treatment facilities: the Woods at Parkside in Dublin, Ohio, and The Counseling Center in Portsmouth, Ohio. Baer also noted that a bed was immediately available at the Woods at Parkside and that there was a waiting period of about three weeks for The Counseling Center. Baer informed the court that The Counseling Center is an inpatient facility that helps with drug addiction, education, and employment. He admitted that he did not know if there was a waiting list at Hannah House but noted “that’s something that could be explored as well.” [*Id.* at 13.] Baer concluded that Hunt was “not opposed to a long-term [drug rehabilitation] program” whether it

² This was the state’s third motion to revoke bond filed during the pendency of the case.

be Hannah's House, the Woods at Parkside, The Counseling Center, or some other program. [*Id.* at 9.]

{¶ 17} At the conclusion of the hearing, the trial court decided to sentence Hunt to a 36-month prison term rather than community control as recommended by the state. The court noted that it considered the PSI, statements of counsel, the dismissed case, the court records, the principles and purposes of felony sentences, the statutorily enumerated seriousness and recidivism factors, as well as the most recently filed motion to revoke bond.

{¶ 18} The trial court also ordered Hunt to pay court costs and issued a sentencing entry reflecting its decision. Hunt then filed a timely notice of appeal.

II. ASSIGNMENTS OF ERROR

{¶ 19} Hunt assigns the following errors for our review:

First Assignment of Error:

Mary Hunt was deprived of her constitutional right to the effective assistance of counsel. Fifth, Sixth, and Fourteenth Amendments, United States Constitution; Sections 10 and 16, Article I, Ohio Constitution. March 5, 2014 Hearing Tr. 3-4; March 24, 2014 Hearing Tr. 4; April 2, 2014 Sentencing Hearing Tr. 6.

Second Assignment of Error:

Mary Hunt's sentence is contrary to law. R.C. 2958.03; R.C. 2929.11; R.C. 2929.12; R.C. 2929.13. April 2, 2014 Sentencing Hearing Tr. 14-17; April 4, 2014 Judgment Entry.

III. LAW AND ANALYSIS

A. Ineffective Assistance of Counsel

{¶ 20} In her first assignment of error, Hunt claims that she was denied the effective assistance of counsel. Specifically, Hunt contends that her trial counsel was ineffective because he did procure her placement in the Hannah House drug rehabilitation program. Hunt argues that

the plea agreement required placement in Hannah House, and that the trial court promised to abide by the state's recommended community control sentence only if she participated in the Hannah House program. Thus, she claims that without such failure there is a reasonable probability that she would have been sentenced to community control.

{¶ 21} Criminal defendants have a right to counsel, including a right to the effective assistance from counsel. *McMann v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970), fn. 14; *State v. Stout*, 4th Dist. Gallia No. 07CA5, 2008–Ohio–1366, ¶ 21. To establish constitutionally ineffective assistance of counsel, a criminal defendant must show (1) that his counsel's performance was deficient and (2) that the deficient performance prejudiced the defense and deprived him of a fair trial. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Issa*, 93 Ohio St.3d 49, 67, 752 N.E.2d 904 (2001); *State v. Goff*, 82 Ohio St.3d 123, 139, 694 N.E.2d 916 (1998). “In order to show deficient performance, the defendant must prove that counsel's performance fell below an objective level of reasonable representation. To show prejudice, the defendant must show a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.” *State v. Conway*, 109 Ohio St.3d 412, 2006-Ohio-2815, 848 N.E.2d 810, ¶ 95. “Failure to establish either element is fatal to the claim.” *State v. Jones*, 4th Dist. Scioto No. 06CA3116, 2008-Ohio-968, ¶ 14. In Ohio, there is a presumption that a properly licensed attorney is competent. *State v. Calhoun*, 86 Ohio St.3d 279, 289, 714 N.E.2d 905 (1999).

{¶ 22} Here, Hunt cannot establish that her counsel's performance was deficient. In her brief, Hunt contends that the “record demonstrates that the [trial] court would accept the negotiated plea and sentence if Hannah's House was used.” However, upon reviewing the record, we do not believe that the trial court's willingness to accept the state's recommended sentence

was conditioned solely upon Hunt's placement in Hannah House. Rather, defense counsel and the state clarified at the plea hearing that other long-term drug rehabilitation facilities similar to Hannah House were acceptable alternatives. Defense counsel also corrected the trial court at the plea hearing noting that alternatives to Hannah House were adequate, and the trial court agreed stating it would "absolutely" and "certainly listen" to alternatives. And because defense counsel presented two suitable long-term drug rehabilitation facilities to the trial court prior to its imposition of sentence, we cannot say that his performance was deficient or fell below an objective level of reasonable representation.

{¶ 23} Hunt also cannot establish a reasonable probability that but for counsel's alleged error, the result of the proceedings would have been different. At the plea hearing, the trial court told Hunt that it was inclined to follow the state's recommended sentence so long as Hunt did nothing wrong prior to sentencing. However, the state filed a motion to revoke Hunt's bond prior to sentencing, alleging that law enforcement found her in possession of drug paraphernalia. The sentencing hearing transcript further reveals that the trial court considered the state's motion to revoke bond when imposing the prison sentence. Thus, there is no credible evidence indicating a reasonable probability that the results of the proceedings would have been different even if defense counsel had procured Hunt's placement in Hannah House.

{¶ 24} For the forgoing reasons, we overrule Hunt's first assignment of error.

B. Prison Sentence

{¶ 25} In her second assignment of error, Hunt contends that the trial court's 36-month prison sentence is contrary to law. Specifically, Hunt argues that the sentence is not consistent with the purposes and principles of sentencing stated in R.C. 2929.11 or the seriousness and recidivism factors stated in R.C. 2929.12.

{¶ 26} When reviewing felony sentences, we apply the standard of review set forth in R.C. 2953.08(G)(2). *State v. Mockbee*, 4th Dist. Scioto No. 14CA3601, 2014-Ohio-4493, ¶ 11; *State v. Graham*, 4th Dist. Highland No. 13CA11, 2014-Ohio-3149, ¶ 31; *State v. Bever*, 4th Dist. Washington No. 13CA21, 2014-Ohio-600, ¶ 13. R.C. 2953.08(G)(2) specifies that an appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either that “the record does not support the sentencing court's findings” under the specified statutory provisions or “the sentence is otherwise contrary to law.”

{¶ 27} At issue in the case sub judice is whether Hunt’s sentence is clearly and convincingly contrary to law. “[A] sentence is generally not contrary to law if the trial court considered the R.C. 2929.11 purposes and principles of sentencing as well as the R.C. 2929.12 seriousness and recidivism factors, properly applied post-release control, and imposed a sentence within the statutory range.” *State v. Brewer*, 2014-Ohio-1903, 11 N.E.3d 317, ¶ 38 (4th Dist.). “The sentence must also comply with any specific statutory requirements that apply, e.g. a mandatory term for a firearm specification, certain driver’s license suspensions, etc.” *Id.*

{¶ 28} While the sentencing court is required to consider the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors listed in R.C. 2929.12, it “need not make any specific findings in order to demonstrate its consideration of those factors, nor does it have to use the exact wording of the statute.” *State v. Sparks-Arnold*, 2nd Dist. Clark No. 2014-CA-9, 2014-Ohio-4711, ¶ 8; *see also State v. Lister*, 4th Dist. Pickaway No. 13CA15, 2014-Ohio-1405, ¶ 15 (“ ‘[T]here is still no “mandate” for the sentencing court to engage in any factual findings under R.C. 2929.11 or R.C. 2929.12.’ ”), quoting *State v. Jones*, 12th Dist. Butler No. CA2012–03–049, 2013–Ohio–150, ¶ 49. Moreover, the factors set forth in R.C. 2929.12 are non-exhaustive,

and sentencing courts may consider “any other factors that are relevant to achieving those purposes and principles of sentencing.” R.C. 2929.12(A).

{¶ 29} Here, the trial court stated at the sentencing hearing when imposing its sentence that it considered the PSI, the statements of counsel, the record, the case that was dismissed as part of the plea agreement, the most recently filed motion to revoke bond, the overriding principles and purposes of sentencing, and the seriousness and recidivism factors. In addition, the sentencing entry expressly states that:

The Court has considered the record, oral statements, any victim impact statement, and pre-sentence report prepared, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors under Ohio Revised Code Section 2929.12. * * *

For the reasons stated on the record, and after consideration of the factors under Ohio Revised Code Section 2929.12, the Court also finds that prison is consistent with the purposes of the Ohio Revised Code Section 2929.11, and the Defendant is not amenable to an available community control sanction.

Furthermore, the sentencing entry properly applies post-release control, orders that a firearm disability be imposed per Ohio law, and that Hunt pay the costs of prosecution.

{¶ 30} Thus, the record demonstrates that the trial court considered R.C. 2929.11 and R.C. 2929.12 when sentencing Hunt to prison. The trial court also considered other relevant factors such as Hunt’s dismissed criminal case and Hunt’s failure to stay out of trouble while released on bond. The record also supports the conclusion that the trial court properly applied post-release control and that the sentence complies with all other statutory requirements. Finally,

Hunt's 36-month prison sentence falls within the statutory range for escape in violation of R.C. 2921.34(A)(1), a felony of the third degree. *See* R.C. 2929.14(A)(3)(b) ("For a felony of the third degree that is not an offense for which division (A)(3)(a) of this section applies, the prison term shall be nine, twelve, eighteen, twenty-four, thirty, or thirty-six months."). Accordingly, Hunt's sentence is not clearly and convincingly contrary to law and Hunt's second assignment of error is overruled.

IV. CONCLUSION

{¶ 31} Having overruled Hunt's assignments of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Meigs County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of the proceedings in that court. If a stay is continued by this entry, it will terminate at the earliest of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to the expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to [Rule 27 of the Rules of Appellate Procedure](#).

Abele, P.J. and McFarland, J.: Concur in Judgment and Opinion.

For the Court

By: _____
Marie Hoover, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.