

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

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 13CA25
	:	
vs.	:	
	:	
RONALD W. FISHER,	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
	:	
Defendant-Appellant.	:	<b>Released: 09/18/14</b>

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APPEARANCES:

Brian A. Smith, Barberton, Ohio, for Appellant.

James E. Schneider, Washington County Prosecuting Attorney, and Alison L. Cauthorn, Washington County Assistant Prosecuting Attorney, Marietta, Ohio, for Appellee.

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McFarland, J.

{¶ 1} Ronald Fisher (Appellant) appeals his conviction in the Washington County Court of Common Pleas after he pleaded guilty to a bill of information charging him with aggravated assault, in violation of R.C. 2903.12(A)(2), and burglary, in violation of R.C. 2911.12(A)(3). Appellant contends: (1) the trial court acted contrary to law when it sentenced him based on improper factors and failed to sentence him on all counts; and (2) the trial court abused its discretion when it sentenced Appellant to the maximum term of 36 months in prison.

Upon review, we find the trial court did not abuse its discretion nor did it act contrary to law in imposing sentence. Accordingly, we overrule both assignments of error and affirm the judgment of the trial court.

### FACTS

{¶ 2} On January 8, 2013, Appellant and his daughter Kayla Fisher went to the residence of William Williams. Williams later claimed after he opened the door, both individuals “charged” into his apartment, and Appellant stabbed Williams. Fisher’s version of the incident was that when Williams opened the door, Williams grabbed Kayla by the throat and assaulted her. Fisher claimed he “poked” Appellant with a knife in defense of his daughter, and that he punched Williams in self-defense. The altercation lasted approximately 5 minutes and the Fishers left the scene. Kayla Fisher corroborated this story.

{¶ 3} The Fishers were later stopped by officers from the Marietta Police Department. Appellant was returned to the scene, was identified by witnesses, and was taken to the police station. He was later charged by bill of information on one count of burglary, a felony of the third degree and a violation of R.C. 2911.12(A)(3), and one count of aggravated assault, a violation of R.C. 2903.12(A)(2).

{¶ 4} Appellant pled guilty to the two counts on March 29, 2013. On May 21, 2013, Appellant was sentenced to a maximum prison term of 36 months of incarceration and ordered to pay court costs. This timely appeal followed. Where relevant, additional facts are set forth below.

### ASSIGNMENTS OF ERROR

I. “THE TRIAL COURT ACTED CONTRARY TO LAW WHEN IT SENTENCED APPELLANT BASED ON IMPROPER FACTORS AND FAILED TO SENTENCE APPELLANT ON ALL COUNTS.”

II. “THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT SENTENCED APPELLANT TO THE MAXIMUM TERM OF 36 MONTHS IN PRISON.”

#### A. STANDARD OF REVIEW

{¶ 5} In the past, this court has reviewed felony sentences under the two-step process set forth in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶4; *State v. Batty*, 4th Dist. Ross No. 13CA3398, 2014-Ohio-2826, ¶20; see, also, *State v. McClintock*, 4th Dist. Meigs No. 13CA4, 2013-Ohio-5598, ¶4; *State v. Evans*, 4th Dist. Washington No. 11CA16, 2012-Ohio-850, ¶5; *State v. Moman*, 4th Dist. Adams No. 08CA876, 2009-Ohio-2510, ¶6. Pursuant to *Kalish*, an appellate court first determines whether the trial court complied with all applicable rules and statutes. *Kalish, supra*, at ¶4. If it did, the appellate court then reviews the

sentence under the abuse of discretion standard. *Id*; *State v. Roach*, 4th Dist. Lawrence No. 11CA12, 2012-Ohio-1295, ¶4.

{¶ 6} However, a growing number of appellate districts have abandoned *Kalish*'s second step "abuse of discretion" standard of review. *Batty, supra*; *State v. Brewer*, 4th Dist. Meigs No. 14CA1, 2014-Ohio-1903, ¶31. Former R.C. 2953.08(G)(2) authorized a court of appeals to take any action if it clearly and convincingly found either of the following: "(a) That the record did not support the sentencing court's findings under division (B)of (D) of section 2929.13, division (E)(4) of section 2929.14, or division (H) of section 2929.20 of the Revised Code, whichever, if any, was relevant; and (b) That the sentence was otherwise contrary to law." *Kalish*, 896 N.E.2d 124, ¶10; 2004 Am.Sub. H.B.No. 473, 150 Ohio laws, Part IV, 5814. In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶99,<sup>1</sup> the Supreme Court of Ohio declared certain provisions of the felony sentencing statues unconstitutional. *Brewer, supra*, at ¶27. The Supreme Court held that insofar as former R.C. 2953.08(G) referred to the unconstitutional provisions, it no longer applied. *Id*; *Foster, supra* at ¶99. Following *Foster*, appellate districts applied different standards of review in felony sentencing cases. *Brewer, supra*, at ¶28. In *Kalish*, the Supreme

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<sup>1</sup> *Foster* was abrogated by *Oregon v. Ice*, 129 S.Ct. 711, 716, 555 U.S. 160, 167 (2009), and superseded by statute as stated in *State v. Rodeffer*, 5 N.E.3d 1069, 2013-Ohio-5759.

Court of Ohio attempted to resolve the conflicting standards, and a three-judge plurality held that based on the court's previous opinion in *Foster*, "[A]ppellate courts must apply a two-step approach when reviewing felony sentences." *Brewer, supra*, at ¶28, quoting *Kalish*, at ¶26. However, following *Kalish*, the United States Supreme Court decided *Oregon v. Ice*, 555 U.S. 160, 164, 129 S.Ct. 711 (2009), in which it held, contrary to *Foster*, that it is constitutionally permissible for states to require judges rather than juries to make findings of fact before imposing consecutive sentences. Then in *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768, paragraphs two and three of the syllabus, the Supreme Court of Ohio then held that the sentencing provisions it ruled unconstitutional in *Foster* remained invalid following *Ice* unless the General Assembly enacted new legislation requiring the judicial findings. Thereafter, the General Assembly enacted 2011 Am. Sub. H.B. No. 86 (H.B. 86), which revised some of the judicial fact-finding requirements for sentences and reenacted the felony sentencing standard of review in R.C. 2953.08(G). *Brewer, supra*, at ¶30.

{¶ 7} When the General Assembly reenacted R.C. 2953.08(G)(2), it expressly stated that "[t]he appellate court's standard of review is not whether the sentencing court abused its discretion." *Id.* See generally *State*

v. *White*, 2013-Ohio-4225, 997 N.E.2d 629 (1st. Dist.), ¶9 (“we cannot justify applying an abuse of discretion standard where the legislature has explicitly told us that the standard of review is not an abuse of discretion. Thus, henceforth, we will apply the statutory standard rather than the *Kalish* plurality framework to our review of felony sentences.”)<sup>2</sup> Pursuant to R.C. 2953.08(G)(2) 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.” *Brewer, supra*, at ¶37.

## B. LEGAL ANALYSIS

{¶ 8} Because Appellant’s assignments of error have to do with Purported errors in his sentencing, we consider them jointly. Appellant has not specifically brought this appeal under the provisions of R.C. 2953.08(G)(2), however, he first argues that the trial court acted contrary to

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<sup>2</sup> See, also *State v. Scates*, 2nd Dist. Clark No. 2013-CA-36, 2014-Ohio-418, ¶11 (“*Kalish*’s two-step approach no longer applies to appellate review of felony sentences”); *State v. Tammerine*, 6th Dist. Lucas No. L-13-1081, 2014-Ohio-425, ¶10 (“Given recent legislative action in Ohio, culminating in the passage of a new statute directly addressing appellate court felony sentence review and a growing body of recent appellate cases applying the new statutory parameters, we are no longer utilizing the former *Kalish* approach”); *State v. Venes*, 2013-Ohio-1891, 992 N.E.2d 453 (8th Dist.), ¶10 (“With the basis for the decision in *Kalish* no longer valid and given that *Kalish* had questionable precedential value in any event, we see no viable reasoning for continuing to apply the standard of review used in that case”); *State v. Ayers*, 10th Dist. Franklin No. 13AP-371, 2014-Ohio-276, ¶8, quoting *State v. Allen*, 10th Dist. Franklin No. 10AP-487, 2011-Ohio-1757, ¶21 (“since *Kalish*, this court has \* \* \*only applied the contrary-to-law standard of review”); *State v. Waggoner*, 12th Dist. Butler No. CA2013-27-027, 2013-Ohio-5204, ¶6, quoting *State v. Crawford*, 12th Dist. Clermont No. CA2012-12-088, 2013-Ohio-3315, ¶6 (“we recently stated that ‘rather than continue to apply the two-step approach as provided by *Kalish* ‘in reviewing felony sentencing, the standard of review set forth in R.C. 2953.08(G)(2) shall govern all felony sentences.’”).

law when it sentenced him based on improper factors. Specifically, Appellant argues the trial court's sentence was contrary to law because it improperly considered a factor which it claimed rendered Appellant's conduct more serious, the fact the incident involved an assault offense. This factor is not enumerated in R.C. 2929.12. Appellant argues this arbitrarily increased the number of seriousness factors the trial court took into account in imposing a maximum sentence. Appellant argues this was also duplicative since the trial court already explicitly stated on the record it considered the victim's injuries and physical harm.

{¶ 9} We begin by setting forth the trial judge's language and comments as he imposed sentence, in pertinent part as follows:

“The Court has considered the record, the oral statements made in open court this date, the victim impact statement and the pre-sentence investigation, and the principles and purposes of sentencing, set forth in 2929.11 and the seriousness and recidivism factors set forth in 2929.12.

As far as non-binding factors that the Court may consider- - which I don't believe I am required to consider, but I have three- - Mr. Fisher has an extensive prior criminal record. He's failed to respond favorably in the past to sanctions imposed for criminal convictions. That's his - -making recidivism greater. In fact, he's had numerous contempt of courts.

Making recidivism unlikely, he does now show remorse, although at the time, he was not remorseful when he first appeared in this court, but he is today, and he's had time to reflect on it.

Seriousness factors, there was serious physical injury to the victim. He still reports of pain every day from his wounds.

It was an assault, also an a - - an assault offense. That's in seriousness factors.

Less serious, none of those are present.

Violence factors, there was physical harm to the- - the victim. It was with a deadly weapon and a dangerous knife. That's a violence factor.

Mr. Fisher has previously served a prison term.

And nonviolent, the only one that would appear would be that he did not have a firearm in his presence. He had a knife.

\* \* \*

So, he's got an extensive record and a consistent record of drug involvement.

Having been found guilty of burglary and aggravated assault, the Court believes these are merged offenses and you will be sentenced at the election of the State to the - - on the third degree felony....”

{¶ 10} In response to Appellant's first argument, Appellee, State of Ohio, responds that R.C. 2929.12 does not limit a sentencing court to only those factors listed in the statute. Generally, the statute provides that the court "...in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing." R.C. 2929.12(A). And, with respect to factors that make an offense more serious, Appellee points out, the statute provides that the sentencing court shall consider the



listed factors “and any other relevant factors.” R.C. 2929.12(B). The statute also provides for consideration of whether a victim suffered serious physical harm. R.C. 2929.12(B)(2).

{¶ 11} The journal entry of the sentencing hearing states as follows:

“[A] The Court FINDS the following factors present which make this crime more serious than the norm:

- (1) The Defendant caused serious physical harm to the victim.
- (2) The victim is still in pain today.
- (3) That one of the offenses committed was an assault offense.”

{¶ 12} We agree with Appellee. The sentence imposed by the trial court is not contrary to law because the trial judge considered “other relevant factors,” the fact an assault was committed, or the fact that the victim suffered serious physical harm and continued to experience pain. We find no merit to this argument contained in Appellant’s first assignment of error and, hereby, overrule it.

{¶ 13} Appellant also argues the trial court’s sentence was contrary to law when it failed to sentence Appellant on all counts. Specifically, Appellant argues the trial court failed to impose a sentence for aggravated assault. Appellant argues the trial court considered the facts leading to the aggravated assault charge as aggravating factors for purposes of sentencing on the burglary charge, without giving Appellant an opportunity to argue for

a reduced sentence on each of the two counts. Appellee responds the sentencing court was very clear that it was only imposing sentence for the burglary offense because the burglary and aggravated assault offenses were allied offenses of similar import. We agree. The journal entry of the sentencing hearing clearly states:

“Having been found guilty of burglary and aggravated assault, the Court believes these are merged offenses and you will be sentenced at the election of the state to the - - on the third degree felony....”

The entry further provides:

“...upon Defendant’s Guilty plea to the crime of **Aggravated Assault**, a felony of the fourth degree, in violation of Ohio Revised Code Section 2903.12(A)(2), as charged in Count Two of the Bill of Information, the Defendant, **Ronald W. Fisher**, will not be sentenced on this Count. Count Two is merged with Count One, so that in the **aggregate**, the Defendant **Ronald W. Fisher**, be imprisoned and confined in the Ohio Correctional Reception Center, at Orient, Ohio, for a definite period of **thirty-six (36) months**, and be ordered to pay the costs of prosecution....”

{¶ 14} We interpret Appellant’s argument as, in essence, contending that the counts of burglary and aggravated assault should not have been merged for sentencing. The Double Jeopardy Clause of the United States Constitution prohibits multiple punishments for the same offense. *State v. Lane*, 12th Dist. Butler No. CA2013-05-074, 2014-Ohio-562, ¶9. To that end, the Ohio General Assembly enacted R.C. 2941.24, Ohio’s multiple

count statute, “which subjects ‘allied offense of similar import’ to the judicial concept of ‘merger’ at sentencing.” *Id.*, quoting *State v. Highfield*, 12th Dist. Brown No. CA2013-05-007, 2014-Ohio-165, ¶6, citing *State v. Grube*, 4th Dist. Gallia No. 12CA7, 2013-Ohio-692, ¶45. Specifically, R.C. 2941.25 provides that:

“(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant’s conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.”

{¶ 15} The Supreme Court of Ohio has set forth a test to determine whether offenses are allied offenses of similar import, pursuant to R.C. 2941.25. *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061. Pursuant to the *Johnson* test, courts must first determine “whether it is possible to commit one offense and commit the other with the same conduct.” (Emphasis sic.) *Lane*, ¶10; *Johnson*, at ¶48. It is not necessary that the commission of one offense will always result in the commission of the other. *Id.* Rather, the question is simply whether it is possible for both offenses to be committed by the same conduct. *Id.*

{¶ 16} If it is possible to commit both offenses with the same conduct, courts must next determine whether the offenses were in fact committed by the same conduct, that is, by a single act, performed with a single state of mind. *Id.* at ¶49. If so, the offenses are allied offenses of similar import and must be merged. *Id.* at ¶50. On the other hand, if the offenses are committed separate or with a separate animus, the offenses will not merge. *Id.* at ¶51.

{¶ 17} “Animus” is defined for purposes of R.C. 2941.25(B) as “‘purpose’ or ‘more properly, immediate motive.’” *Lane, supra*, at ¶11, citing *State v. Lewis*, 12th Dist. Clinton No. CA2008, 10-045, 2012-Ohio-885, ¶13, quoting *State v. Logan*, 60 Ohio St.2d 126, 131 (1979). “If the defendant acted with the same purpose, intent, or motive in both instances, the animus is identical for both offenses.” *Lane, supra* at ¶12, quoting *Lewis*, at ¶13. Animus is often difficult to prove directly, but must be inferred from the surrounding circumstances. *Lane, supra*, citing *State v. Lung*, 12th Dist. Brown No. CA2012, 03-004, 2012-Ohio-5352, ¶12.

{¶ 18} An appellate court applies a de novo standard of review in reviewing a trial court’s R.C. 2941.25 merger determination. *Lane, supra*, at ¶ 13, citing *State v. Tannreuther*, 12<sup>th</sup> Dist. Butler No. CA2013-04-062,

2014-Ohio-74, ¶12, citing *State v. Williams*, 134 Ohio St.3d 482, 2012-Ohio-5699, ¶28.

{¶ 19} Appellant pled guilty and was convicted of burglary, in violation of R.C. 2911.12, which provides in pertinent part:

“(A) No person by force, stealth, or deception shall do any of the following: (3) Trespass in an occupied structure...with purpose to commit in the habitation, any criminal offense.”

{¶ 20} Fisher was also convicted of aggravated assault, in violation of R.C. 2903.12(A)(2) which provides:

“(A) No person while under the influence of sudden passion, or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly,

(2) Cause or attempt to cause physical harm to another...by means of a deadly weapon, or dangerous ordnance, as defined in section 2923.11 of the Revised Code.”

{¶ 21} In this case, the facts demonstrate that Appellant forced his way into the victim’s residence and stabbed the victim. Appellant’s own version of the incident is that the victim assaulted his daughter first and Appellant reacted. Under either scenario, the incident occurred very quickly after the victim opened the door of his apartment. The facts also demonstrate Appellant used a knife and did, in fact, cause physical harm to the victim. Both offenses were committed with the same conduct. At

sentencing, Appellant indicated he overreacted in order to protect his daughter. However, animus may be inferred from the surrounding circumstances, and the surrounding circumstances indicate Appellant went to the victim's apartment with a deadly weapon and the incident happened almost immediately when the victim opened his door. Despite Appellant's statement to the contrary at sentencing, the surrounding circumstances indicate Appellant committed both offenses while acting with the same purpose, intent, or motive. We do not find error in the trial court's decision to merge the two offenses for sentencing.

{¶ 22} Furthermore, the trial judge clearly explained his rationale at sentencing Appellant on the burglary charge only, when he stated that he believed they were merged offenses. We find this portion of Appellant's first assignment of error also to be without merit. We conclude by overruling Appellant's first assignment of error.

{¶ 23} Finally, Appellant argues the trial court erred by ordering the maximum sentence of 36 months. Specifically, Appellant argues the trial court relied heavily on the finding that an "assault offense" took place, which as a criminal offense, was one of the elements of burglary as defined by R.C. 2911.12(A)(3). Our analysis must determine, pursuant to R.C.

2953.08(G)(2), if we can find that the maximum nature of the sentence is clearly and convincingly contrary to law.

{¶ 24} Maximum sentences do not require specific findings. *State v. Lister*, 4th Dist. Pickaway No. 13CA15, 2014-Ohio-1405, ¶10, citing *State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, (1st. Dist.), ¶7. Although trial courts have full discretion to impose any term of imprisonment within the statutory range, they must consider the sentencing purposes in R.C. 2929.11 and the guidelines contained in R.C. 2929.12. *Lister, supra*, at ¶14. H.B. 86 amended R.C. 2929.11, which states:

“(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.”

R.C. 2929.12 also provides a non-exhaustive list of factors a trial court must consider when determining the seriousness of the offense and the likelihood that the offender will commit future offenses. *Lister, supra*, at ¶15. In analyzing whether a sentence is contrary to law, “[t]he only specific guideline is that the sentence must be within the statutory range[.]” *State v.*

*Sims*, 4th Dist. Gallia No. 10CA17, 2012-Ohio-238, quoting *State v. Welch*, 4th Dist. No. 08CA29, 2009-Ohio-2655, ¶7, quoting *State v. Ross*, 4th Dist. No. 08CA872, 2009-Ohio-877, ¶10. Additionally, courts must consider the general guidance factors set forth in R.C. 2929.11 and 2929.12. *Sims*, *supra* at ¶12; *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶42; *Kalish*, at ¶13; *Davis*, at ¶33.

{¶ 25} Appellant relies on *Sims*, to support his claim that the trial court abused its discretion in sentencing him to the maximum term on the burglary count. Specifically, he argues because he was convicted of burglary, which included an element of “intent” to commit a criminal offense, the trial court was prohibited from considering the offense which he did commit. “A trial court may not elevate the seriousness of an offense by pointing to a fact that is also an element of the offense itself.” *State v. Sims*, 4th Dist. No. 10CA17, 2012-Ohio-238, ¶16, quoting *State v. Davis*, 4th Dist. NO. 09CA28, 2010-Ohio-555, ¶24. “ ‘Even though [a trial court] has discretion in choosing an appropriate sentence, when a court considers an improper sentencing factor, it has committed an abuse of discretion.’ “*Martin* at ¶12, quoting *Sims* at ¶16, quoting *Davis* at ¶25. An abuse of discretion is more than an error of judgment; it implies that the court’s



attitude is unreasonable, arbitrary, or unconscionable. *Martin*, at ¶12; *Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, at ¶19.

{¶ 26} Appellee points to a more recent case, *State v. Martin*, 4th Dist. Washington No. 12CA10, 2013-Ohio-1324, to distinguish the case at bar. In *Martin*, the defendant appealed his 36-month sentence for failure to comply with an order of a police officer and argued that the trial court abused its discretion by considering an element of his offense to determine whether his crime was more serious than usual for sentencing purposes. The only “seriousness factor” recited by the trial court in the sentencing entry was that the defendant caused serious physical harm to property and there was a potential for serious physical harm to persons. This court held because these same findings are necessary in order to elevate Martin’s crime to a third degree felony, the court improperly considered an element of his offense to conclude his crime was more serious than the norm for sentence. We therefore held the court considered an improper sentencing factor and abused its discretion.

{¶ 27} Here, Appellant was convicted of burglary, for a violation of R.C. 2911.12(A)(3) which prohibits: “trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, with purpose to commit...any criminal offense.” Appellee points out assault

is not an element of every burglary committed under this section: it is the intention to commit a criminal offense that is the element of every burglary. Appellee also notes the commission of assault is not part of every burglary and is, thus, more serious conduct. Furthermore, in this matter, the criminal offense of assault involved stabbing another with a 4-inch knife, which is more serious conduct than the commission of a theft offense or a vandalism type offense in the course of trespass into an occupied structure.

{¶ 28} Appellee argues the sentencing entry shows the court found the offense more serious because Appellant caused serious physical harm to the victim and because the victim was still in pain at the time of sentencing. The entry also indicates the court considered this burglary more serious because the criminal offense was committed and because it was an assault. Appellee argues these are unique facts which reflect an accurate assessment of the relative severity of this particular crime, as compared with other burglaries. We agree.

{¶ 29} Here, the trial court sentenced Appellant to thirty-six months in prison for his violation of R.C. 2911.12(A)(3), burglary, a felony of the third degree. Under R.C. 2929.14(A)(3)(b), the range of statutory prison terms for this particular felony of the third degree is thirty-six months. As referenced above, the trial court stated on the record:

“The Court has considered the record, the oral statements made in open court this date, the victim impact statement and the pre-sentence investigation and the principles and purposes of sentencing, set forth in 2929.11 and the seriousness and recidivism factors set forth in 2929.12.”

{¶ 30} When sentencing an offender, each case stands on its own unique facts. *Lister, supra*, at ¶13 citing *State v. Stamper*, 12th Dist. Butler No. CA2012-08-166, 2013-Ohio-5669, ¶15, quoting *State v. Mannarino*, 8th Dist. Cuyahoga No. 98727, 2013-Ohio-1795, ¶58. In the sentencing remarks, the trial judge here noted an assault offense took place within the commission of the burglary- not a non-violent offense such as theft or even an act of vandalism. The trial judge also noted a 4-inch knife was used and the victim continued to experience pain months after the incident.

{¶ 31} The trial court imposed a sentence within the appropriate definite prison term pursuant to R.C. 2929.14. The record reflects that the trial court considered the purposes and principles of felony sentencing under R.C. 2929.11, and balanced the seriousness and recidivism factors under R.C. 2929.12. The court also provided his reasoning for finding Appellant’s case unique and finding a maximum sentence of thirty-six months appropriate. We find that the trial court complied with all applicable rules and statutes. As such, we overruled Appellant second assignment of error and affirm the judgment of the trial court.

**JUDGMENT AFFIRMED.**

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington 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 proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier 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 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.: Concurs in Judgment and Opinion.

Hoover, J.: Concurs in Judgment Only.

For the Court,

BY: \_\_\_\_\_  
Matthew W. McFarland, 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.**