[Cite as *State v. Pettiford*, 2015-Ohio-1723.]

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 14CA3444
v.	:	DECISION AND
LAUREL M. PETTIFORD,	:	JUDGMENT ENTRY
Defendant-Appellant.	:	RELEASED 05/01/2015

APPEARANCES:

Lori J. Rankin, Chillicothe, Ohio, for Appellant.

Matthew S. Schmidt, Ross County Prosecuting Attorney, and Jeffrey C. Marks, Ross County Assistant Prosecuting Attorney, Chillicothe, Ohio, for Appellee.

Hoover, P.J.

{¶ 1} Defendant-appellant, Laurel M. Pettiford, appeals from the prison sentence she received in the Ross County Common Pleas Court following her plea of no contest to one count of complicity to aggravated robbery, a violation of R.C. 2923.03, a felony of the first-degree; and one count of tampering with evidence, a violation of R.C. 2921.12, a felony of the third-degree.

{¶ 2} Pettiford contends that her due process rights were violated when the trial court allegedly imposed a sentence based on findings not supported by the record. A review of the record reveals, however, that Pettiford's arguments are misplaced and without merit. Therefore, we overrule Pettiford's assignment of error and affirm the judgment of the trial court.

I. FACTS

{¶ 3} In January 2014, a Ross County grand jury indicted Pettiford on one count of complicity to aggravated robbery, a violation of R.C. 2923.03, a felony of the first-degree, and

one count of tampering with evidence, a violation of R.C. 2921.12, a felony of the third-degree. At her arraignment, Pettiford pled not guilty to the charges.

{¶ 4} Pettiford and her son, Eric Pettiford, gave statements to the Chillicothe Police Department admitting their involvement in a robbery of the Circle K in Chillicothe, Ohio. The robbery occurred during the early morning hours of Christmas Eve 2013. Pettiford and her son dressed in two layers of clothing so the outer layer could be discarded following the robbery. Pettiford wore a blue ski mask while her son also wore a covering over his face. Pettiford and her son walked to the store and waited in the grass at the edge of a tree line just east of the store for about an hour. Pettiford and her son eventually went into the store. Pettiford admitted that she possessed a folded knife concealed in her hand the entire time they were in the store. Pettiford stood behind her son as he displayed a knife with the blade extended and told the clerk to open the register. The clerk complied with Eric Pettiford's order and gave him $22 in cash. Pettiford and her son then fled the store. Pettiford then discarded her toboggan, gloves, and knife in a hollow in a downed tree; and she discarded her jacket and maternity jeans in a garbage bin.

{¶ 5} During the pendency of Pettiford's case, Eric Pettiford had pled guilty and was sentenced to four years total on charges of aggravated robbery and tampering with evidence. In April 2014, Pettiford changed her plea of not guilty to a plea of no contest. During the plea hearing, and prior to Pettiford changing her plea to no contest, the trial court acknowledged that the State of Ohio had recommended a sentence for Pettiford similar to the four-year sentence that her son received; however, the trial court advised that it was not comfortable with that recommendation. The trial court explicitly stated on the record and in the presence of Pettiford that it "would be comfortable at five years."

{¶ 6} Pettiford was later sentenced to a prison term of five years on the complicity to

aggravated robbery charge and twenty-four months on the tampering with evidence charge. The trial court ordered the sentences to run concurrently for a total sentence of five years.

{¶ 7} Pettiford filed a timely notice of appeal.

II. ASSIGNMENT OF ERROR

{¶ 8} Pettiford assigns the following error for our review:

> THE TRIAL COURT ERRED IN VIOLATION OF THE DEFENDANT-APPELLANT'S RIGHT TO DUE PROCESS OF LAW UNDER THE UNITED STATES AND OHIO CONSTITUTIONS WHEN THE TRIAL COURT IMPOSED A SENTENCE BASED ON FINDINGS NOT SUPPORTED BY THE RECORD.

III. LAW AND ANALYSIS

{¶ 9} In her sole assignment of error, Pettiford contends that the trial court violated her due process rights by imposing a sentence based on findings not supported by the record.

{¶ 10} 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."

{¶ 11} Pettiford argues that the five-year sentence that she received was based on findings not supported in any way by the record. This argument is flawed, however, because the trial court was not required to make any findings prior to sentencing Pettiford. R.C. 2953.08(G)(2) sets forth certain statutory provisions that require a trial court to make findings

supported by the record. Pettiford's situation does not fall within the statutory provisions that are set forth in R.C. 2953.08(G)(2). Specifically, R.C. 2953.08(G)(2) states that an appellate court may take authorized action if it clearly and convincingly finds that the sentence is contrary to law or:

> (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant * * *.

Upon examination of the specific statutory provisions set forth above, it is clear that the section is inapplicable to Pettiford.

{¶ 12} For instance R.C. 2929.13(B) deals with offenders who are convicted of or pled guilty to felonies of the fourth or fifth-degree. R.C. 2929.13(D) applies when a trial court gives community control sanctions to persons convicted of felonies of the first or second-degree. Pettiford is in neither of these situations. Pettiford was convicted of a third-degree felony; and the trial court did not consider giving Pettiford community control for the first-degree felony charge of complicity to aggravated robbery.

{¶ 13} In addition, R.C. 2929.14(B)(2)(e) sets forth that if a trial court sentences an offender as a repeat violent offender, then it must set forth the findings explaining the imposed sentence. Pettiford is not a repeat violent offender. R.C. 2929.14(C)(4) deals with consecutive sentences and the findings that must be made by a trial court prior to imposing consecutive sentences. This section also does not apply to Pettiford as she was sentenced to concurrent sentences.

{¶ 14} Lastly, R.C. 2929.20(I) is a section that applies to sentence reduction through judicial release. This is inapplicable to Pettiford as the sentencing in this case was an initial sentencing, not a sentence reduction through judicial release.

{¶ 15} Pettiford does not explicitly argue that the trial court's sentence is contrary to law; however, even if we construe Pettiford's argument as such, we find that the sentence is not 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*.

{¶ 16} 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).

{¶ 17} Here, the trial court expressly stated the following at the sentencing hearing when imposing its sentence:

THE COURT: ALRIGHT, THE COURT HAS CONSIDERED THE RECORD, THE STATEMENT OF DEFENDANT AND COUNSEL, I MAKE MY DECISION PRIMARILY BASED UPON THE OVERRIDING PRINCIPALS AND PURPOSES OF FELONY SENTENCING. I HAVE CONSIDERED ALL THE RELEVANCE [SIC] SERIOUSNESS AND RECIDIVISM FACTORS, FIND THE OFFENDER IS NOT AMENABLE TO COMMUNITY CONTROL, AND THAT PRISON TERM IS CONSISTENT WITH PURPOSES AND PRINCIPALS OF FELONY SENTENCING.

{¶ 18} In addition, the sentencing entry expressly states that:

The Court has considered the file in this matter, statements of counsel and the defendant, the negotiations that were entered into in this matter, the purposes of felony sentencing under Ohio Revised Code Section 2929.11, the seriousness and recidivism factors contained in Ohio Revised Code Section 2929.12. The court has also considered the felony sentence guidance as provided in Ohio Revised Code Section 2929.13. The court has also determined the minimum sanctions necessary to accomplish the purposes of felony sentencing without imposing an unnecessary burden on state or local government resources.

Defendant is not amenable to available community control sanctions and a sentence to prison is consistent with the purposes and principles of felony sentencing.

{¶ 19} It is noteworthy that the trial court explicitly told Pettiford and her attorney at the change of plea hearing that:

> I WAS NOT COMFORTABLE WITH THE RECOMMENDATION COMING FROM THE PARTIES, BUT I WOULD BE COMFORTABLE AT FIVE YEARS. I INITIALLY SAID SIX YEARS, BUT AFTER REVIEWING THE REPORT, I AGREED OR TOLD THE PARTIES THAT I WAS COMFORTABLE WITH THE FIVE YEAR SENTENCE. * * *

The trial court also went through the following colloquy with Pettiford:

> Q. YOU UNDERSTAND EVERYTHING THAT'S GOING ON TODAY?
>
> A. YES.
>
> Q. ALRIGHT, HAS ANYONE THREATENED YOU TO CHANGE YOUR PLEA TO NO CONTEST?
>
> A. NO.
>
> Q. HAS ANYONE PROMISED YOU ANYTHING OTHER THAN WHAT I JUST SAID A FEW MINUTES AGO WHEN I WAS OUTLINING THE PLEA NEGOTIATIONS?
>
> A. NO.
>
> Q. ALRIGHT SO YOU'RE TELLING ME YOU'RE DOING THIS VOLUNTARILY?
>
> A. YES.
>
> Q. DO YOU UNDERSTAND THAT WHILE YOU AND THE STATE CAN PRESENT TO ME ANY RECOMMENDATION YOU LIKE FOR SENTENCING, THAT I'M NOT BOUND TO ACCEPT ANY OF THOSE RECOMMENDATIONS. SO THAT MEANS I CAN SENTENCE YOU TO

ANYTHING AT ALL IN THE LEGAL RANGE OF SENTENCES. DO YOU UNDERSTAND THAT?

A. YES.

* * *

{¶ 20} Therefore, the record demonstrates that the trial court considered R.C. 2929.11 and R.C. 2929.12 and properly informed Pettiford of post-release control when sentencing Pettiford. The sentences comply with all other statutory requirements. Pettiford's five-year prison term falls within the statutory range for complicity to aggravated robbery in violation of R.C. 2923.03, a felony of the first degree. *See* R.C. 2929.14(A)(1) ("For a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, ten, or eleven years.") Pettiford's sentence of twenty-four months also falls within the statutory range for tampering with evidence in violation of R.C. 2921.12, 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, Pettiford's sentence is not clearly and convincingly contrary to law.

{¶ 21} Finally, Pettiford contends that the trial court erred by finding, at sentencing, that she was more culpable then her son because she was his mother and presumably had a hand in raising him. Pettiford argues that the record did not support such a finding, insinuating that her son was raised primarily by his grandmother. Thus, Pettiford argues that the trial court's reliance on such a finding in imposing a more severe sentence than her son's was a violation of due process. We disagree with Pettiford, however, because a "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." (Quotations omitted). *State v. Coots*, 2nd Dist. Miami No. 2014CA1, 2015-Ohio-126, ¶ 81. Therefore, because the imposed sentence was within the statutory range and not otherwise contrary to law, the trial court's remarks at sentencing are irrelevant on appeal; and we overrule Pettiford's sole assignment of error.

IV. CONCLUSION

{¶ 22} Having overruled Pettiford's assignment 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 Ross 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.

Harsha, J. and McFarland, A.J.: Concur in Judgment and Opinion.

For the Court

By:_____
Marie Hoover, Presiding 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.