[Cite as *State v. England*, 2004-Ohio-576.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RICHARD ENGLAND, ET AL.

Defendants-Appellants

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. Sheila G. Farmer, J.
Hon. Julie A. Edwards, J.

Case No. 2003CA20

O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Fairfield County Court of Common Pleas, Case No. 02CR0282
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	February 4, 2004

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
BRAD L. TAMMARO ROBERT W. CHEUGH II Assistant Attorneys General 30 East Broad Street, 25th Floor Columbus, Ohio 43215-3428	E. DENNIS MUCHNICKI 5650 Blazer Parkway Dublin, Ohio 43017

Hoffman, P.J.

{¶1} Defendants-appellants Richard England and RIE Painting, Inc. appeal the April 3, 2003 Judgment Entry of Sentence entered by the Fairfield County Court of Common Pleas, following appellants' entering no contest pleas to one count of criminal damaging, in violation of R.C. 2909.06, and one count of illegal transportation of hazardous waste, in violation of R.C. 3734.02(F) and 3734.99(A), and the trial court's finding appellants guilty. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE AND FACTS

{¶2} On August 14, 2002, the Fairfield County Prosecutor filed an Information against appellants. Count one of the information charged appellants with one count of criminal damaging, in violation of R.C. 2909.06, a misdemeanor of the first degree. Count two charged appellant RIE Painting, Inc. with one count of illegal transportation of hazardous waste, in violation of R.C. 3734.02(F) and 3734.99(A), an unclassified felony. Appellants filed a Written Waiver of Indictment on December 2, 2002.

{¶3} The parties appeared for a pretrial hearing on February 7, 2003, at which time the State advised the trial court the parties had a reached negotiated plea agreement. Pursuant to the agreement, appellant England would enter a no contest plea to one count of criminal damaging and RIE Painting would enter no contest pleas to one count of criminal damaging and one count of illegal transportation of hazardous waste. In exchange, the State recommended England serve sixty days of home incarceration, pay a fine in the amount of $1,000, and pay restitution at a minimum of $10,000 and a maximum of $40,000. The State further recommended RIE Painting pay a fine of $1,000 with respect to the criminal damaging charge, and pay a minimum fine of $10,000 on the illegal

transportation charge. The trial court conducted a Crim. R. 11 colloquy with England. Thereafter, England entered no contest pleas personally and on behalf of the corporation. The trial court accepted the pleas and scheduled a sentencing hearing for March 28, 2003.

{¶4} At the sentencing hearing, appellant England testified he is the CEO and sole stock holder of appellant RIE Painting. During 2000, the company engaged in sandblasting and painting. England explained when the company first began sandblasting, he had a series of tests conducted to determine whether the sandblasting waste was toxic. The results revealed the waste generated was not hazardous. England acknowledged there was some hazardous waste created as part of the process due to the use of paint thinner. During 2000, England also contracted to perform interstate street sweeping for the City of Louisville, Kentucky. England lived in Kentucky during the first half of the year 2000, returning to Ohio on occasional weekends.

{¶5} After several weeks in Kentucky, England returned to his facility in early May, 2000. He found the storage area, which included two twenty-four foot trailers, one of which stored empty fifty-five gallon drums, and the other which stored waste, looking like "a dump." England explained there were barrels and buckets thrown all over the area. England confronted his foreman, Charles Love, and instructed him to have things cleaned up immediately. England did not tell Love how to clean up the area because he had worked with England for ten years and "he knew" the procedure. The following day appellant arrived at the facility to find the dump trailer, which was used to transport non-hazardous sand residue to the landfill, filled with the buckets and drums from the previous day's mess area. England instructed his employees to remove the drums, which he knew should not be on the trailer. Appellant returned to his office. The employees transported

the dump trailer to the landfill. Thereafter, appellant received a call from Love, informing him one of the trucks had been pulled over because something was leaking from it.

{¶6} Appellant immediately proceeded to the area where the truck had been stopped. Appellant stated he observed a slow leakage coming from the truck, which had an odor of paint thinner. On cross-examination, appellant conceded he never checked to see that his employees had removed the drums from the trailer prior to its transportation to the landfill. Appellant further acknowledged he had not spoken to any of his employees about what had happened until some two weeks after the incident.

{¶7} Upon conclusion of the testimony, the trial court proceeded to sentencing. The trial court sentenced appellant to six months in jail for the offense of criminal damaging. The trial court suspended four months of the sentence and ordered appellant serve the remaining sixty days in the county jail. The trial court imposed a fine of $1,000, plus court costs and ordered appellant pay restitution up to $40,000. The trial court fined RIE Painting $10,000 plus costs. The trial court memorialized the sentencing via Judgment Entry filed April 3, 2003.

{¶8} It is from this sentence appellant appeals, raising the following assignments of error:

{¶9} "I. THE COURT ABUSED ITS DISCRETION WHEN IT FAILED TO ACCURATELY APPLY THE MANDATORY SENTENCING FACTORS SPECIFIED IN REVISED CODE SECTION 2929.22(A).

{¶10} "II. THE RECORD DOES NOT AFFIRMATIVELY JUSTIFY THE NEED FOR THE TRIAL COURT'S IMPOSITION OF INCARCERATION AS WELL AS FINES AND

RESTITUTION IN THIS CASE AS REQUIRED REVISED CODE SECTION 2929.22(E) AND (F)."

I

{¶11} In his first assignment of error, appellants maintain the trial court abused its discretion in failing to apply the mandatory sentencing factors set forth in R.C. 2929.22(A). We disagree.

{¶12} Misdemeanor sentencing is governed by R.C. 2929.21, which provides, in pertinent part:

{¶13} "(A) * * * whoever is convicted of or pleads guilty to a misdemeanor * * * shall be imprisoned for a definite term or fined, or both, which term of imprisonment and fine shall be fixed by the court as provided in this section.

{¶14} "(B) * * * terms of imprisonment for misdemeanor [sic] shall be imposed as follows:

{¶15} "(1) For a misdemeanor of the first degree, not more than six months;

{¶16} "(C) Fines for misdemeanor [sic] shall be imposed as follows:

{¶17} "(1) For a misdemeanor of the first degree, not more than one thousand dollars".

{¶18} R.C. 2929.22 specifies factors a court shall consider in imposing sentence: "A) In determining whether to impose imprisonment or a fine, or both, for a misdemeanor, and in determining the term of imprisonment and the amount and method of payment of a fine for a misdemeanor, the court shall consider the risk that the offender will commit another offense and the need for protecting the public from the risk; the nature and circumstances of the offense; the history, character, and condition of the offender and the

offender's need for correctional or rehabilitative treatment; any statement made by the victim * * *, and the ability and resources of the offender and the nature of the burden that payment of a fine will impose on the offender."

{¶19} The trial court sentenced appellant to six months incarceration, the maximum sentence for a first degree misdemeanor, but suspended four months of the sentence. Appellant submits the trial court based the sentence "upon an incorrect understanding of the evidence"; therefore, the trial court failed to base its sentence on the factors set forth in R.C. 2929.22(A). Although the trial court may have misstated appellant's testimony regarding whether or not he knew if the barrels contained any hazardous substance, such is insufficient to demonstrate the trial court did not consider the appropriate factors. Furthermore, as the sentence fell within the statutory guidelines, we find the trial court did not abuse its discretion in so sentencing appellant.

{¶20} Appellant's first assignment of error is overruled.

II

{¶21} In their second assignment of error, appellants argue the trial court erred in imposing fines and restitution when the record did not support the need for such. We disagree.

{¶22} R.C. 2929.22 provides: "(E) The court shall not impose a fine in addition to imprisonment for a misdemeanor unless a fine is specifically adapted to deterrence of the offense or the correction of the offender, the offense has proximately resulted in physical harm to the person or property of another, or the offense was committed for hire or for purpose of gain. (F) The court shall not impose a fine or fines that, in the aggregate and to the extent not suspended by the court, exceed the amount that the offender is or will be

able to pay by the method and within the time allowed without undue hardship by the offender or the offender's dependents, or will prevent the offender from making restitution or reparation to the victim of the offender's offense."

{¶23} Although R.C. 2929.22 demonstrates a predisposition against the imposition of both fines and imprisonment in misdemeanor cases, the statute does not require the trial court to state its reasons or enter its findings for imposing both a fine and imprisonment on the record.

{¶24} We find the trial court's imposition of fines in addition to prison time was statutorily supported as a deterrence of the offense. Furthermore, appellant agreed to the imposition of fines and restitution as a part of his negotiated plea agreement with the State.

{¶25} Appellant's second assignment of error is overruled.

{¶26} The judgment of the Fairfield County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Edwards, J. concur