

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
vs.	:	
	:	
LARRY A. HARPSTER	:	Case No. 04COA061
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Municipal Court, Case No. 2004CRB738AB

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: March 9, 2005

APPEARANCES:

For Plaintiff-Appellee

DAVID M. HUNTER
244 West Main Street
Loudonville, OH 44842

For Defendant-Appellant

THOMAS L. MASON
P.O. Box 345
153 West Main Street
Ashland, OH 44805

Farmer, J.

{¶1} On July 16, 2004, appellant, Larry Harpster, was charged with menacing in violation of R.C. 2903.22, a fourth degree misdemeanor, and resisting arrest in violation of R.C. 2921.33, a second degree misdemeanor. Said charges arose from an incident between appellant and his neighbor, Eric Lytle, wherein appellant chased and threatened Mr. Lytle with a stick for allegedly killing his cat. When sheriff's deputies arrived, appellant was uncooperative and had to be subdued by a Tazer.

{¶2} A jury trial commenced on August 25, 2004. The jury found appellant guilty. By judgment entry filed same date, the trial court sentenced appellant to thirty days in jail on the menacing charge and ninety days in jail on the resisting charge, to be served consecutively. However, the trial court suspended ninety days. The trial court also imposed a total aggregate fine of \$300.00.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶4} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN SENTENCING THE DEFENDANT-APPELLANT TO MAXIMUM, CONSECUTIVE SENTENCES AND IMPOSING A FINE."

I

{¶5} Appellant claims the trial court erred in sentencing him to maximum, consecutive sentences and imposing fines. We disagree.

{¶6} Misdemeanor sentencing rests in the sound discretion of the trial court. R.C. 2929.22(A). In order to find an abuse of that discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

{¶7} R.C. 2929.22 governs sentencing on misdemeanors and states the following as amended on January 1, 2004:

{¶8} "(B)(1) In determining the appropriate sentence for a misdemeanor, the court shall consider all of the following factors:

{¶9} "(a) The nature and circumstances of the offense or offenses;

{¶10} "(b) Whether the circumstances regarding the offender and the offense or offenses indicate that the offender has a history of persistent criminal activity and that the offender's character and condition reveal a substantial risk that the offender will commit another offense;

{¶11} "(c) Whether the circumstances regarding the offender and the offense or offenses indicate that the offender's history, character, and condition reveal a substantial risk that the offender will be a danger to others and that the offender's conduct has been characterized by a pattern of repetitive, compulsive, or aggressive behavior with heedless indifference to the consequences;

{¶12} "(d) Whether the victim's youth, age, disability, or other factor made the victim particularly vulnerable to the offense or made the impact of the offense more serious;

{¶13} "(e) Whether the offender is likely to commit future crimes in general, in addition to the circumstances described in divisions (B) (1)(b) and (c) of this section.

{¶14} "(2) In determining the appropriate sentence for a misdemeanor, in addition to complying with division (B)(1) of this section, the court may consider any other factors that are relevant to achieving the purposes and principles of sentencing set forth in section 2929.21 of the Revised Code.

{¶15} "(C) Before imposing a jail term as a sentence for a misdemeanor, a court shall consider the appropriateness of imposing a community control sanction or a combination of community control sanctions under sections 2929.25, 2929.26, 2929.27, and 2929.28 of the Revised Code. A court may impose the longest jail term authorized under section 2929.24 of the Revised Code only upon offenders who commit the worst forms of the offense or upon offenders whose conduct and response to prior sanctions for prior offenses demonstrate that the imposition of the longest jail term is necessary to deter the offender from committing a future crime."

{¶16} R.C. 2929.21 as referenced in R.C. 2929.22(B)(2) states the following in pertinent part:

{¶17} "(A) A court that sentences an offender for a misdemeanor or minor misdemeanor violation of any provision of the Revised Code, or of any municipal ordinance that is substantially similar to a misdemeanor or minor misdemeanor violation of a provision of the Revised Code, shall be guided by the overriding purposes of misdemeanor sentencing. The overriding purposes of misdemeanor sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the impact of the offense upon the victim and the need for changing the offender's behavior,

rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public."

{¶18} Appellant argues the trial court did not consider all of the factors set forth in R.C. 2929.22 and R.C. 2929.21 in sentencing appellant. Appellant also argues the trial court proceeded in haste to sentence him without benefit of a presentence investigation.

{¶19} Appellant was convicted by a jury of menacing, a misdemeanor of the fourth degree, and resisting arrest, a misdemeanor of the second degree. The trial court sentenced appellant to thirty days in jail on the menacing charge and ninety days in jail on the resisting charge, to be served consecutively. However, the trial court suspended ninety days. The trial court also imposed a total aggregate fine of \$300.00.

{¶20} There is no requirement that a trial court in sentencing on misdemeanor offenses specifically state its reasons on the record as is required in felony sentencing. *State v. Adams*, Licking App. No. 2002CA00089, 2003-Ohio-3169, ¶16.

{¶21} The trial court heard the nature and circumstances of the offense during the jury trial. The testimony established appellant approached Mr. Lytle with a stick and told him he was going to kill him and/or beat him to death for killing his cat. T. at 53-55, 60-62, 68-69. Mr. Lytle told appellant to leave his property, but appellant persisted and chased him with the stick and continued to threaten him. T. at 53-55. After the sheriff's deputies arrived, appellant refused to cooperate. T. at 89-90, 92, 117-118. He refused to give up the stick even after he had been informed of his arrest. T. at 88-89, 116. Appellant lunged at a deputy and grabbed her neck. T. at 93. Deputies subdued

appellant by a Tazer. T. at 57, 93. In sentencing appellant, the trial court expressed its concern for the fact that appellant went "after a deputy sheriff." T. at 179.

{¶22} This incident was not a simple disagreement among neighbors. Appellant was the aggressor. Even when he was out of the heat of the initial confrontation he reiterated his threats. Appellant did not merely pull away or minimally resist the deputies. He refused to cooperate and relinquish the stick, and he physically assaulted a deputy.

{¶23} Pursuant to R.C. 2929.22(B)(2) and R.C. 2929.21, the trial court is permitted to consider "any other factors that are relevant" "to protect the public from future crime by the offender and others and to punish the offender." Given the facts sub judice, we fail to find any abuse of discretion by the trial court in sentencing appellant.

{¶24} As for the fines imposed, appellant argues said fines are in violation of R.C. 2929.22(E) and (F). We note when the statute was rewritten, effective January 1, 2004, these sections were deleted. Pursuant to R.C. 2929.28(A):

{¶25} "In addition to imposing court costs pursuant to section 2947.23 of the Revised Code, the court imposing a sentence upon an offender for a misdemeanor, including a minor misdemeanor, may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section."

{¶26} Fines are included as financial sanctions. R.C. 2929.28(A)(2). The trial court did not abuse its discretion in imposing the fines along with jail time.

{¶27} The sole assignment of error is denied.

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Municipal Court of Ashland County, Ohio is affirmed.

JUDGES