[Cite as *State v. Konstantinov*, 2009-Ohio-6964.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
STATE OF OHIO	:	Hon. W. Scott Gwin, P.J.
	:	Hon. Julie A. Edwards, J.
Plaintiff-Appellee	:	Hon. Patricia A. Delaney, J.
	:	
-vs-	:	
	:	Case No. 09-CAA-090077
MARIA KONSTANTINOV	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Criminal appeal from the Delaware County Court of Common Pleas, Case No. 09CR-I-06-0304D
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	December 30, 2009

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
DAVID A. YOST WILLIAM J. OWEN Delaware County Prosecutor's Office 140 North Sandusky St., 3rd Fl. Delaware, OH 43015	WILLIAM T. CRAMER 470 Olde Worthington Rd., Ste. 200 Westerville, OH 43082

Gwin, P.J.

{¶1} Appellant Maria Konstantinov appeals the sentence rendered by the Delaware County Court of Common Pleas. The plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} Following an alleged string of thefts from stores in and around the Polaris Mall, appellant, her husband, and their three adult daughters were indicted together on a charge of engaging in a pattern of corrupt activity (R.C. 2923.32(A)(1)) involving robbery (R.C. 2911.02(A)(3)), receiving stolen property (R.C. 2913.51(A)), and other related offenses. All five family members were further charged with possession of criminal tools (R.C. 2923.24(A)) and three counts of receiving stolen property valued at $500 or more but less than $5,000 (R.C. 2913.51(A)) from three different Polaris Mall stores.

{¶3} Additionally, when a security guard tried to stop them, appellant's husband allegedly tried to run him over with their car. As a result, appellant's husband was individually charged with robbery (R.C. 2911.02(A) (3)) and assault with a deadly weapon (R.C. 2903.11(A) (2)), namely a motor vehicle. Appellant and her daughters were charged with aiding and abetting the robbery (R.C. 2923.03(A) (2)).

{¶4} All of the members of the family accepted plea bargains. Appellant pled guilty to the three counts of receiving stolen property, all fifth degree felonies, in exchange for the prosecution dismissing the remaining counts.

{¶5} At the sentencing hearing, the prosecution argued that multiple or consecutive sentences were warranted because all three counts of receiving stolen property had a separate animus as the property was stolen from three different stores-

Strasbourg Clothing, Williams Sonoma, and Accent on Image. The prosecution presented a security video that they claimed showed appellant and her daughters entering the mall together, walking around the mall, and entering and/or exiting some stores. The prosecution also presented photographs of a "tent" or "luggage" dress that was allegedly used to conceal stolen items and that was found in appellant's car at the time of her arrest. The prosecution argued that the evidence showed that all four of the Konstantinov women stole the property together, thereby committing separate acts of receiving stolen property.

{¶6} Appellant's trial counsel argued that appellant did not plead guilty to stealing anything, only to receiving the property that was found in their vehicle when they were subsequently detained. According to appellant's counsel, since all of the property was in the appellant's vehicle when she was stopped it was of no consequence that it came from multiple sources. Appellant's possession, therefore, for purposes of receiving stolen property was simultaneous and without a separate animus. Accordingly, the counts should be merged for sentencing.

{¶7} The court also reviewed a pre-sentence investigation report, which indicated that appellant had been involved in a long string of theft-related, shoplifting type of offenses in various states stretching back over numerous years.

{¶8} The trial court concluded that there was a separate animus as to each count because the property was received from separate businesses. Based on the evidence, the court sentenced appellant to the maximum term of 12 months on each count and set them to run consecutively, for a total term of three years.

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

{¶10} "I. THE TRIAL COURT VIOLATED DUE PROCESS AND R.C. 2929.14(E)(4) BY IMPOSING CONSECUTIVE SENTENCES THAT WERE DISPROPORTIONATE TO APPELLANT'S CONDUCT.

{¶11} "II. THE TRIAL COURT VIOLATED DUE PROCESS AND ABUSED ITS DISCRETION IN IMPOSING MAXIMUM CONSECUTIVE SENTENCES THAT WERE NOT COMMENSURATE WITH APPELLANT'S CONDUCT.

{¶12} "III. THE TRIAL COURT VIOLATED DUE PROCESS, THE DOUBLE JEOPARDY CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS, AND R.C. 2941.25 BY IMPOSING MULTIPLE CONVICTIONS FOR THREE COUNTS OF RECEIVING STOLEN PROPERTY THAT WERE COMMITTED SIMULTANEOUSLY WITH A SINGLE ANIMUS."

STANDARD OF REVIEW

{¶13} This case comes to us on the accelerated calendar. App. R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

{¶14} "(E) Determination and judgment on appeal. The appeal will be determined as provided by App. R. 11. 1. It shall be in sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form. The decision may be by judgment entry in which case it will not be published in any form."

{¶15} One of the important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on

the regular calendar where the briefs, facts and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App. 3d 158.

{¶16} Further, we note a reviewing court is not authorized to reverse a correct judgment merely because it was reached for the wrong reason. *State v. Lozier* (2004), 101 Ohio St. 3d 161, 166, 2004-Ohio-732 at ¶46, 803 N.E.2d 770, 775. [Citing State *ex rel. McGinty v. Cleveland City School Dist. Bd. of Edn.* (1998), 81 Ohio St.3d 283, 290, 690 N.E.2d 1273]; *Helvering v. Gowranus* (1937), 302 U.S. 238, 245, 58 S.Ct. 154, 158.

{¶17} This appeal shall be considered in accordance with the aforementioned rules.

III.

{¶18} For ease of discussion, we shall address appellant's third assignment of error first. In her third assignment of error, appellant maintains that the three receiving stolen property offenses should have been merged for sentencing under R.C. 2941.25 because they were committed simultaneously with a single animus[1]. We disagree.

{¶19} The federal and state constitutions' double jeopardy protection guards citizens against cumulative punishments for the "same offense." *State v. Moss* (1982), 69 Ohio St.2d 515, 518. Despite such constitutional protection, a state legislature may impose cumulative punishments for crimes that constitute the "same offense" without violating double jeopardy protections. *State v. Rance* (1999), 85 Ohio St.3d 632, 635, citing *Albernaz v. United States* (1981), 450 U.S. 333, 344. Under the "cumulative

[1] We note, although not addressed by either party in the case at bar, the Written Text of Criminal Rule 11(F) Agreement filed July 20, 2009 contains an express waiver by appellant of her right to appellate review, including review of the trial court's sentence. However, the state has not raised this issue. Further, the record in the case before us does not contain a transcript of the actual change of plea hearing. Accordingly, we express no opinion on the validity or enforceability of the waiver in this case.

punishment" prong, double jeopardy protections do "no more than prevent the sentencing court from prescribing greater punishment than the legislature intended." *Missouri v. Hunter* (1983), 459 U.S. 359, 366. When a legislature signals its intent to either prohibit or permit cumulative punishments for conduct that may qualify as two crimes, the legislature's expressed intent is dispositive. *Rance,* at 635. Therefore, when determining the constitutionality of imposing multiple punishments against a criminal defendant in one criminal proceeding for criminal activity emanating from one transaction, appellate courts are limited to assuring that the trial court did not exceed the sentencing authority the legislature granted to the judiciary. *Moss,* at 518, citing *Brown v. Ohio* (1977), 432 U.S. 161. The trial court's authority to impose multiple punishments for conduct constituting both attempted murder and felonious assault is contained in Ohio's multi-count statute, R.C. 2941.25.

{¶20} "[I]f a defendant commits offenses of similar import separately or with a separate animus, he may be punished for both pursuant to R.C. 2941.25(B). *State v. Jones* (1997), 78 Ohio St.3d 12, 13-14, 676 N.E.2d 80, 81." *Rance*, 85 Ohio St.3d at 635-636, 710 N.E.2d 699; *State v. Cooper*, 104 Ohio St.3d 293, 296, 2004-Ohio-6553 at ¶13, 819 N.E.2d 657, 660. R.C. 2941.25(A) applies when the state obtains multiple convictions arising out of the same conduct of a defendant that can be construed to constitute two or more allied offenses of similar import. Where the state has not relied upon the same conduct of the defendant to support a conviction for the offense of rape and a separate conviction for gross sexual imposition the defendant may be convicted of both crimes and sentenced on each.

{¶21} R.C. 2941.25 provides:

{¶22} "(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.

{¶23} "(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."

{¶24} Recently, the Supreme Court of Ohio in *State v. Cabrales,* 118 Ohio St.3d 54, 57, 2008-Ohio-1625, 884 N.E.2d 181, instructed as follows:

{¶25} "In determining whether offenses are allied offenses of similar import under R.C. 2941.25(A), courts are required to compare the elements of offenses in the abstract without considering the evidence in the case, but are not required to find an exact alignment of the elements. Instead, if, in comparing the elements of the offenses in the abstract, the offenses are so similar that the commission of one offense will necessarily result in the commission of the other, then the offenses are allied offenses of similar import."

{¶26} Nonetheless, even though the offenses are of similar import under R.C. 2941.25(A), Subsection (B) permits convictions for two or more similar offenses if the offenses were either (1) committed separately, or (2) committed with a separate animus as to each. See *State v. Price* (1979), 60 Ohio St.2d 136, 398 N.E.2d 772, paragraph five of the syllabus.

{¶27} To find appellant guilty of receiving stolen property, the trier of fact would have had to find that appellant received, retained, or disposed of the property of another, knowing or having reasonable cause to believe the property had been obtained through the commission of a theft offense. R.C. 2913.51(A). A theft offense includes "theft," which involves knowingly obtaining control over the property of another without that person's consent. R.C. 2913.02(A) (1).

{¶28} The criteria for determining whether a defendant knew or should have known that property has been stolen were set forth in *State v. Davis* (1988), 49 Ohio App.3d 109, 550 N.E.2d 966. The factors include: 1) the defendant's unexplained possession of the merchandise; 2) the nature of the merchandise; 3) the frequency with which such merchandise is stolen; 4) the nature of the defendant's commercial activities; and 5) the relatively limited time between the theft and the recovery of the merchandise. Id. at 112.

{¶29} "Knowledge that property is stolen may be inferred from circumstantial evidence." *State v. Beasley* (Feb. 21, 1991) Cuyahoga App. No. 58054.

{¶30} In *State v. Jones*, the Supreme Court observed:

{¶31} “This court has generally not found the presence or absence of any specific factors to be dispositive on the issue of whether crimes were committed separately or with a separate animus. But, see, *State v. Barnes* (1981), 68 Ohio St.2d 13, 17, 22 O.O.3d 126, 129, 427 N.E.2d 517, 520-521 (Celebrezze, C.J., concurring). Instead, our approach has been to analyze the particular facts of each case before us to determine whether the acts or animus were separate. See *State v. Nicholas* (1993), 66 Ohio St.3d 431, 435, 613 N.E.2d 225, 229; *State v. Hill* (1992), 64 Ohio St.3d 313, 332,

595 N.E.2d 884, 899-900; *State v. Jells* (1990), 53 Ohio St.3d 22, 33, 559 N.E.2d 464, 475; *Newark v. Vazirani* (1990), 48 Ohio St.3d 81, 83-84, 549 N.E.2d 520, 522; *State v. Powell* (1990), 49 Ohio St.3d 255, 262, 552 N.E.2d 191, 199. Thus, we must examine the record to determine whether the two acts…were committed separately or with a separate animus….” 78 Ohio St.3d 12, 14, 676 N.E.2d 80, 81-82, 1997-Ohio-38.

{¶32} In the case at bar, the trial court conducted a sentencing hearing. The state played for the trial court two DVD copies of the mall’s surveillance tapes showing the group of females going from store to store. The trial court found that the merchandise was recovered from “three distinct places of retail and although located in the Polaris Mall, each was located separately and were not adjoining. (Judgment Entry on Sentence, filed August 24, 2009 at 1). Further, the appellant, through her counsel, acknowledged that she knew or should have known that the property was stolen. (Sent. T., Aug. 12, 2009 at 14; 16).

{¶33} As a result of plea negotiations, appellant entered pleas to three separate counts of receiving stolen property, not simply a single count. The entry of a plea of guilty is a grave decision by an accused to dispense with a trial and allow the state to obtain a conviction without following the otherwise difficult process of proving his guilt beyond a reasonable doubt. See *Machibroda v. United States* (1962), 368 U.S. 487, 82 S. Ct. 510, 7 L. Ed. 2d 473. A plea of guilty constitutes a complete admission of guilt. Crim. R. 11 (B) (1). “By entering a plea of guilty, the accused is not simply stating that he did the discreet acts described in the indictment; he is admitting guilt of a substantive crime.” *United v. Broce* (1989), 488 U.S. 563, 570, 109 S.Ct. 757, 762. Finally, appellant acknowledged on the record during the sentencing hearing that she

has been involved in theft related offenses throughout the Unites States on twenty-five previous occasions. (Sent. T. at 22). Accordingly, the trial court could find that appellant was not an innocent, naive participant in the activity of stealing the merchandise from various stores located within the mall.

{¶34} Based on the foregoing, the record reflects that the state presented evidence at trial demonstrating that appellant committed three separate acts. Accordingly, the state did not rely on the same conduct to prove three offenses. Appellant's convictions did not originate from a single act; therefore, the trial court did not err in sentencing appellant for each offense.

{¶35} Appellant's third assignment of error is overruled.

I & II

{¶36} Appellant's first and second assignments of error relate to the propriety of the trial court's sentencing appellant upon her guilty pleas to three (3) counts of felony receiving stolen property. Specifically, appellant challenges the imposition of maximum consecutive sentences on the basis that the sentences were unduly harsh and not commensurate with her conduct. We disagree.

{¶37} At the outset, we note there is no constitutional right to an appellate review of a criminal sentence. *Moffitt v. Ross* (1974), 417 U.S. 600, 610-11, 94 S.Ct. 2437, 2444; *McKane v. Durston* (1894), 152 U.S. 684, 687, 14 S. Ct. 913. 917; *State v. Smith* (1997), 80 Ohio St.3d 89, 1997-Ohio-355, 684 N.E.2d 668; *State v. Firouzmandi*, 5th Dist No. 2006-CA-41, 2006-Ohio-5823. An individual has no substantive right to a particular sentence within the range authorized by statute. *Gardner v. Florida* (1977), 430 U.S. 349, 358, 97 S.Ct. 1197, 1204-1205; *State v. Goggans*, Delaware App. No.

2006-CA-07-0051, 2007-Ohio-1433 at ¶ 28. In other words "[t]he sentence being within the limits set by the statute, its severity would not be grounds for relief here even on direct review of the conviction…It is not the duration or severity of this sentence that renders it constitutionally invalid…." *Townsend v. Burke* (1948), 334 U.S. 736, 741, 68 S.Ct. 1252, 1255.

{¶38} In a plurality opinion, the Supreme Court of Ohio established a two-step procedure for reviewing a felony sentence. *State v. Kalish,* 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124. The first step is to "examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law." *Kalish* at ¶ 4. If this first step "is satisfied," the second step requires the trial court's decision be "reviewed under an abuse-of-discretion standard." Id.

{¶39} As a plurality opinion, *Kalish* is of limited precedential value. See *Kraly v. Vannewkirk* (1994), 69 Ohio St.3d 627, 633, 635 N.E.2d 323 (characterizing prior case as "of questionable precedential value inasmuch as it was a plurality opinion which failed to receive the requisite support of four justices of this court in order to constitute controlling law"). *See, State v. Franklin* (2009), 182 Ohio App.3d 410, 912 N.E.2d 1197, 2009-Ohio-2664 at ¶ 8. "Whether Kalish actually clarifies the issue is open to debate. The opinion carries no syllabus and only three justices concurred in the decision. A fourth concurred in judgment only and three justices dissented." *State v. Ross,* 4th Dist. No. 08CA872, 2009-Ohio-877, at FN 2; *State v. Welch*, Washington App. No. 08CA29, 2009-Ohio-2655 at ¶ 6.

{¶40} Nevertheless, until the Supreme Court of Ohio provides further guidance on the issue, we will continue to apply *Kalish* to appeals involving felony sentencing. *State v. Welch*, supra; *State v. Reed*, Cuyahoga App. No. 91767, 2009-Ohio-2264 at n. 2; *State v. Ringler,* Ashland App. No. 09-COA-008, 2009-Ohio-6280 at ¶ 20.

{¶41} In the first step of our analysis, we review whether the sentence is contrary to law. In the case at bar, appellant was convicted of three separate felonies of the fifth degree. Upon each conviction for a felony of the fifth degree, the potential sentence that the trial court can impose is six, seven, eight, nine, ten, eleven or twelve months. R.C. 2929.14(A) (5). In the case at bar, appellant was sentenced to twelve months on each of the three counts.

{¶42} Upon review, we find that the trial court's sentencing on the charges complies with applicable rules and sentencing statutes. The sentences were within the statutory sentencing range. Furthermore, the record reflects that the trial court considered the purposes and principles of sentencing and the seriousness and recidivism factors as required in Sections 2929.11 and 2929.12 of the Ohio Revised Code and advised appellant regarding post release control. Therefore, the sentence is not clearly and convincingly contrary to law.

{¶43} Having determined that the sentence is not contrary to law we must now review the sentence pursuant to an abuse of discretion standard. *Kalish* at ¶ 4; *State v. Firouzmandi,* supra at ¶ 40. In reviewing the record, we find that the trial court gave careful and substantial deliberation to the relevant statutory considerations.

{¶44} Under Ohio law, judicial fact-finding is no longer required before a court imposes consecutive or maximum prison terms. See *State v. Foster,* 109 Ohio St.3d 1,

845 N.E.2d 470, 2006-Ohio-856; *State v. Mathis,* 109 Ohio St.3d 54, 846 N.E.2d 1, 2006-Ohio-855. Instead, the trial court is vested with discretion to impose a prison term within the statutory range. See *Mathis,* at ¶ 36. In exercising its discretion, the trial court must "carefully consider the statutes that apply to every felony case [including] R.C. 2929.11, which specifies the purposes of sentencing, and R.C. 2929.12, which provides guidance in considering factors relating to the seriousness of the offense and recidivism of the offender [and] statutes that are specific to the case itself." Id. at ¶ 37. Thus, post-*Foster,* "there is no mandate for judicial fact-finding in the general guidance statutes. The court is merely to 'consider' the statutory factors." *Foster* at ¶ 42. *State v. Rutter,* 5th Dist. No. 2006-CA-0025, 2006-Ohio-4061; *State v. Delong,* 4th Dist. No. 05CA815, 2006-Ohio-2753 at ¶ 7-8. Therefore, post-*Foster,* trial courts are still required to consider the general guidance factors in their sentencing decisions.

{¶45} There is no requirement in R.C. 2929.12 that the trial court states on the record that it has considered the statutory criteria concerning seriousness and recidivism or even discussed them. *State v. Polick* (1995), 101 Ohio App.3d 428, 431; *State v. Gant,* Mahoning App. No. 04 MA 252, 2006-Ohio-1469, at ¶ 60 (nothing in R.C. 2929.12 or the decisions of the Ohio Supreme Court imposes any duty on the trial court to set forth its findings), citing *State v. Cyrus* (1992), 63 Ohio St.3d 164, 166; *State v. Hughes,* Wood App. No. WD-05-024, 2005-Ohio-6405, at ¶10 (trial court was not required to address each R.C. 2929.12 factor individually and make a finding as to whether it was applicable in this case), *State v. Woods,* 5th Dist. No. 05 CA 46, 2006-Ohio-1342 at ¶19 ("... R.C. 2929.12 does not require specific language or specific

findings on the record in order to show that the trial court considered the applicable seriousness and recidivism factors"). (Citations omitted).

{¶46} Where the record lacks sufficient data to justify the sentence, the court may well abuse its discretion by imposing that sentence without a suitable explanation. Where the record adequately justifies the sentence imposed, the court need not recite its reasons. *State v. Middleton* (Jan. 15, 1987), 8th Dist. No. 51545. In other words, an appellate court may review the record to determine whether the trial court failed to consider the appropriate sentencing factors. *State v. Firouzmandi,* 5th Dist No. 2006-CA41, 2006-Ohio-5823 at ¶ 52.

{¶47} Accordingly, appellate courts can find an "abuse of discretion" where the record establishes that a trial judge refused or failed to consider statutory sentencing factors. *Cincinnati v. Clardy* (1978), 57 Ohio App.2d 153, 385 N.E.2d 1342. An "abuse of discretion" has also been found where a sentence is greatly excessive under traditional concepts of justice or is manifestly disproportionate to the crime or the defendant. *Woosley v. United States* (1973), 478 F.2d 139, 147. The imposition by a trial judge of a sentence on a mechanical, predetermined or policy basis is subject to review. *Woosley,* supra at 143-145. Where the severity of the sentence shocks the judicial conscience or greatly exceeds penalties usually exacted for similar offenses or defendants, and the record fails to justify and the trial court fails to explain the imposition of the sentence, the appellate court's can reverse the sentence. *Woosley,* supra at 147. This by no means is an exhaustive or exclusive list of the circumstances under which an appellate court may find that the trial court abused its discretion in the imposition of sentence in a particular case. *State v. Firouzmandi,* supra.

{¶48} There is no evidence in the record that the judge acted unreasonably by, for example, selecting the sentence arbitrarily, basing the sentence on impermissible factors, failing to consider pertinent factors, or giving an unreasonable amount of weight to any pertinent factor. We find nothing in the record of appellant's case to suggest that her sentence was based on an arbitrary distinction that would violate the Due Process Clause of the Fifth Amendment.

{¶49} In the case at bar, the trial court conducted a sentencing hearing in open court. The court further had the benefit of a pre-sentence investigation report. The appellant admitted both in that report and in open court that she has been involved with the authorities throughout the United States on twenty-five previous occasions for theft related offenses.

{¶50} Courts have consistently held that evidence of other crimes, including crimes that never result in criminal charges being pursued, or criminal charges that are dismissed as a result of a plea bargain, may be considered at sentencing. *State v. Cooey* (1989), 46 Ohio St.3d 20, 35, 544 N.E.2d 895 (such uncharged crimes are part of the defendant's social history and may be considered); *State v. Tolliver,* 9th Dist. No. 03CA0017, 2003-Ohio-5050, ¶ 24 (uncharged crimes in a presentence investigation report may be a factor at sentencing); *United States v. Mennuti* (C.A.2, 1982), 679 F.2d 1032, 1037 (similar though uncharged crimes may be considered); *United States v. Needles* (C.A.2, 1973), 472 F.2d 652, 654-56 (a dropped count in an indictment may be considered in sentencing). This has long been the rule in Ohio:

{¶51} “[I]t is well-established that a sentencing court may weigh such factors as arrests for other crimes. As noted by the Second Circuit United States Court of Appeals,

the function of the sentencing court is to acquire a thorough grasp of the character and history of the defendant before it. The court's consideration ought to encompass negative as well as favorable data. Few things can be so relevant as other criminal activity of the defendant [.]" *State v. Burton* (1977), 52 Ohio St.2d 21, 23, 368 N.E.2d 297; *State v. Snook* (April 26, 1999), Stark App. No. 1998CA00244 at *4; *State v. Starkey*, Mahoning App. No. 06 MA 110, 2007-Ohio-6702 at ¶ 17-18.

{¶52} It appears to this Court that the trial court's statements at the sentencing hearing were guided by the overriding purposes of felony sentencing to protect the public from future crime by the offender and others and to punish the offender. R.C. 2929.11.

{¶53} Based on the record, the transcript of the sentencing hearing and the subsequent judgment entry, this Court cannot find that the trial court acted unreasonably, arbitrarily, or unconscionably, or that the trial court violated appellant's rights to due process under the Ohio and United States Constitutions in its sentencing appellant. Further, the sentence in this case is not so grossly disproportionate to the offense as to shock the sense of justice in the community.

{¶54} Accordingly, appellant's first and second assignments of error are overruled.

{¶55} For the foregoing reasons, the judgment of the Delaware County Court of Common Pleas is affirmed.

By Gwin, P.J.,

Edwards, J., and

Delaney, J., concur

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HON. W. SCOTT GWIN

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HON. JULIE A. EDWARDS

_____
HON. PATRICIA A. DELANEY

WSG:clw 1210

[Cite as *State v. Konstantinov*, 2009-Ohio-6964.]

IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
MARIA KONSTANTINOV	:	
Defendant-Appellant	:	CASE NO. 09-CAA-090077

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Delaware County Court of Common Pleas is affirmed. Costs to appellant.

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HON. W. SCOTT GWIN

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HON. JULIE A. EDWARDS

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HON. PATRICIA A. DELANEY