

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-08-1370

Appellee

Trial Court No. CR0200801492

v.

Jeffrey Smith

DECISION AND JUDGMENT

Appellant

Decided: September 11, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney,
And Anita Mathew, Assistant Prosecuting Attorney, f or appellee.

Patricia Horner, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that found appellant guilty of one count of failure to pay child support in violation of R.C. 2919.21(B) and (G)(1) and imposed a prison sentence. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant sets forth a single assignment of error:

{¶ 3} "The trial court erred sentencing defendant to prison rather than community control for the felony five non-support conviction."

{¶ 4} On August 25, 2008, appellant entered a plea of no contest to one count of nonsupport of dependents in violation of R.C. 2919.21(B) and (G)(1). The trial court accepted appellant's plea and found him guilty of the offense. On September 25, 2008, the trial court sentenced appellant to a term of ten months imprisonment to be served consecutively to the three-year prison sentence appellant was serving at that time for a prior burglary conviction.

{¶ 5} Appellant now argues that the trial court should have placed him on community control. He asserts that the prison sentence was arbitrary and capricious because during the time set forth in the indictment he was incarcerated and therefore not able to support his child. Appellant further argues that his sentence was not consistent with sentences imposed for similar crimes committed by similar offenders.

{¶ 6} The record in this case reveals that appellant has an extensive criminal record throughout four states including numerous felonies for which he has served prison sentences. Appellant also had a prior felony nonsupport conviction in 2007, for which he was sentenced to 12 months imprisonment.

{¶ 7} R.C. 2929.11(A) and (B) provide as follows:

{¶ 8} "(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. 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.

{¶ 9} "(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders. * * *."

{¶ 10} Further, R.C. 2929.12(A) provides in relevant part that "* * * a court that imposes a sentence under this chapter upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code. * * *"

{¶ 11} An appellate court may not disturb an imposed sentence unless it finds by clear and convincing evidence that the sentence is not supported by the record or is "otherwise contrary to law." *State v. Johnson*, 6th Dist. No. OT-07-007, 2007-Ohio-6000, ¶ 11.

{¶ 12} At the sentencing hearing, the trial court stated that it had "* * * considered the record, oral statements, any victim impact statement and presentence investigation report prepared, as well as the principles and purposes of sentencing under R.C. 2929.11,

and has balanced the seriousness and recidivism factors under R.C. 2929.12." The trial court noted appellant's prior felony and misdemeanor convictions. The court further found that appellant was not amenable to community control and that a term of imprisonment would be consistent with the purposes of R.C. 2929.11.

{¶ 13} Appellant states that in Lucas County, Ohio, an individual convicted of felony nonsupport is not ordered to serve a prison term without first being placed on community control. In support, he provides a sampling of such cases wherein the offender was placed on community control; in only one of the cases did the offender have a prior conviction for failure to pay child support. While R.C. 2929.11(B) states that sentences imposed for similar offenses by similar offenders should be consistent, this court has held that an appellate court is not required to glean all data to determine whether the sentence imposed by the trial court is in "lockstep with others." *State v. Brinkman*, 168 Ohio App.3d 245, 2006-Ohio-3868, ¶ 21, citing *State v. Ryan*, 10th Dist. No. C-020283, 2003-Ohio-1188, ¶ 10. This court has held that if a sentencing court has properly considered the statutory sentencing factors and guidelines and the appropriate sentencing range, and has properly observed the principles and purposes of felony sentencing, consistency will result. *State v. Lathan*, 6th Dist. No. L-03-1188, 2004-Ohio-7074, ¶ 26.

{¶ 14} This court has reviewed the entire record in this case, including the transcript from appellant's sentencing hearing and the sentencing judgment entry. It is clear that the trial court properly considered the most effective means of complying with

the principles and purposes of sentencing. Further, appellant's sentence is within the statutory range of six to 12 months for a fifth-degree felony as set forth in R.C.

2929.14(A)(5) and is not contrary to law. Upon consideration thereof, this court finds that there was clear and convincing evidence to support the sentence imposed by the trial court. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 15} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

Richard W. Knepper, J.
CONCUR.

JUDGE

JUDGE

Judge Richard W. Knepper, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
