

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

State of Ohio

Court of Appeals No. E-11-004

Appellee

Trial Court No. 2009-CR-452

v.

Jason A. Steible

**DECISION AND JUDGMENT**

Appellant

Decided: April 6, 2012

\* \* \* \* \*

Kevin J. Baxter, Erie County Prosecuting Attorney, and Mary Ann Barylski,  
Assistant Prosecuting Attorney, for appellee.

Karin L. Coble, for appellant.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This an appeal from a sentencing judgment of the Erie County Court of Common Pleas which, pursuant to a negotiated plea agreement, found appellant guilty of one amended count of attempted kidnapping, in violation of R.C. 2905.01, and one amended count of felonious assault, in violation of R.C. 2903, both felonies of the second

degree. Appellant was sentenced to two four-year concurrent terms of incarceration, for a total term of imprisonment of eight years. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Jason A. Steible, sets forth the following sole assignment of error:

The trial court erred by failing to consider the principles and purposes of sentencing pursuant to R.C. 2929.11 and R.C. 2929.12.

{¶ 3} The following undisputed facts are relevant to this appeal. On November 10 and December 15, 2009, respectively, appellant was indicted on one count of kidnapping, one count of felonious assault, one count of domestic violence, one count of tampering with evidence, one count of attempted murder, one count of bribery, and one count of intimidation of a witness. On October 14, 2010, pursuant to a voluntary plea agreement, appellant pled guilty to one amended count of attempted kidnapping and one amended count of felonious assault, both felonies of the second degree. In exchange, the remaining charges and the corresponding repeat violent offender specifications were dismissed.

{¶ 4} The crux of appellant's allegations pertains to the events surrounding sentencing. In the course of a voluntary plea agreement, appellant was sentenced on October 14, 2010. A brief bench discussion occurring between the trial court, defense counsel, and the prosecuting attorney prior to the imposition of sentence is determinative to this appeal. Appellant determinatively relies upon and quotes the exchange at the

onset of his merit brief. The underlying bench discussion will be extensively referenced and discussed below.

{¶ 5} Immediately after quoting the bench discussion, appellant asserts, “The exchange between the trial court and both counsel demonstrates that the trial court failed [sic] consider the mandatory sentencing factors in imposing sentences for each offense.” Appellant unilaterally concludes that, “The exchange between the trial court and counsel shows that the trial court had decided on a definite sentence *prior* to hearing statements and considering the required factors.”

{¶ 6} We note that appellant acknowledges the applicability of R.C. 2953.08(D), which prohibits appellate review of a jointly recommended sentence imposed by the sentencing judge not exceeding the maximum authorized by law, such as the disputed sentence in the instant case. Nevertheless, appellant asserts the propriety of this appeal based upon the subjective, unsupported allegation that the bench discussion prior to sentencing could be construed as evidence of the existence of an improper trial court determination of a “definite sentence *prior* to hearing statements and considering the required factors.”

{¶ 7} It is well-established that in reviewing disputed felony sentences, appellate courts are governed by a two-pronged process. First, we must examine the record of evidence to verify compliance with applicable rules and statutes to ensure that the sentence is not clearly and convincingly contrary to law. If this first threshold is

satisfied, we must then ascertain whether the disputed sentencing decision constituted an abuse of discretion. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912.

{¶ 8} We have carefully scrutinized the record of evidence, with emphasis placed upon the sentencing transcript encompassing the bench discussion cited by appellant in support of the allegation of a sentencing done in violation of *Kalish*. We find that the record clearly reflects the language and context of the disputed bench discussion to be facially demonstrative of a real time discussion and real time determination by the trial court of a definite sentence, contrary to the unsupported allegation that the trial court had determined a definite sentence prior to hearing statements and considering requisite factors.

{¶ 9} The transcript of the sentencing hearing shows that the trial court opened the relied upon bench discussion by posing a question, not a conclusion. The trial court proffers, “Eight and eight concurrent?” Counsel for appellee replies, “Yeah, probably that -well, that’s the maximum, isn’t it.” Shortly thereafter, counsel for appellant suggests an alternative more favorable to appellant and inquires, “You don’t want to give him four on four?” The trial court replies, “I can.” Counsel for appellant responds, “Yeah. Let’s do that. Let’s do that.” The prosecuting attorney then expressly notes, “The State is not suggesting how the Court does it but that is just going along with it.” The language utilized by all parties during the exchange, particularly in light of the context of it occurring at the sentencing hearing, clearly and unambiguously reflects a real time debate and discussion of options on the term of sentence between the parties.

{¶ 10} The record clearly reflects that the trial court next heard and considered a detailed victim impact statement and then a request from defense counsel stating, “Judge, I ask the Court to go along with the agreed sentence of eight years.” The court then heard and considered a mitigating statement from appellant. Finally, the record shows that the court clearly and thoroughly conveyed its consideration of all of the aforementioned, as well as the sentencing purposes and principles prior to then determining and imposing a term of incarceration. The record clearly reflects the trial court ultimately reached a definite sentencing judgment after all of these things transpired, not prior to, when it stated, “Having said all that and all of what the Court just indicated, it will be the judgment and sentence of this Court \* \* \* those sentences to run consecutive for a total of eight years.” The sentencing transcript wholly contradicts allegations of an arguably improper definite determination by the trial court prior to consideration of factors and hearing statements. There is no objective evidence demonstrating that the trial court reached a judgment on a definite sentence prior to hearing statements and considering the required factors. The transcript of the sentencing hearing reflects the opposite. The language of the full bench discussion is fundamentally inconsistent with speculative notions of a prior definite determination.

{¶ 11} Wherefore, we find that the record clearly runs counter to appellant’s premise. As such, appellant has failed to satisfy the first prong of *Kalish*, apart from the issue of the validity of the appeal itself pursuant to R.C. 2953.08(D). The record of evidence does not comport with appellant’s conclusion that, “The trial court did not

exercise its will, make a choice, or determine competing considerations.” The record of evidence is clearly demonstrative of a lawful and proper sentencing of appellant. We find appellant’s sole assignment of error not well-taken.

{¶ 12} Wherefore, we find substantial justice has been done in this matter. The judgment of the Erie 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

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.  
CONCUR.

JUDGE

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>.