

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

State of Ohio

Court of Appeals No. L-11-1069

Appellee

Trial Court No. CR0200902222

v.

David W. Jones

DECISION AND JUDGMENT

Appellant

Decided: October 19, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Timothy F. Braun, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a sentencing judgment of the Lucas County Court of Common Pleas, which sentenced appellant to a maximum five-year term of incarceration upon his conviction of one count of failure to comply with an order of a police officer, in

violation of R.C. 2921.331(B), a felony of the third degree. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, David Jones, sets forth the following single assignment of error:

The Trial Court abused its discretion in sentencing appellant to a maximum prison term.

{¶ 3} The following undisputed facts are relevant to this appeal. On April 9, 2009, the Toledo Police Department initiated a traffic stop of appellant in International Park in Toledo. Appellant was driving a motor vehicle possessing stolen license plates. Appellant pulled his vehicle over in the vicinity of the Toledo rowing club in International Park. As the officers approached appellant's vehicle, appellant sped off. Appellant drove away at a high rate of speed down a sidewalk of the park, nearly striking multiple pedestrians utilizing the sidewalk.

{¶ 4} Appellant led police on a hazardous high speed chase through East Toledo, with appellant reaching speeds approaching 100 m.p.h. During the course of these events, appellant caused two collisions. Appellant fled on foot following the second collision. A foot chase ensued. Appellant was subsequently tackled by the pursuing officers. Nearly twenty grams of heroin was recovered from appellant's vehicle.

{¶ 5} On January 13, 2011, appellant was arraigned on one count of failure to comply with an order of a police officer, in violation of R.C. 2921.331(B), a felony of the third degree. Following several pretrial hearings, appellant entered a plea of guilty to the sole count. Appellant was referred for a presentence investigation and report. On

March 10, 2011, appellant was sentenced to a maximum term of incarceration of five years by the trial court. Timely notice of appeal was filed.

{¶ 6} In the sole assignment of error, appellant asserts that the trial court abused its discretion in imposing a maximum term of incarceration. It is well-established that trial courts are no longer required to make specific findings or furnish specific reasons for imposing maximum, consecutive, or more than minimum sentences. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. Trial courts are vested with full discretion to impose any duration of imprisonment falling within the permissible statutory range while being mindful of the guiding principles and purposes of felony sentencing. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124.

{¶ 7} In applying these guiding legal parameters to the instant case, we note that the trial court was extensive and precise in the course of crafting and imposing a sentence upon appellant. The trial court noted that the instant case represented appellant's fifth felony conviction, in addition to nearly thirty misdemeanor convictions. In conjunction with appellant's lengthy criminal history, the trial court emphasized the severe recklessness of appellant's actions. Appellant hazardedly fled from police, driving his vehicle down an occupied pedestrian walkway of International Park, nearly running over innocent bystanders.

{¶ 8} Appellant proceeded to flee at dangerous rates of speed, nearly 100 m.p.h., through the streets of East Toledo causing several collisions. Following the second collision, appellant fled on foot. Appellant had to be physically tackled and restrained by

the responding officers following the foot chase. The officers later recovered a black bag possessing nearly twenty grams of heroin and assorted drug paraphernalia from appellant's vehicle.

{¶ 9} The trial court highlighted that during the course of appellant's extensive criminal history he had been furnished a multitude of failed prior opportunities for drug treatment and rehabilitation. The trial court determined, based upon a wealth of aggravating facts and evidence before it, that the need to impose a maximum sentence to protect the public from appellant was overwhelming. The trial court stated that appellant, "[p]ut people in danger of losing their life, of being paralyzed, all sorts of things. Children, adults, innocent people, your passenger, here is the evidence. And this court cannot ignore that. A minimum of 1 year? No. Twenty-four years on the bench never have I seen anything like this before." The trial court imposed a maximum term of incarceration of five years.

{¶ 10} We have carefully reviewed and considered the record of evidence. We find absolutely no indicia that the trial court abused its discretion in imposing a maximum term of incarceration given the facts and circumstances of this case. Appellant's extensive, serious criminal history, repeated failures when given prior opportunities at rehabilitation, and extreme recklessness in driving at high rates of speed through crowded parks and streets furnish an ample basis from which to conclude a maximum term of incarceration to protect the public was not unreasonable, arbitrary, or unconscionable.

On the contrary, the sentence comported with the law and was reflective of the seriousness of the events and appellant's criminal history.

{¶ 11} On consideration whereof, we find appellant's assignment of error not well- taken. 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

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

<p>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.</p>
