

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

State of Ohio

Court of Appeals No. L-11-1167

Appellee

Trial Court No. CR0201101442

v.

Bryant Espinoza

DECISION AND JUDGMENT

Appellant

Decided: November 30, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Andrew J. Lastra, Assistant Prosecuting Attorney, for appellee.

Mollie B. Hojnicky, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that sentenced defendant-appellant, Bryant Espinoza, to two consecutive six year terms of imprisonment after he pled guilty to two counts of robbery. Appellant now challenges that sentence through his sole assignment of error:

The trial court's imposition of two, six year consecutive sentences was contrary to law and constituted an abuse of discretion.

{¶ 2} On March 17, 2011, the Lucas County Grand Jury issued a 16-count indictment against appellant and five other individuals. The indictment resulted from theft offenses that had allegedly been perpetrated by various combinations of the defendants on eight separate occasions between December 8, 2010 and March 7, 2011. Counts 6 and 13 of the indictment charged appellant with aggravated robbery in violation of R.C. 2911.01(A)(1), felonies of the first degree, on February 14 and March 6, 2011, respectively. Counts 7 and 14 of the indictment charged appellant with robbery in violation of R.C. 2911.02(A)(2), felonies of the second degree, also on February 14 and March 6, 2011, respectively. Appellant initially entered pleas of not guilty to all charges, but on May 11, 2011, appellant, in open court, withdrew his not guilty pleas and entered pleas of guilty to Counts 7 and 14, the robbery charges. In exchange, the state agreed to enter a nolle prosequi as to the aggravated robbery charges at the time of sentencing. Before accepting appellant's guilty pleas, the lower court informed him of the rights he was waiving by entering the pleas and further notified him that the maximum sentence he was facing on each of the charges was eight years in prison and that if the court decided to run the sentences consecutively, he could receive a 16-year sentence. In entering his guilty pleas, appellant acknowledged that he understood the potential sentence he was facing.

{¶ 3} On May 26, 2011, the case proceeded to a sentencing hearing at which the court imposed six year terms of incarceration for each of the two offenses and ordered that the terms be served consecutively, for a total sentence of 12 years. It is from that judgment that appellant appeals.

{¶ 4} In his sole assignment of error, appellant asserts that the trial court's imposition of two six-year sentences, ordered to be consecutively served, was contrary to law and an abuse of discretion.

{¶ 5} In *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 26, the Supreme Court of Ohio clarified that

[A]ppellate courts must apply a two-step approach when reviewing felony sentences. First, they must 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. If this first prong is satisfied, the trial court's decision in imposing the term of imprisonment is reviewed under the abuse-of-discretion standard.

{¶ 6} Appellant asserts that his sentence was contrary to law and that the court abused its discretion because the court failed to consider R.C. 2929.11 and 2929.12 in imposing sentence.

{¶ 7} 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.

Rather, courts are vested with full discretion to impose any duration of imprisonment that falls within the statutory range, as long as they remain mindful of the principles and purposes of felony sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors set forth in R.C. 2929.12. *Kalish* at ¶ 16-18. R.C. 2929.11 provides that “[t]he overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender.” R.C. 2929.12 then sets forth a non-exhaustive list of factors that the court is to consider that relate to the seriousness of the defendant’s conduct and the likelihood that the defendant will reoffend. Where the trial court, however, does not expressly state on the record that it considered R.C. 2929.11 and 2929.12, we are to presume that it gave proper consideration to those statutes. *Id.* at ¶ 18, fn. 4.

{¶ 8} In the present case, appellant was convicted of two second degree felonies. The sentencing range for those offenses is two, three, four, five, six, seven, or eight years. R.C. 2929.14(A)(2). Accordingly, appellant was given a mid-range term for each offense. In imposing those terms, however, and in ordering that they be served consecutively, the trial court reviewed appellant’s criminal history. The court noted that while appellant was then 23 years old, he had already had one prior felony adjudication as a juvenile, one misdemeanor adjudication as a juvenile, and two misdemeanor convictions as an adult. Appellant’s juvenile record included offenses of assault and felony theft, as well as a probation violation. His adult record reflected alcohol and drug offenses. The court found the offenses of which appellant was convicted in this case to

be “horrific in nature,” in that the victims of the offenses were robbed at gunpoint, with one victim being told lay down on the floor. The court further noted appellant’s history of drug abuse and inability to make positive changes when given drug treatment by the juvenile court. Based on these factors, the court determined that appellant was not a proper candidate for community control and imposed the consecutive sentences as noted.

{¶ 9} Upon review of the record in this case, we cannot find that the sentences imposed, or their consecutive nature, were contrary to law or that the lower court abused its discretion in imposing them. Although the trial court did not expressly state at the sentencing hearing that it considered the principles and purposes of felony sentencing under R.C. 2929.11, or the seriousness and recidivism factors under R.C. 2929.12, the court clearly did consider those matters. Indeed, the court noted in its sentencing judgment entry that in imposing sentence, it had considered the record, oral statements, victim impact statements, and the presentence report as well as the principles and purposes of sentencing under R.C. 2929.11, and had balanced the seriousness and recidivism factors under R.C. 2929.12. Accordingly, the sole assignment of error is not well-taken.

{¶ 10} On consideration whereof, the court finds that the appellant was not prejudiced or prevented from having a fair trial and 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.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, 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:
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