

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

State of Ohio

Court of Appeals No. S-12-011

Appellee

Trial Court No. 10 CR 431

v.

Cenon M. Morrisette

DECISION AND JUDGMENT

Appellant

Decided: March 22, 2013

* * * * *

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney,
and Dean E. Ross, Special Assistant Prosecuting Attorney,
for appellee.

Jennifer L. Kahler, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from an April 4, 2012 judgment of the Sandusky County Court of Common Pleas, which sentenced appellant to four one-year terms of incarceration, to be served consecutively, following appellant's revocation from a court diversion program. Appellant was placed in the diversion program subsequent to

voluntarily entering pleas of no contest to four counts of felony nonsupport, in violation of R.C. 2919.21, felonies of the fifth degree. In exchange, three additional felony nonsupport counts were dismissed. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Cenon Morrisette, sets forth the following sole assignment of error:

The trial court erred in imposing consecutive sentences against appellant.

{¶ 3} The following undisputed facts are relevant to this appeal. Appellant has fathered 11 children with multiple women. Appellant is subject to multiple child support orders. Appellant possesses a history of noncompliance and substantial accumulated arrearages in several counties stemming from these child support orders. Appellant's arrearages total approximately \$40,000.

{¶ 4} On April 13, 2010, appellant was indicted on seven counts of felony nonsupport, in violation of R.C. 2919.21, all felonies of the fifth degree. On July 12, 2010, pursuant to a voluntary agreement, appellant pled guilty to four of the seven counts and was placed in a Sandusky County diversion program. The record reflects that appellant was directly advised by the trial court that the failure to successfully complete the diversion program would result in appellant being convicted and sentenced on the four counts of felony nonsupport.

{¶ 5} On February 7, 2012, appellant, represented by counsel, was revoked from the pretrial diversion program given his failure to successfully comply with the program. Appellant was referred to the probation department for a presentence investigation report. At the time of revocation, appellant represented to the court that he had obtained employment at Broadleaf Construction Company doing general contracting work. Appellant further represented that his compensation ranged from \$10-\$15 per hour. Given these representations, appellant was advised that if the employment was verified and if child support payments commenced pursuant to that employment, the state would not object to community control at sentencing.

{¶ 6} On April 4, 2012, appellant was sentenced. At sentencing, the trial court learned that no payments have been made in the interim from the last hearing until the week prior to sentencing. Shortly before sentencing, payments totaling \$100 towards the arrearages of approximately \$40,000 were made. In conjunction with this, the trial court learned that the owner of Broadleaf Construction was contacted by a representative of the court to verify appellant's employment. The court was notified that appellant had not and did not work at Broadleaf, as inaccurately represented to the court by appellant at his revocation hearing.

{¶ 7} At sentencing, the trial court noted the numerous opportunities, including the diversion program, furnished to appellant in an effort to facilitate compliance with his child support orders. In addition, the trial court noted appellant's ongoing failure to comply and his misrepresentations to the court regarding nonexistent employment. The

trial court noted in relevant part, “He has had the opportunity to work with the probation people; we have exhausted our resources in offering assistance which has been refused by the defendant.” In conjunction with this, appellant’s prior felony history was also noted at sentencing. Appellant was sentenced to four consecutive one-year terms of incarceration. This appeal ensued.

{¶ 8} In the sole assignment of error, appellant maintains that the trial court erred in imposing consecutive sentences. It is well-established that we cannot overturn a trial court order imposing a felony sentence unless we find an abuse of discretion. As the Supreme Court declared in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, appellate courts reviewing felony sentences apply a two-step approach. First they must determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court’s decision is then reviewed pursuant to the abuse of discretion standard. *Kalish*, supra.

{¶ 9} In conjunction with the above, as established by *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, the trial court is vested with full discretion to impose any sentence within the statutory range without a requirement that it issue specific reasons or findings prior to imposition of the sentence.

{¶ 10} We have carefully reviewed and considered the record of evidence in this matter. We find that the record herein reflects that the trial court did not abuse its discretion in sentencing appellant to consecutive terms of imprisonment. The record reflects that in crafting the sentence the trial court considered the record, the presentence

investigation, and the principles and purposes of sentencing. The trial court specifically emphasized the numerous squandered opportunities given to appellant by the trial court to comply with its orders. The court also noted appellant's various misrepresentations to the court. Appellant himself conceded in pertinent part, "Yeah. Sir, I have no excuses. I totally agree with what Mr. Ross said, but putting me in prison is not going to help my kids. It's not going to help me." The trial court found that the aggravating factors of the offenses outweighed appellant's statement in mitigation.

{¶ 11} The record in this matter clearly reflects that the disputed trial court sentence was not contrary to law and was within the discretion of the trial court. Wherefore, we find appellant's assignment of error not well-taken. The judgment of the Sandusky 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.

JUDGE

Stephen A. Yarbrough, 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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