[Cite as *State v. Redfern*, 2013-Ohio-2480.]

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

State of Ohio — Court of Appeals No. OT-12-014

Appellee — Trial Court No. 11-CR-078

v.

Zachary Redfern — **DECISION AND JUDGMENT**

Appellant — Decided: June 14, 2013

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
Andrew M. Bigler, Assistant Prosecuting Attorney, for appellee.

Howard C. Whitcomb, III, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Zachary Redfern, appeals the sentence imposed upon him by the Ottawa County Court of Common Pleas. We affirm.

A. Facts and Procedural Background

{¶ 2} Stemming from his conduct on two days in early March 2011, the Ottawa County Grand Jury entered a seven-count indictment against appellant. The charges included two counts of burglary, felonies of the second degree, three counts of grand theft, felonies of the third degree, and one count of theft and one count of receiving stolen property, both felonies of the fifth degree. Pursuant to a plea agreement, appellant pleaded guilty under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), to one count of grand theft in violation of R.C. 2913.02(A)(1), a third-degree felony, and an amended count of burglary in violation of R.C. 2911.12(A)(3), a third-degree felony. The remaining charges were dismissed.

{¶ 3} The trial court ordered a presentence investigation report, and the matter was scheduled for a sentencing hearing. At the hearing, the trial court heard statements from appellant, appellant's counsel, and appellant's girlfriend in mitigation. The court then indicated that it considered the principles and purposes of sentencing in R.C. 2929.11, and the sentencing factors provided in R.C. 2929.12. The court found that the factors in R.C. 2929.12(B), indicating appellant's conduct was more serious, outweighed the factors in R.C. 2929.12(C), indicating it was less serious, and that the factors in R.C. 2929.12(D), indicating appellant is more likely to commit a future crime, outweighed the factors in R.C. 2929.12(E), indicating he is less likely. Further, the trial court considered R.C. 2929.13. The trial court then sentenced appellant to 36 months in prison on each

count, and, upon making the requisite findings under R.C. 2929.14(C)(4)(b), ordered those sentences to be served consecutively for a total prison term of 72 months.

B. Assignments of Error

{¶ 4} Appellant has timely appealed, raising two assignments of error:

> 1. THE TRIAL COURT ERRED IN IMPOSING THE MAXIMUM POSSIBLE SENTENCE UPON DEFENDANT-APPELLANT IN THAT IT DID NOT COMPLY WITH THE REQUIREMENTS OF OHIO REVISED CODE SECTIONS 2929.11 ET SEQ.
>
> 2. THE TRIAL COURT ABUSED ITS DISCRETION IN IMPOSING THE MAXIMUM POSSIBLE SENTENCE UPON DEFENDANT-APPELLANT AS IT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

II. Analysis

{¶ 5} Because appellant's assignments of error are interrelated, we will address them together. Appellant essentially raises four arguments. First, he argues that the trial court did not consider all of the principles and purposes of sentencing in R.C. 2929.11, or all of the sentencing factors in R.C. 2929.12. Second, he argues that the trial court did not give appropriate weight to the factors in R.C. 2929.12. Third, appellant contests the trial court's comparison to his co-defendant when fashioning appellant's sentence. Finally, appellant contends that maximum sentences are intended to be reserved for the

most violent and repeat offenders, which he is not. Upon review, we find appellant's arguments to be without merit.

{¶ 6} We review felony sentences pursuant to the two-step analysis set forth in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124. First, we are required to "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." *Id.* at ¶ 4. If the first step is satisfied, we then review the trial court's decision for an abuse of discretion. *Id.* An abuse of discretion connotes that the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 7} Under the first prong, we initially note that it is undisputed that appellant's sentences fall within the statutory range provided for his level of offense, and that the trial court made the appropriate finding under R.C. 2929.14(C)(4)(b) when ordering appellant's sentences to be served consecutively. Thus, the issue is the trial court's statement that it considered R.C. 2929.11 and 2929.12 when fashioning the sentence. Appellant argues that the trial court should have found that several of the "less serious factors" were present. Further, appellant argues that because the trial court did not specifically list those factors it found to be applicable under R.C. 2929.12, it cannot be independently ascertained that the trial court considered *all* of the factors. However, "[w]hile the phrase 'shall consider' is used throughout R.C. 2929.12, the sentencing court is not obligated to give a detailed explanation of how it algebraically applied each

seriousness and recidivism factor to the offender. Indeed, no specific recitation is required. * * * Merely stating that the court considered the statutory factors is enough." *State v. Brimacombe*, 195 Ohio App.3d 524, 2011-Ohio-5032, 960 N.E.2d 1042, ¶ 11 (6th Dist.), citing *State v. Arnett*, 88 Ohio St.3d 208, 215, 724 N.E.2d 793 (2000). Therefore, we hold that appellant's sentence is not clearly and convincingly contrary to law, and the first prong under *Kalish* is satisfied.

{¶ 8} Under the second prong, the gravamen of appellant's argument is that he is not a violent offender, and thus the trial court abused its discretion in giving him the maximum possible sentence. Appellant states that his co-defendant also received a 72-month prison sentence, but that the same sentence should not be applied to appellant because, unlike his co-defendant, he was not alleged to have struck an elderly gentleman in the head with a wrench. However, upon reviewing the record, including appellant's lengthy juvenile criminal history, we cannot say the trial court abused its discretion when sentencing appellant.

{¶ 9} Accordingly, because the trial court's sentence is neither contrary to law nor an abuse of discretion, appellant's assignments of error are not well-taken.

III. Conclusion

{¶ 10} For the foregoing reasons, the judgment of the Ottawa 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.

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
JUDGE

James D. Jensen, J.
CONCUR. _____
JUDGE