

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

State of Ohio

Court of Appeals No. L-13-1013

Appellee

Trial Court No. CR0201202793

v.

Torrance McCray

DECISION AND JUDGMENT

Appellant

Decided: November 22, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

David A. Baker, for appellant.

* * * * *

JENSEN, J.

{¶ 1} Appellant, Torrance McCray, appeals the seven-year sentence imposed by the Lucas County Court of Common Pleas, journalized on January 4, 2013, following his conviction for burglary, a second-degree felony under R.C. 2911.12(A)(2) and (D). McCray asserts that “[the] trial court abused its discretion when it sentenced the

Defendant to a seven (7) year prison term.” For the reasons that follow, we find no error in the sentence imposed by the trial court and we affirm the January 4, 2013 judgment.

I. Background

{¶ 2} McCray was indicted on one count of burglary after breaking a window and entering a bed and breakfast on September 3, 2012. On December 10, 2012, he withdrew his original plea of not guilty and entered a plea of guilty to the burglary charge, a violation of R.C. 2911.12(A)(2) and (D). The trial court accepted the plea, referred the matter to the probation department for a presentence investigation report, and scheduled sentencing for December 27, 2012.

{¶ 3} During the sentencing hearing, the trial court indicated that it had reviewed the presentence investigation report and a letter McCray had submitted. The court allowed McCray’s attorney to make a statement on his behalf and McCray himself also made a statement. McCray and his attorney advised the court that McCray had a substance abuse problem, that he was drunk and high when he committed the offense, that he believed the structure he burglarized was unoccupied, that he had attempted to secure and maintain gainful employment but was repeatedly terminated when his criminal history was made known to his employers, and that these circumstances exacerbated his substance abuse problem.

{¶ 4} After listening to McCray’s statement, the court observed that his testimony that he was high at the time of the offense was contradicted by information he provided to the probation department. The court also noted that his actions caused financial and

emotional harm to the occupants of the home he burglarized, that he had six prior felony convictions and 31 misdemeanor convictions, that he had a history of assault and theft-related offenses, that he had served time in the penitentiary on four occasions, and that according to the presentence investigation report, he had not expressed remorse for his crime. The court sentenced McCray to a seven-year prison term and three years of post-release control.

{¶ 5} McCray now argues that the trial court failed to balance the seriousness of the offense, his recidivism, and the mitigating factors under R.C. 2929.12.

II. Standard of Review

{¶ 6} In *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, the Ohio Supreme Court set forth a two-step analysis for reviewing felony sentences on appeal. First, appellate courts 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.” *Id.* at ¶ 26. Second, if the first prong is satisfied, the appellate court reviews the decision imposing the sentence under an abuse of discretion standard. *Id.* See also *State v. Williams*, 6th Dist. Wood No. WD-12-007, 2013-Ohio-413. An abuse of discretion is ““more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.”” *Kalish* at ¶ 19, quoting *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

III. Analysis

{¶ 7} Before we address McCray’s argument, we observe, as did the state in its brief, that McCray made no objection to the length of the sentence at the time it was imposed. He is, therefore, prohibited from raising this issue for the first time on appeal. *State v. Comen*, 50 Ohio St.3d 206, 211, 553 N.E.2d 640 (1990). Nevertheless, we find that the trial court did not abuse its discretion in imposing a seven-year prison sentence.

{¶ 8} A violation of R.C. 2911.12(A)(2) is a second-degree felony. R.C. 2911.12(D). Under R.C. 2929.14(A)(2), a trial court must impose a prison term ranging between two and eight years for a second-degree felony. McCray’s sentence fell within this range, thus the length of his sentence was not contrary to law.

{¶ 9} McCray argues, however, that there is nothing in the record to indicate that the court considered the seriousness of the offense, the recidivism factors, and the mitigating circumstances set forth in R.C. 2929.12. This is at odds with our reading of the record.

{¶ 10} The trial court told McCray: “I have reviewed the presentence report very carefully, I’ve read your letter. I’ve also listened very carefully to what you and your attorney have had to say.” The court also expressly stated that it had considered the report, the statements, and the principles of sentencing under R.C. 2929.11, and had balanced the seriousness and recidivism factors under R.C. 2929.12. It is clear from the trial court’s dialogue with McCray that it had done just that. The court compared the statements McCray had made during the presentence investigation to the information he

presented during his statement, considered the financial and emotional impact McCray's crime had on the victim, reviewed the number and types of McCray's prior criminal convictions, acknowledged that McCray had served four prison terms and had violated community control in the past, and voiced skepticism as to McCray's professed remorse.

{¶ 11} In *State v. Willis*, 6th Dist. Lucas No. L-11-1274, 2012-Ohio-6070, ¶ 10, we explained:

R.C. 2929.12 is a guidance statute. It sets forth the seriousness and recidivism criteria that a trial court "shall consider" in fashioning a felony sentence. * * * Subsections (B) and (C) establish the factors indicating whether the offender's conduct is more serious or less serious than conduct normally constituting the offense. Subsections (D) and (E) contain the factors bearing on whether the offender is likely or not likely to commit future crimes. While 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*, 6th Dist. Lucas No. L-10-1179, 2011-Ohio-5032, ¶ 11.

(Internal citations omitted.)

Here the trial court went beyond merely stating that it had considered the statutory factors; it fully explained its rationale for the sentence imposed. We, therefore, find that the trial court abided by all applicable rules and statutes in imposing McCray's sentence.

{¶ 12} The first prong of *Kalish* having been satisfied, we now review the trial court's sentencing decision under an abuse of discretion standard. Taking into consideration McCray's extensive criminal history and the facts upon which the conviction was premised, we conclude that the sentence the court imposed was not unreasonable, arbitrary, or unconscionable.

IV. Conclusion

{¶ 13} We find no abuse of discretion in the seven-year sentence imposed by the trial court. We affirm the January 4, 2013 judgment of the Lucas County Court of Common Pleas. 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.

Stephen A. Yarbrough, J.

James D. Jensen, J.
CONCUR.

JUDGE

JUDGE

JUDGE

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