

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

State of Ohio

Court of Appeals No. S-13-009

Appellee

Trial Court No. 12 CR 1132

v.

Seth M. Boonie

**DECISION AND JUDGMENT**

Appellant

Decided: December 30, 2013

\* \* \* \* \*

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney,  
and Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Jon M. Ickes, for appellant.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This is an appeal from a judgment of the Sandusky County Court of  
Common Pleas, which sentenced appellant to an 18-month term of incarceration on one  
count of attempted burglary and to a 12-month term of incarceration on one count of

breaking and entering, with the sentences ordered to be served consecutively. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Seth Boonie, sets forth the following sole assignment of error:

The Trial Court failed to make the requisite findings to sentence the Defendant to the maximum sentences and order those sentences to be served consecutively.

{¶ 3} The following undisputed facts are relevant to this appeal. On August 9, 2012, appellant engaged in a major crime spree throughout Sandusky County. First, in order to facilitate commission of the crimes, appellant stole a Jeep. Appellant then drove the stolen vehicle to the Green Hills Golf Club. Upon arrival at that location, appellant utilized a fire extinguisher to smash through a window and break into the club's pro shop. Appellant stole the cash drawer and assorted computer equipment from the pro shop and loaded the stolen cash and equipment into the stolen vehicle. Appellant then traveled to an area business known as Kuny's Farm and forcibly broke into that business. Appellant again stole cash and assorted merchandise. In addition to the above-described crimes occurring on August 9, 2012, appellant had also recently broken into at least a dozen motor vehicles around Sandusky County. Appellant stole cash and various electronic devices from the targeted vehicles.

{¶ 4} On September 20, 2012, appellant was indicted on one count of burglary, in violation of R.C. 2911.12(A)(2), two counts of breaking and entering, in violation of R.C.

2911.13(A)(1), and one count of theft of a motor vehicle, in violation of R.C.

2913.02(A)(1). These charges all stemmed from appellant's August 9, 2012 crime spree.

{¶ 5} Despite appellant's significant criminal history, appellant received a plea agreement through which he pled guilty to one amended count of attempted burglary, amended down to a felony of the fourth degree, and one of the two counts of breaking and entering, a felony of the fifth degree. In exchange, the remaining two felonies were dismissed. A presentence investigation was ordered and conducted.

{¶ 6} On January 25, 2013, appellant was sentenced. The trial court and all parties reviewed the presentence investigation report prior to sentencing. In addition, counsel for appellant and appellant himself offered statements in mitigation. It was also noted that appellant was responsible for the dozen break-ins and theft of property from motor vehicles.

{¶ 7} The record reflects that during the course of this matter, appellant attempted to attribute blame and accountability for the crimes to his younger brother, a minor, who participated in the crimes and was separately charged as a juvenile. When questioned by the trial court regarding these crimes appellant stated, "Because, uhm, he just looks up to me so I just did what he wanted me to do."

{¶ 8} The trial court was not persuaded. The trial court stated in relevant part, "You have been on this crime spree so to speak. My job is to attempt to protect the public from future crime and I'm going to give you a time out." Appellant was sentenced to an 18-month term of incarceration on the reduced charge of attempted burglary and a

12-month term of incarceration on the count of breaking and entering, to be served consecutively. The balance of felony charges were dismissed pursuant to the plea agreement. This appeal ensued.

{¶ 9} In the sole assignment of error, appellant contends that the trial court erred in sentencing him to maximum, consecutive sentences. Appellate review of disputed felony sentences is conducted pursuant to the two-step process set forth in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124. First, we must examine the record to ensure that the disputed trial court sentence complied with applicable statutes and rules so as to not be clearly and convincingly contrary to law. *Id.* at ¶ 4. If the first step is satisfied, we must then determine if the sentence constituted an abuse of discretion. *Id.* An abuse of discretion is more than a mere error of law or judgment. It requires finding that the trial court's action was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, 1142 (1983).

{¶ 10} Our review commences with an examination of the sentencing statutes that apply to this case. R.C. 2929.14 establishes the parameters of the permissible sentencing ranges that may be imposed in fourth and fifth degree felony cases. It directs that sentences on fourth degree felony cases may range from six to eighteen months and sentences on fifth degree felony cases may range from six to twelve months. Appellant's disputed sentences of eighteen and twelve months clearly fall within the permissible sentencing range.

{¶ 11} The disputed sentences were also ordered to be served consecutively. R.C. 2929.14(C)(4) establishes that if multiple terms are imposed when an offender has been convicted of multiple offenses the court may order the terms to be served consecutively if it determines that consecutive sentences are necessary to protect the public from future crimes by this offender or to punish the offender so long as the court finds that consecutive sentences are not disproportionate to the conduct, the defendant poses a danger to the public, and the offender's history of criminal conduct demonstrates that the consecutive sentences are necessary to protect the public.

{¶ 12} We have carefully reviewed and considered the entire record in this matter, paying close attention to the transcript of the sentencing proceedings. As a preliminary matter, the record reflects that, although maximum and consecutive, the sentences were not clearly contrary to law. Accordingly, we must determine whether imposing maximum, consecutive sentences under the facts and circumstances of this case constituted an abuse of discretion.

{¶ 13} We also note that the record reflects that appellant possesses a lengthy and escalating criminal history. We also note that the record reflects that appellant has been furnished with several opportunities during his past involvement in the criminal justice system to turn his life around. The record reflects that despite those opportunities, appellant continued to commit more crimes, and also committed more serious crimes. The record shows that appellant had recently committed a large volume of additional serious crimes in the community in which he lives. Based upon consideration of the

record, the oral statements of appellant, and the presentence report, the record shows that the trial court determined that it had a prevailing duty to protect the public from future crimes by appellant and thereby imposed maximum, consecutive sentences.

{¶ 14} We have carefully reviewed and considered this matter. The record is devoid of any indicia that the trial court sentence in this matter was clearly and convincingly contrary to law, unreasonable, arbitrary or unconscionable. We find appellant's assignment of error not well-taken.

{¶ 15} Wherefore, the judgment of the Sandusky County Court of Common Pleas is hereby 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.

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JUDGE

Stephen A. Yarbrough, J.

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JUDGE

James D. Jensen, J.

CONCUR.

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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: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
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