

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

State of Ohio

Court of Appeals No. S-11-034

Appellee

Trial Court No. 11 CR 215

v.

James D. Guy

DECISION AND JUDGMENT

Appellant

Decided: January 4, 2013

* * * * *

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

John F. Kirwan, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Sandusky County Court of Common Pleas that found appellant guilty of two counts of felonious assault in violation of R.C. 2903.11(A)(2) and imposed maximum sentences of eight years on each count to be served consecutively. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant sets forth the following assignments of error:

1. The trial court failed to apply ORC 2953.08(A)(1)(b) in imposing the maximum consecutive sentences.

2. The trial court abused its discretion in sentencing defendant to the maximum sentence of 8 years on each count and running each count consecutive for a total sentence of 16 years. For two or more offenses arising out of a single incident.

3. The trial court erred in refusing to consider 2929.1(C)(1)(2) and (4) in sentencing defendant to consecutive maximum sentences.

4. The trial court failed to follow ORC 2929.41 and ORC 5145.01 when it sentenced defendant to consecutive maximum sentences.

{¶ 3} The undisputed facts relevant to the issues raised on appeal are as follows.

On March 18, 2011, appellant was indicted on four counts of felonious assault and two counts of attempted murder in connection with an incident that occurred on February 18, 2011, in which two men were stabbed outside a Clyde, Ohio, bar. On May 18, 2011, appellant entered a plea of guilty to two counts of felonious assault, second degree felonies, and the remaining counts were dismissed. Appellant was sentenced to eight years on each count to be served consecutively.

{¶ 4} In support of his first assignment of error, appellant asserts that the sentencing court failed to follow R.C. 2953.08. This statute sets forth some of the grounds for appeal from a felony sentence; there is nothing contained in the statute for

the trial court to “fail to follow,” as appellant characterized it. The trial court in this case properly informed appellant at the sentencing hearing of his right to appeal. Appellant’s first assignment of error is not well-taken.

{¶ 5} Appellant’s second, third and fourth assignments of error argue that the trial court improperly imposed maximum, consecutive sentences and will be considered together.

{¶ 6} 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, ¶ 11, appellate courts reviewing felony sentences must apply a two-step approach. 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 shall be reviewed under an abuse-of-discretion standard. *Kalish, supra*.

{¶ 7} “The term abuse of discretion connotes more than an error of law or judgment. It implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). Additionally, the standard of review on appeal is that of deference to the decision of the trier of fact. *Seasons Coal Co. v. City of Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984).

{¶ 8} As established by *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶ 100, 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 such a sentence. However, the trial court must still consider R.C. 2929.11 and 2929.12. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, ¶ 38. These two statutes serve as the guiding parameters for trial judges to consider in fashioning an appropriate sentence. *Kalish* at ¶ 17.

{¶ 9} As the record herein reflects, the trial court did not abuse its discretion in sentencing appellant to a maximum consecutive term of imprisonment. Both the transcript and sentencing entry demonstrate that the trial court carefully considered the record, the oral statements of the victims and family members, the presentence investigation, and the principals and purposes of sentencing as required under R.C. 2929.11. The trial court noted appellant's juvenile and adult records as well as his two prior prison sentences. The trial court found that the aggravating factors of the seriousness of the offense, the significant victim impact and appellant's pattern of recidivism outweighed appellant's arguments in mitigation.

{¶ 10} Appellant also argues that the two eight-year sentences should be served concurrently because "although the two offenses were separate they occurred out of the same incident." Two men were stabbed by appellant, albeit within a very brief time frame in the same location. Appellant stabbed one victim and then directed his violent

actions toward another victim, stabbing him as well; therefore, two separate crimes were committed. This argument is without merit.

{¶ 11} Based on the foregoing, we cannot find that the maximum, consecutive sentences imposed by the trial court were unreasonable, arbitrary or unconscionable. Pursuant to R.C. 2929.14(A)(2), the maximum prison sentence permissible for a second degree felony is eight years. The sentence was not contrary to law and did not constitute an abuse of discretion. Accordingly, appellant's second, third and fourth assignments of error are not well-taken.

{¶ 12} On consideration whereof, the judgment of the Sandusky County Court of Common Pleas is affirmed. Pursuant to App.R. 24, the costs of this appeal are assessed to appellant.

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

Arlene Singer, P.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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