

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

State of Ohio

Court of Appeals No. E-11-085

Appellee

Trial Court No. 2010-CR-222

v.

Trent R. Sattler

DECISION AND JUDGMENT

Appellant

Decided: February 1, 2013

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Mary Ann Barylski, Assistant Prosecuting Attorney, for appellee.

Karin L. Coble, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} This is an appeal from the judgment of the Erie County Court of Common Pleas, sentencing appellant, Trent Sattler, to 60 months in prison pursuant to his conviction for attempted corrupting another with drugs and attempted endangering children. For the reasons that follow, we affirm in part, and reverse in part.

A. Facts and Procedural Background

{¶ 2} On June 18, 2010, Sattler was indicted by the Erie County Grand Jury on two counts of compelling prostitution, one count of endangering children, and one count of corrupting another with drugs.

{¶ 3} On August 5, 2011, the state filed a bill of information against Sattler for one count of attempted endangering children. That same day, Sattler entered a plea of guilty to one count of attempted corrupting another with drugs in violation of R.C. 2925.02(A)(1) and 2923.02(A), and one count of attempted endangering children in violation of R.C. 2919.22(B)(5) and 2923.02(A), both felonies of the third degree. Pursuant to a plea agreement, the state dismissed the remaining charges.

{¶ 4} As a result of Sattler's guilty plea, the court conducted a sentencing hearing on October 14, 2011. During the sentencing hearing, the court stated that it "reviewed the presentence investigation and report * * *, which includes the circumstances surrounding these offenses, [Sattler's] criminal history, social history, educational background and so forth." In addition, the court made it clear that it considered statements made at the sentencing hearing as well as the victim impact statements. Finally, the court stated that it considered the seriousness and recidivism factors under R.C. 2929.11 and 2929.12.

{¶ 5} Ultimately, the court imposed a prison term of 30 months as to each count, the maximum allowable prison term. The court ordered the prison terms served consecutive to one another. In support of its imposition of consecutive terms, the court

stated that it found consecutive sentences to be necessary “because the sentence is proportionate to the seriousness of [Sattler’s] conduct in this case and the danger of future crimes and danger [Sattler] poses to the public.” In addition to the prison term, the court imposed a \$5,000 fine as to each count and ordered Sattler to “pay all court costs in this matter.”

{¶ 6} It is from this conviction that Sattler timely appeals.

B. Assignments of Error

{¶ 7} Sattler assigns the following errors for our review:

Assignment of Error One: The trial court abused its discretion in imposing consecutive terms of incarceration for the offense.

Assignment of Error Two: The imposition of “costs” was in error.

II. Analysis

{¶ 8} In his first assignment of error, Sattler argues that the trial court abused its discretion by imposing consecutive terms of incarceration.

{¶ 9} An appellate court reviews challenges to the sentencing court’s application of R.C. 2929.11 and 2929.12 using the method announced in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124. In *Kalish*, the Supreme Court established a “two-prong” process for appellate review of felony sentences, stating:

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. If this first prong is satisfied, the trial court's decision shall be reviewed under an abuse-of-discretion standard. *Id.* at ¶ 4.

{¶ 10} Here, Sattler acknowledges that his sentence falls within the range allowed by statute. A choice of sentence from within the permissible statutory range cannot, by definition, be contrary to law. *Id.* at ¶ 15. Thus, the first prong under *Kalish* is satisfied. Under the second prong, we review the trial court's "exercise of its discretion in selecting a sentence within the permissible statutory range," using the sentencing record as the context. *Id.* at ¶ 17. This prong asks whether, in selecting a specific prison term, the court's decision was "unreasonable, arbitrary or unconscionable." *Id.* at ¶ 20.

{¶ 11} Regarding the import of R.C. 2929.12, we have stated:

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. No. L-10-1179, 2011-Ohio-5032, ¶ 11. (Internal citations omitted.)

{¶ 12} Sattler argues that the trial court’s imposition of consecutive sentences is contrary to the purposes and principles of sentencing under R.C. 2929.11 and 2929.12. Sattler contends that consecutive sentences are improper in light of the fact that he has no prior criminal record or history of drug abuse. However, the trial court is not required to reduce a sentence or order multiple sentences to run concurrently simply because a defendant is not a seasoned criminal or a drug abuser. Rather, the trial court is merely required to *consider* those factors in arriving at its decision. *See State v. Barnhart*, 6th Dist. No. OT-10-032, 2011-Ohio-5685, ¶ 21 (“the premise of Barnhart’s argument confuses the statutory mandate *to consider* any mitigating factor that might exist * * * with a concomitant obligation automatically *to assign* that factor the same qualitative weight as another factor the court deemed unfavorable”). (Emphasis sic.)

{¶ 13} We have reviewed the sentencing hearing transcript, as well as the judgment entry. Based on our review, it is clear that the trial court fulfilled its obligation to consider the statutory factors. Therefore, we cannot say that the trial court abused its discretion by imposing the maximum sentences, and ordering the sentences to run consecutively. Accordingly, Sattler’s first assignment of error is not well-taken.

{¶ 14} In his second assignment of error, Sattler argues that the trial court’s imposition of costs was erroneous. He essentially raises two issues with respect to the trial court’s imposition of costs. First, Sattler contends that the trial court failed to give

notification of mandatory community service in the event he fails to pay the costs, as required by R.C. 2947.23. Second, he contends that the trial court erred in its imposition of the costs of court-appointed counsel by failing to find that he had the ability to pay.

{¶ 15} We note at the outset that the trial court never ordered the costs of court-appointed counsel. Indeed, the phrase “court-appointed counsel” does not appear in the judgment entry or the sentencing hearing transcript. Thus, Sattler’s argument concerning court-appointed fees is without merit.

{¶ 16} As to the community-service notification pursuant to R.C. 2947.23, the state concedes that the trial court erred by failing to inform Sattler that he would be required to perform community service if he failed to pay the mandatory court costs. Accordingly, we find Sattler’s second assignment of error well-taken.

III. Conclusion

{¶ 17} We vacate the imposition of costs and remand the matter to the trial court for resentencing on the issue of costs, and to provide proper community-service notification to Sattler pursuant to R.C. 2947.23. In all other respects, the judgment of the Erie County Court of Common Pleas is affirmed. Costs of this appeal are assessed to the state pursuant to App.R. 24.

Judgment affirmed, in part,
and reversed, in part.

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