

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

State of Ohio

Court of Appeals No. S-13-029

Appellee

Trial Court No. 13 CR 132

v.

April C. Hull

DECISION AND JUDGMENT

Appellant

Decided: May 16, 2014

* * * * *

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

Geoffrey Oglesby, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals the sentence imposed upon her following her conviction for complicity to theft in the Sandusky County Court of Common Pleas. Because the sentence imposed was lawful, we affirm.

{¶ 2} On November 15, 2012, a loss prevention manager at a Fremont Wal-Mart store was reviewing security videos when he saw two women shoplifting video games from the store. Police identified Marissa Bigley and appellant, April C. Hull, as the individuals on the recording.

{¶ 3} On February 8, 2013, the Sandusky County Grand Jury handed down a single count indictment charging appellant with complicity to theft, a fifth degree felony. Appellant initially pled not guilty, but subsequently changed her plea to guilty in return for the prosecutor's recommendation that she be placed on community control. After a plea colloquy pursuant to Crim.R. 11, the trial court accepted appellant's plea, found her guilty and ordered a presentence investigation.

{¶ 4} At sentencing, the court found that appellant was not amenable to community control and sentenced her to a 12-month term of imprisonment, the maximum allowable sentence, and ordered her to pay restitution. The court recommended that appellant serve a risk reduction sentence under R.C. 5120.036.

{¶ 5} From this judgment, appellant now brings this appeal. Appellant sets forth the following single assignment of error:

The trial court errors [sic] when it sentenced appellant to the maximum prison term for a felony of the fifth degree.

{¶ 6} An appeals court hearing a statutory felony sentence appeal must review the record, including the findings underlying the sentence. The appellate court may increase,

reduce, modify, or vacate and remand a disputed sentence if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings under [R.C. 2929.13 (B) or (D)], [R.C. 2929.14 (B)(2)(e) or (C)(4)], or [R.C. 2929.20 (I)], whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law. R.C. 2953.08(G)(2).

{¶ 7} The standard of review for an appeal of a sentence is not abuse of discretion. *State v. Tammerline*, 6th Dist. Lucas No. L-13-1081, 2014-Ohio-425, ¶ 11. If a sentencing court is statutorily required to make findings or state findings on the record concerning the imposition of a sentence and fails to do so, the appeals court is directed to remand the case and instruct the sentencing court to state, on the record, the required findings. R.C. 2953.08(G)(1).

{¶ 8} R.C. 2929.13(B)(1)(a) directs that an offender convicted of a non-violent fourth or fifth degree felony be placed on community control if (1) the offender has not previously been convicted of a felony, and (2) the most serious offense against the offender is a fourth or fifth degree felony, and (3) a community control program is available, and (4) the offender has not been convicted of a misdemeanor of violence within the two years prior to the present offense.

{¶ 9} Appellant had previously been convicted of a felony, so this directive is inapplicable to her.

{¶ 10} R.C. 2929.13(B)(2)(b) grants a sentencing court discretion to impose a term of imprisonment for a non-violent fourth or fifth degree felony if, inter alia, the offender had previously served a prison term, was under community control, or was on probation at the time of the present offense.

{¶ 11} Appellant had previously served prison time for a 2009 cocaine trafficking conviction and was on probation at the time of the present offense. Accordingly, the trial court was vested with discretion to impose imprisonment for this offense.

{¶ 12} For a fifth degree felony, no findings are required by R.C. 2929.13 or 2929.14. R.C. 2929.20(I) is inapplicable. Moreover, based on our review of the record, including the presentence investigatory report, we conclude that the trial court's decision to impose imprisonment was not an abuse of discretion. *See Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 622 (1991).

{¶ 13} The basic sentences of imprisonment for a fifth degree felony are “six, seven, eight, nine, ten, eleven, or twelve months.” R.C. 2929.14(A)(5). Consequently, the imposition of a 12-month sentence is not contrary to law.

{¶ 14} Appellant argues that, because the sentence for her accomplice, Marissa Bigley, for the same offense was community control, there was an unwarranted disparity of sentences. A “disparity of sentence does not justify reversal when the sentence is neither illegal nor an abuse of discretion.” *State v. Issa*, 93 Ohio St.3d 49, 72, 752 N.E.2d 904 (2001). A trial court does not have to sentence codefendants equally. *State v. Boone*, 7th Dist. Mahoning App. No. 96-CA-9, 1999 WL 756429, * 4 (Sept. 22, 1999).

As we have stated, the sentence imposed was neither illegal, nor, considering appellant's prior record and initiating role in this offense, an abuse of discretion. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 15} On consideration, the judgment of the Sandusky County Court of Common Pleas is affirmed. It is ordered that appellant pay the court 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.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, P.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.
