

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

State of Ohio

Court of Appeals No. L-13-1126

Appellee

Trial Court No. CR0201301156

v.

Christopher L. Grace

DECISION AND JUDGMENT

Appellant

Decided: May 30, 2014

* * * * *

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

Kent Sobran, for appellant.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} In this appeal of a criminal sentence, appellant, Christopher Grace, argues that the Lucas County Court of Common Pleas erred when it sentenced him to a maximum prison term and ordered his sentence to be served consecutively to a sentence out of Wood County. We affirm.

{¶ 2} Pursuant to a negotiated plea agreement, appellant pleaded no contest to an amended count of attempted possession of cocaine in violation of R.C. 2923.02 and 2925.11(A) and (C)(4)(b), a felony of the fifth degree. The trial court accepted the plea, found appellant guilty, and proceeded immediately to sentencing. Appellant and his attorney spoke in mitigation, and requested that the court sentence appellant to community control, or in the alternative, that the court order any prison sentence to run concurrently with appellant's prison sentence out of Wood County.

{¶ 3} The trial court, in imposing its sentence, considered that appellant has been convicted as a juvenile, and that as an adult he has been convicted of six felonies and four misdemeanors. In addition, the court noted that appellant has served two years in prison beginning in 2010, and that he has been convicted of three drug offenses that occurred in roughly the same period of time. Thus, the court found that consecutive sentences were necessary to protect the public from future crime, and were not disproportionate to the seriousness of appellant's conduct or to the danger he poses to the public. The court additionally found that his history of criminal conduct demonstrates that consecutive sentences are necessary. Therefore, the court ordered appellant to serve 12 months in prison, to run consecutively to the term out of Wood County.

{¶ 4} Appellant has timely appealed, and brings one assignment of error for our review:

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT
SENTENCED APPELLANT TO THE MAXIMUM SENTENCE AND

ORDERED IT SERVED CONSECUTIVELY TO A PRIOR SENTENCE
FROM A DIFFERENT COURT.

II. Analysis

{¶ 5} In his assignment of error, appellant argues that his sentence is contrary to law in that the trial court did not adhere to the presumption of community control for a fifth degree felony. Further, he argues that due to his health concerns and drug addiction, the trial court should have imposed a sentence less than the maximum, and ordered it to be served concurrently with his Wood County sentence.

{¶ 6} We review sentences using the standard of review set forth in R.C. 2953.08. *State v. Banks*, 6th Dist. Lucas No. L-13-1095, 2014-Ohio-1000, ¶ 10. Under R.C. 2953.08(G)(2), we may either increase, reduce, or otherwise modify a sentence, or vacate the sentence and remand the matter for resentencing where we clearly and convincingly find that either the record does not support the trial court's findings under R.C. 2929.13(B) or 2929.14(C)(4), or the sentence is otherwise contrary to law. Notably, we do not review the trial court's sentence for an abuse of discretion. R.C. 2953.08(G)(2).

{¶ 7} Under R.C. 2929.13(B)(1)(b), the trial court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence or that is a qualifying assault offense if any of the following apply: * * * (x) The offender at the time of the offense was serving, or the offender previously had served, a prison term.

Here, the trial court appropriately exercised its discretion in sentencing appellant to prison, not community control, since appellant had previously served a two-year prison term out of the same court. Furthermore, the trial court's selection of a 12-month prison term falls within the allowed range of punishments for a fifth degree felony. R.C. 2929.14(A)(5). Thus, we find appellant's argument that the trial court erred by not sentencing him to community control to be without merit.

{¶ 8} Under R.C. 2929.14(C)(4), a trial court may sentence an offender to consecutive prison terms if:

the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single

prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶ 9} Here, the trial court expressly found at the sentencing hearing and in its sentencing entry that consecutive sentences were necessary to protect the public and were not disproportionate to the seriousness of appellant's conduct. The court also found that appellant's history of criminal conduct demonstrated that consecutive sentences were necessary to protect the public from future crime. The trial court's findings were reasonably based on appellant's lengthy and recent criminal record. Therefore, we find that appellant's argument that his sentence should have been ordered to run concurrently with his sentence out of Wood County to be without merit.

{¶ 10} Accordingly, we hold that the trial court's findings are clearly and convincingly supported by the record and are not otherwise contrary to law. Appellant's assignment of error is not well-taken.

III. Conclusion

{¶ 11} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is 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.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.J.
CONCUR.

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