

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

State of Ohio

Court of Appeals No. L-13-1149

Appellee

Trial Court No. CR0201203032

v.

Anthony Mitchell

DECISION AND JUDGMENT

Appellant

Decided: June 20, 2014

* * * * *

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

Merle R. Dech Jr., for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, which found appellant guilty of one count of retaliation, in violation of R.C. 2921.05(A) and (C), a felony of the third degree, in connection to an incident involving threats of violence against the Lucas County Common Pleas Court judiciary, security

personnel and the victim in a separate criminal case. Appellant was sentenced to a maximum term of incarceration of three years. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Anthony Mitchell, sets forth the following single assignment of error:

I. The trial court did not properly balance factors set forth in Ohio Revised Code Section 2929.12 abusing its discretion in sentencing the appellant to Thirty-Six months incarceration.

{¶ 3} The following undisputed facts are relevant to this appeal. This case stems from a courthouse incident that transpired while appellant was present at the Lucas County Court of Common Pleas in connection to a criminal sentencing hearing for his nephew in a separate criminal case. On November 28, 2012, appellant and other members of his family were present at the court during his nephew's criminal sentencing. During the sentencing hearing, appellant remained in the corridor outside of the courtroom. Appellant and his family became disgruntled when they learned the length of the prison term imposed upon their relative by the trial court. Tempers and tensions quickly flared.

{¶ 4} A melee ensued. Following sentencing, court security was attempting to clear those present in the area, including appellant. At this juncture, appellant began to noisily make threats of violence and murder towards the victim and similarly threatened

court security personnel. Appellant ranted at security, “If you touch me, I’m going to kick your ass.” The situation further devolved at that point.

{¶ 5} One of the chief witnesses for appellee, an officer with the Toledo Police Department who was present during the events, testified that appellant directed inflammatory threats of physical violence and murder at the victim of the case. Appellant then proclaimed that he was going to return and burn the entire courthouse down and kill all of the judges. Upon hearing appellant utter this litany of threats against the victim, court security and the judges, the officer arrested appellant.

{¶ 6} On April 15, 2013, appellant entered a plea of no contest to one count of retaliation, in violation of R.C. 2921.05(A) and (C), a felony of the third degree. In exchange, the remaining count against him was dismissed. Appellant was found guilty and the matter was referred for preparation of a presentence report.

{¶ 7} Notably, the record reflects that appellant first had contact with the criminal justice system in 1984 when he was 11 years old. Appellant has subsequently been in contact with the criminal justice system every year since 1984.

{¶ 8} Ultimately, the trial court determined that the maximum sentence was appropriate in this case based upon both the relevant statutory factors and appellant’s extensive criminal record. The trial court concluded that given the unique facts of this case, a heightened need to protect the public existed and warranted a maximum sentence.

{¶ 9} On May 15, 2013, appellant was sentenced to a maximum term of incarceration of 36 months. This appeal ensued.

{¶ 10} In the sole assignment of error, appellant contends that the maximum term of incarceration imposed in this case constituted an abuse of discretion. This court recently set forth the proper parameters of felony sentence review upon appeal. We noted that R.C. 2953.08(G)(2) “directly defines and establishes the proper appellate standard of review in felony sentencing cases.” *State v. Tammerine*, 6th Dist. Lucas No. L-13-1081, 2014-Ohio-425, ¶ 11.

{¶ 11} R.C. 2953.08(G)(2) establishes that, “[t]he appellant court’s standard of review is not whether the sentencing court abused its discretion.” *Id.* As stated in *Tammerine*:

An appellate court may increase, reduce, modify, or vacate and remand a dispute[d] sentence if it clearly and convincingly finds either of the following:

a) That the record does not support the sentencing court’s findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

b) That the sentence is otherwise contrary to law. *Tammerine* at ¶ 11, quoting R.C. 2953.08(G)(2).

{¶ 12} In conjunction with the above, we note that *State v. Kalish* can still be utilized in the context of determining whether a sentence is “clearly and convincingly

contrary to law” and thus “outside the permissible statutory range.” *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 15.

{¶ 13} In applying the controlling R.C. 2953.08(G)(2) parameters to the disputed felony sentence in this case, we first note that the permissible statutory sentencing range for a felony of the third degree, such as the conviction underlying this case, ranges between nine and 36 months. *See* R.C. 2929.14(A)(3)(b). Thus, the disputed term of incarceration imposed in this case clearly falls within the permissible statutory range.

{¶ 14} The record of proceedings reflects that the trial court properly considered and noted the seriousness and recidivism factors underlying this case, appellant’s lengthy criminal history, and the seriousness of the present crime. The record reflects that appellant’s sentence was not clearly and convincingly contrary to law.

{¶ 15} Next, in connection to consideration of any statutory findings potentially relevant to our review of this case, the record reveals none of the R.C. 2953.08(G)(2) statutory findings are applicable to the instant case.

{¶ 16} R.C. 2929.12(E)(4) pertains to whether a crime was committed under circumstances not likely to recur. We note that appellant’s argument that recurrence is unlikely constitutes unilateral unsupported conjecture. This troubling incident occurred within the courthouse and was witnessed by multiple officers and courthouse personnel. Appellant unpersuasively asserts that because the incident occurred in the corridor and not immediately within the courtroom itself, that somehow mitigates the seriousness of the incident or the likelihood of recurrence. We are not convinced.

{¶ 17} R.C. 2929.14(C)(4) pertains to multiple convictions on multiple offenses.

This appeal did not involve multiple convictions and multiple offenses. Thus, these statutory findings are not relevant to the present case.

{¶ 18} Based on the forgoing and pursuant to R.C. 2953.08(G)(2), we find that the disputed sentence was not clearly and convincingly based upon relevant statutory findings not supported by the record, and was not otherwise clearly and convincingly contrary to law. Wherefore, we find appellant's sole assignment of error not well-taken.

{¶ 19} 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

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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