

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

State of Ohio

Court of Appeals No. L-12-1308

Appellee

Trial Court No. CR0201201794

v.

Dean A. Rahe

**DECISION AND JUDGMENT**

Appellant

Decided: January 17, 2014

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Claudia Ford, Assistant Prosecuting Attorney, for appellee.

Peter J. McHugh, for appellant.

\* \* \* \* \*

**PIETRYKOWSKI, J.**

{¶ 1} This is an accelerated appeal from a judgment of the Lucas County Court of Common Pleas, which sentenced defendant-appellant, Dean Rahe, to a term of 36 months

in prison following his guilty plea and conviction on one count of having weapons while under disability. Rahe challenges his sentence through the following assignment of error:

I. Appellant was sentenced for alleged conduct that was not part of the plea that resulted in his conviction and therefore the maximum sentence was unreasonable.

{¶ 2} Appellant was indicted on May 21, 2012, on one count of having weapons while under disability in violation of R.C. 2923.13(A)(3), a third degree felony. Appellant initially entered a not guilty plea, but on August 7, 2012, he withdrew that plea orally and in writing and entered a plea of guilty to the charge. The court found him guilty and referred the matter for a presentence investigation and report. On September 25, 2012, the case proceeded to a sentencing hearing at which the court imposed the maximum sentence of 36 months in prison. It is the maximum nature of his prison sentence that appellant challenges on appeal.

{¶ 3} In *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 869 N.E.2d 124, the Supreme Court of Ohio set forth a two-step analysis for review of felony sentences on appeal. First, appellate courts are required to “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.” *Id.* at ¶ 26. Second, if the first prong is satisfied, the appellate court reviews the decision imposing sentence under an abuse of discretion standard. *Id.*

{¶ 4} Appellant concedes that the 36-month sentence imposed by the trial court was within the statutory range, R.C. 2929.14(A)(3)(b), and so was not clearly and convincingly contrary to law. He asserts, however, that the sentence was unreasonable and an abuse of discretion given that appellant was not convicted of felonious assault or any other assaultive behavior and given that, pursuant to the plea agreement, the state agreed it would not pursue additional charges from the events which led to the instant charge.

{¶ 5} R.C. 2929.11 and 2929.12 set forth the factors to be considered by a trial court in determining the appropriate sentence for a felony offense. Included in that consideration is the defendant's history of criminal convictions and whether the defendant has failed to respond favorably to sanctions previously imposed for criminal convictions. R.C. 2929.12(D)(2) and (3). At the sentencing hearing below, the court stated that it had reviewed the presentence report, noted that appellant had previously been convicted of four felonies and one misdemeanor, and noted that the present case was appellant's third weapons conviction. Following a previous conviction for carrying a concealed weapon, appellant was sentenced to community control, which he violated twice. A 16-month prison sentence was then imposed. Following appellant's release from prison he was indicted on the charges in this case. The court determined that appellant has shown himself to be unable to refrain from having and using weapons, despite having served terms in prison and a correctional treatment facility. The court therefore imposed the maximum sentence.

{¶ 6} We have thoroughly reviewed the sentencing transcript and the record below and conclude that the lower court considered the relevant R.C. 2929.11 and 2929.12 factors in its deliberation. We therefore cannot say that the lower court abused its discretion in imposing the maximum sentence on appellant. The sole assignment of error is not well-taken.

{¶ 7} On consideration whereof, the court finds that appellant was not prejudiced or prevented from having a fair trial and 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.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.

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JUDGE

James D. Jensen, J.  
CONCUR.

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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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