

[Cite as *State v. Howard*, 2016-Ohio-3246.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE OF OHIO,)	
)	
PLAINTIFF-APPELLEE,)	
)	CASE NO. 15 MA 0031
V.)	
)	OPINION
PATRICK HOWARD,)	
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from Court of Common Pleas of Mahoning County, Ohio Case No. 2013CR365

JUDGMENT: Affirmed

APPEARANCES:
For Plaintiff-Appellee Paul Gains
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JUDGES:
Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Carol Ann Robb

Dated: May 26, 2016

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DONOFRIO, P.J.

{¶1} Defendant-appellant, Patrick Howard, appeals from a Mahoning County Common Pleas Court judgment convicting him of felonious assault following a jury trial and the resulting sentence.

{¶2} On April 25, 2013, a Mahoning County Grand Jury indicted appellant on one count of attempted murder, a first-degree felony in violation of R.C. 2903.02(A)(D) and R.C. 2923.02(A); two counts of felonious assault, second-degree felonies in violation of R.C. 2903.11(A)(1)(D) and (A)(2)(D); and two counts of aggravated robbery, first-degree felonies in violation of R.C. 2911.01(A)(1)(C) and (A)(3)(C).

{¶3} The matter proceeded to a jury trial. The jury found appellant not guilty of attempted murder and the aggravated robbery counts. It found him guilty of the two felonious assault counts.

{¶4} The trial court held a sentencing hearing. It merged the two felonious assault counts. It then sentenced appellant to a maximum prison term of eight years. Appellant filed a timely notice of appeal on February 27, 2015.

{¶5} Appellant raises a single assignment of error that states:

PATRICK HOWARD’S SENTENCE IS CONTRARY TO LAW OR
AN ABUSE OF DISCRETION.

{¶6} Appellant argues his maximum sentence is contrary to law or constitutes an abuse of discretion. He points out that the jury acquitted him of attempted murder and aggravated robbery. Therefore, he asserts, the jury found his version of the events more credible on these charges. Additionally, he notes that the state characterized his prior criminal record as “almost nil.” Based on these facts, appellant argues the court erred in finding that he committed the worst form of felonious assault. He cites to other cases that he characterizes as similar where the court did not sentence the defendants to maximum sentences. Appellant argues his sentence is incompatible with R.C. 2929.11 because it is not consistent with sentences imposed for similar crimes by similar offenders and, therefore, is contrary

to law.

{¶7} The Ohio Supreme Court has recently held that when reviewing a felony sentence, an appellate court must uphold the sentence unless the evidence clearly and convincingly does not support the trial court's findings under the applicable sentencing statutes or the sentence is otherwise contrary to law. *State v. Marcum*, Slip Opinion No. 2016-Ohio-1002, ¶ 1.

{¶8} The trial court sentenced appellant to eight years in prison. This is the maximum sentence permitted for a second-degree felony within the applicable statutory range. R.C. 2929.14(A)(2).

{¶9} Although the General Assembly has reenacted the judicial fact-finding requirement for consecutive sentences, it has not revived the requirement for maximum sentences. *State v. Riley*, 7th Dist. No. 13 MA 180, 2015-Ohio-94, ¶ 34. Therefore, the trial court was not required to make any special findings before sentencing appellant to a maximum sentence.

{¶10} In sentencing a felony offender, the court must consider the overriding principles and purposes set out in R.C. 2929.11, which are to protect the public from future crime by the offender and others and to punish the offender. The trial court shall also consider various seriousness and recidivism factors as set out in R.C. 2929.12(B)(C)(D)(E). “[N]either R.C. 2929.11 nor R.C. 2929.12 requires the sentencing court to make specific findings regarding the purposes and principles of sentencing, or seriousness and recidivism factors at the sentencing hearing or in the sentencing judgment entry.” *State v. Taylor*, 7th Dist. No. 15 MA 0078, 2016-Ohio-1065, ¶ 14, citing *State v. Henry*, 7th Dist. No. 14 BE 40, 2015-Ohio-4145, ¶ 22, *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 31, and *State v. Arnett*, 88 Ohio St.3d 208, 215, 724 N.E.2d 793 (2000).

{¶11} In this case, the trial court indicated, both in the judgment entry of sentence and at the sentencing hearing, that it considered the factors and conditions required by R.C. 2929.11 and R.C. 2929.12. (Judgment Entry of Sentence; Sen. Tr. 12-13).

{¶12} R.C. 2929.11(B) provides that a sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set out in R.C. 2929.11(A), “commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.”

{¶13} Appellant asserts his sentence is not similar to other offenders who committed similar crimes. He claims his sentence is disproportionately high.

{¶14} Appellant failed to raise the proportionality argument in the trial court. This court has stated “that a disproportionality argument must be raised in the trial court and the defendant must present some evidence to the trial court for analysis in order to preserve the issue for appeal.” *State v. Williams*, 7th Dist. No. 11 MA 131, 2012-Ohio-6277, ¶ 77, citing *State v. McClendon*, 7th Dist. No. 11 MA 15, 2012-Ohio-1410, ¶ 15. Because appellant failed to raise the issue of proportionality of sentences in the trial court, he has waived this issue on appeal.

{¶15} Finally, appellant argues that his maximum sentence was contrary to law because the prosecutor characterized his record as “almost nil.” But the trial court, which reviewed the presentence investigation, found that appellant “has a history of convictions and juvenile involvement, although he has not served time in prison.” (Sen. Tr. 13). The court noted that appellant was previously charged with assault, which was reduced to domestic violence. (Sen. Tr. 13). It noted appellant had prior adjudications for delinquency, a history of criminal conduct, and has failed to respond favorably to past sanctions. (Sen. Tr. 13-14). The court stated that it found this case involved a “violent and heinous act” because appellant used a deadly weapon, a knife, multiple times to attack the victim. (Sen. Tr. 12). The court went on to find that appellant committed the worst form of the offense because his actions were calculated and brutal, he cut and scarred a young woman, appellant was much larger and stronger than the victim, and the victim suffered multiple cuts, abrasions, and bruises. (Sen. Tr. 15-16). Thus, while the prosecutor may have characterized appellant’s record as almost nil, the record reflects that appellant did have a criminal

record and that the court considered this record along with numerous other factors in meting out appellant's sentence.

{¶16} In sum, appellant's sentence is not contrary to law. Accordingly, appellant's sole assignment of error is without merit.

{¶17} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., concurs.

Robb, J., concurs.