

[Cite as *State v. Smith*, 2003-Ohio-168.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 81056

STATE OF OHIO	:	
	:	
Plaintiff-appellee	:	
	:	JOURNAL ENTRY
vs.	:	and
	:	OPINION
SAMUEL SMITH	:	
	:	
Defendant-appellant	:	
	:	

DATE OF ANNOUNCEMENT	:	
OF DECISION	:	JANUARY 16, 2003

CHARACTER OF PROCEEDING	:	Criminal appeal from Cuyahoga
	:	County Common Pleas Court
	:	Case No. CR-415805

JUDGMENT	:	AFFIRMED.
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DATE OF JOURNALIZATION	:	
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APPEARANCES:

For plaintiff-appellee:	WILLIAM D. MASON
	Cuyahoga County Prosecutor
	BRENDAN J. MACKIN, Assistant
	Justice Center, Courts Tower
	1200 Ontario Street
	Cleveland, Ohio 44113

For defendant-appellant:	JOHN P. PARKER
	Attorney at Law
	The Brownhoist Building
	4403 St. Clair Avenue
	Cleveland, Ohio 44103

KENNETH A. ROCCO, P.J.:

{¶1} Appellant was found guilty of possession of less than one gram of crack cocaine in violation of R.C. 2925.11, and was sentenced to 12 months' imprisonment, the maximum term. He now argues that the sentence should be reversed and the matter remanded for resentencing, because the court failed to ensure that the sentence imposed was consistent with similar sentences imposed for similar offenders, as required by R.C. 2929.11(B).

{¶2} At sentencing, the court noted that this offense was the 28th criminal conviction for this 42 year old man. Prior offenses included aggravated burglary, aggravated robbery, aggravated arson, grand theft, forgery, uttering, passing bad checks, breaking and entering, receiving stolen property, obstruction of official business, and tampering with records. A sentence imposed on appellant in 1991 ordered drug treatment, which the court found to indicate a history of drug abuse prior to this offense.

{¶3} At the conclusion of the sentencing hearing, the court imposed a sentence of 12 months' imprisonment, and stated:

{¶4} "But I want the record to indicate that this individual has a long history of criminal convictions, of very serious crimes. He has a very high rate for recidivism and constitutes a likely threat of further criminal activity.

{¶5} "He has crimes that occurred while he was on bond and on bail. He has not responded favorably to community control

sanctions in the past. He continues to use drugs. He has lied to the Court.

{¶6} "I think that a sentence less than the maximum would demean the significance of the offense and his criminal conduct."

{¶7} Appellant now urges that the court did not engage in the analysis required by R.C. 2929.11(B), which directs the court to impose a sentence which is, among other things, "consistent with sentences imposed for similar crimes committed by similar offenders." Appellant has not shown that the court did not engage in this analysis. Unlike many other parts of the sentencing statutes, R.C. 2929.11(B) does not require the court to make express findings. Cf. *State v. Edmondson* (1999), 86 Ohio St.3d 324. Thus, the lack of any express finding that appellant's sentence was consistent with the sentences imposed for similar crimes by similar offenders is neither surprising nor erroneous. There is nothing in the record to demonstrate that the court did not consider the sentences imposed for similar crimes by similar offenders. In fact, the court's judgment entry expressly finds that "prison is consistent with the purpose of R.C. 2929.11." Therefore, appellant has failed to demonstrate any error by the common pleas court.

{¶8} On the other hand, the court did comply with the dictates of 2929.19(B)(2)(c), which requires the court to make a finding that gives its reasons for imposing the maximum term of imprisonment. Under R.C. 2929.14(C), the court may impose the

maximum prison term "upon offenders who poses the greatest likelihood of committing future crimes." The court here found that appellant posed a very high likelihood of recidivism, justifying the maximum term of imprisonment.

Affirmed.

PRESIDING JUDGE
KENNETH A. ROCCO

PATRICIA A. BLACKMON, J. CONCURS

TERRENCE O'DONNELL, J. CONCURS WITH SEPARATE CONCURRING
OPINION

{¶9} JUDGE TERRENCE O'DONNELL, CONCURRING SEPARATELY:

{¶10} I write separately to highlight for those engaged on this issue to point out that in my view R.C. 2929.11(B) does not impose a duty on a trial judge at sentencing. Rather, I would submit that this section has been misconstrued; it is after all only a legislative statement outlining the purposes of felony sentencing. Had the legislature intended for the sentencing trial courts of this state to engage in the kind of review forecasted in *State v. Lyons*, Cuyahoga App. No. 80220, 2002-Ohio-3424, and as Smith here suggests, it could have mandated such an obligation by incorporating language as it did with its directions for trial judges when imposing more than a minimum sentence (R.C. 2929.14(B)), when imposing a maximum sentence (R.C. 2929.14(C)), and when imposing a consecutive sentence (R.C. 2929.14(E)(4)). It did not do so.

{¶11} Since our role is not to make the law, but rather to interpret it, I offer my view that R.C. 2929.22(B) does not impose any discretionary or mandatory duty or burden on a court in sentencing a criminal defendant. See *State v. Bolton*, Cuyahoga App. No. 80263, 2002-Ohio-4571.

{¶12} For this reason, I concur with the judgment reached by today's majority.