

[Cite as *State v. Eppinger*, 2009-Ohio-5233.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
**No. 92441**

---

**STATE OF OHIO**

PLAINTIFF-APPELLANT

vs.

**NATHAN EPPINGER**

DEFENDANT-APPELLEE

---

**JUDGMENT:  
REVERSED AND REMANDED**

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-515565

**BEFORE:** McMonagle, P.J., Boyle, J., and Celebrezze, J.

**RELEASED:** October 1, 2009

**JOURNALIZED:  
ATTORNEYS FOR APPELLANT**

William D. Mason  
Cuyahoga County Prosecutor  
Pamela Bolton  
Brad S. Meyer  
Assistant Prosecuting Attorneys  
The Justice Center, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, OH 44113

**ATTORNEYS FOR APPELLEE**

Robert L. Tobik  
Cuyahoga County Public Defender  
Robert M. Ingersoll  
Erika B. Cunliffe  
Assistant Public Defenders  
310 Lakeside Avenue, Suite 200  
Cleveland, OH 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

CHRISTINE T. McMONAGLE, P.J.:

{¶ 1} Plaintiff-appellant, the state of Ohio, appeals the trial court's judgment sentencing defendant-appellee, Nathan Eppinger, to 25 days in jail. We reverse and remand.

{¶ 2} Eppinger was charged with two counts of forgery. He pleaded guilty to one count, a fifth-degree felony, and the remaining count was dismissed. After a presentence investigation report was prepared, the court sentenced him to 25 days in jail with credit for time served (i.e., 25 days). Eppinger was also fined \$100 and ordered to pay court costs.

{¶ 3} The record demonstrates that Eppinger attempted to cash a fraudulent payroll check at a Wal-Mart for a man he knew only as "Slim," and whom he had briefly previously encountered at the Bishop Cosgrove Center in Cleveland. "Slim" knew that Eppinger had identification and he told Eppinger he would pay him if he cashed the check; Eppinger had just lost his job and agreed. He was apprehended in the act; the check was not cashed and, thus, Wal-Mart did not suffer a financial loss.

{¶ 4} Over the State's objection, Eppinger was released on a personal bond with court supervision after his plea. He promised the court that he would find employment. In the approximate two weeks between the plea and sentencing hearings, Eppinger found a job and twice tested negative for drugs. At sentencing, he told the court that "[a]fter this job [is] over,<sup>1</sup> I will

---

<sup>1</sup>The employment was seasonal.

find another job \* \* \* and do what I have to do [to] stay out of your courtroom.”

{¶ 5} The State now challenges the 25-day jail sentence. In *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, the Supreme Court of Ohio announced the standard for appellate review of felony sentences subsequent to its ruling in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. Post-*Foster*, we must employ a two-step analysis to review sentences. First, we “must 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.” *Kalish* at ¶4. If this first prong is satisfied, we must then review the trial court’s decision under an abuse-of-discretion standard. *Id.*

{¶ 6} In its first assignment of error, the State contends that the trial court failed to consider R.C. 2929.11 and 2929.12 in sentencing Eppinger. Post-*Foster*, the trial court has wide discretion to sentence an offender within the allowable statutory range permitted for a particular offense. *Id.* at ¶100.

The trial court is no longer required to make findings or give reasons for imposing a sentence. However, the court must still consider R.C. 2929.11, regarding the purposes of sentencing, and R.C. 2929.12, regarding the seriousness of the crime and factors indicative of recidivism. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, ¶38; *Kalish* at ¶13. The

court is not required to make findings pursuant to R.C. 2929.11 and 2929.12, however; it need only consider these provisions. *Mathis*.

{¶ 7} The record in this case demonstrates that the trial court considered R.C. 2929.11 and 2929.12. The sentencing journal entry provides in part that, “[t]he court considered all required factors of the law.” Further, at sentencing the trial judge questioned Eppinger in detail about how he came to commit this crime and how he would prevent it from occurring again.

As already mentioned, Eppinger was out of work at the time of the crime, and on the promise of getting paid, he attempted to cash the check. In the time between his plea and sentencing hearings, he found employment and indicated that he would continue to remain employed. Eppinger also told the court that he lived with his fiancée, who suffered from medical problems, and whom he supported. He indicated that they had plans to get married and “do the right thing.”

{¶ 8} The court noted that Wal-Mart did not suffer an economic loss because the check was not cashed. Further, contrary to the State’s argument that “the trial court completely disregarded” Eppinger’s criminal history, the court expressed its concern about that history, describing it as “pretty extensive.” On this record, the trial court properly considered R.C. 2929.11 and 2929.12 in sentencing Eppinger.

{¶ 9} However, in sentencing Eppinger, “[t]he sentencing court [had] discretion to impose either a sentence of imprisonment or community control sanctions \* \* \*.” 1 Griffin & Katz, Ohio Felony Sentencing Law (2006 Ed.) 109, Section 2929.13. R.C. 2929.15, governing community control sanctions, provides that if a court is not going to sentence an offender to prison, “the court may directly impose a sentence that consists of one or more community control sanctions authorized pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code.” R.C. 2929.16, 2929.17, and 2929.18 govern residential sanctions, nonresidential sanctions, and financial sanctions, respectively.

{¶ 10} One of the results of sentencing an offender to community control is supervision of the offender. To that end, R.C. 2929.15(A)(2)(a) provides as follows:

{¶ 11} “If a court sentences an offender to any community control sanction or combination of community control sanctions \* \* \* the court *shall* place the offender under the general control and supervision of a department of probation \* \* \* for purposes of reporting to the court a violation of any condition of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender’s probation officer.” (Emphasis added.)

{¶ 12} Further, R.C. 2929.19(B)(5) requires that a court sentencing an offender to community control sanctions must:

{¶ 13} “\* \* \* notify the offender that, if the conditions of the sanction are violated, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to section 2929.14 of the Revised Code.” See, also, *State v. Brown* (Mar. 22, 2001), Cuyahoga App. No. 77875.

{¶ 14} The sentence pronounced by the court was as follows: “Okay, Mr. Eppinger, I sentence you to 25 days county jail, credit for 25 days served, \$100 fine and \$100 costs.” Similarly, the sentencing entry provides: “It is now ordered and adjudged that said defendant Nathan Eppinger is sentenced to the Cuyahoga County Jail for a term of 25 days. Defendant to receive jail time credit for 25 days.”

{¶ 15} Eppinger was not sentenced to either prison or a community control under the supervision of the probation department; further, the court did not inform him of the consequences of not paying the fine or court costs. Because the sentence was not imposed under the supervision of the probation department and Eppinger was not informed of the consequences of violating the sanction, it was not a valid community control sanction.

{¶ 16} Accordingly, the sentence was contrary to law, the first prong under *Kalish*. As the sentence was contrary to law, we need not consider whether the trial court abused its discretion, the second prong under *Kalish*. The first assignment of error is sustained in part.

{¶ 17} For its second assigned error, the State contends that “the trial court erred by terminating community control sanctions before a ‘significant period of time’ elapsed,” in violation of R.C. 2929.15(C). As just noted, the court did not sentence Eppinger to a community control sanction under the supervision of probation department for *any* period of time. Thus, the sentence was contrary to law. Accordingly, the second assignment of error is moot.

Judgment reversed and remanded.

Costs waived.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, PRESIDING JUDGE



MARY J. BOYLE, J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR