

[Cite as *State v. Brooks*, 2010-Ohio-1063.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**Nos. 93347 and 93613**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**DONZIEL BROOKS**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case Nos. CR-520754 and CR-520440

**BEFORE:** Dyke, J., Gallagher, A.J., and Boyle, J.  
**RELEASED:** March 18, 2010

**JOURNALIZED:**

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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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

ANN DYKE, J.:

Defendant-appellant, Donziel Brooks (“appellant”), appeals his sentence. For the reasons that follow, we affirm.

On February 5, 2009, appellant was indicted in Cuyahoga County Common Pleas Case No. CR-520440 for one count of theft in violation of R.C. 2913.02(A)(1) and two counts of failure to comply with an order of a police officer in violation of R.C. 2921.331(B). Initially, he pled not guilty to the charges.

On February 9, 2009, appellant was indicted in another case, Cuyahoga County Common Pleas Case No. CR-520754, for one count of receiving stolen property in violation of R.C. 2913.51(A). Again, appellant pled not guilty to the charges.

On March 12, 2009, appellant pled guilty to the theft charge and one count of failure to comply with an order of a police officer as charged in Case No. CR-520440. The state nolleed the remaining charge of failure to comply. At the same plea hearing, appellant also pled guilty to receiving stolen property as charged in Case No. CR-520754.

On April 24, 2009, the court sentenced appellant to 12 months imprisonment for the theft conviction and three years for the failure to comply conviction. The court ordered said sentences to run consecutive to each other and consecutive to a 12 month sentence for Case No. CR-520754, for a total of five years imprisonment. Additionally, the court imposed three years of postrelease control.

Appellant now appeals and presents one assignment of error for our

review. His assignment states:

“Appellant was not accorded effective assistance of counsel in that trial counsel failed to raise the issue of a disproportionate sentence.”

In order to establish a claim of ineffective assistance of counsel, the applicant must demonstrate that counsel’s performance was deficient and that the deficient performance prejudiced the defense. *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674; *State v. Bradley* (1989), 42 Ohio St.3d 136, 143, 538 N.E.2d 373, cert. denied (1990), 497 U.S. 1011, 110 S.Ct. 3258, 111 L.Ed.2d 768.

In *Strickland*, the United States Supreme Court ruled that judicial scrutiny of an attorney’s work must be highly deferential. *Strickland*, supra at 689. The Court noted that it is very tempting for a defendant to question his lawyer’s performance after conviction and that it would be too easy for a court, examining an unsuccessful defense in hindsight, to conclude that a particular act or omission was deficient. *Id.* Therefore, “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’” *Id.*

Here, appellant asserts that his trial counsel was ineffective for failing to raise the argument that his sentence was disproportionate to his young age. It is well-settled that “a proper and circumspect application of the sentencing

guidelines acts to ensure proportionality and consistency under R.C. 2929.11(B).”

*State v. Marker*, Portage App. No. 2006-P-0014, 2007-Ohio-3379. Therefore, when a trial court considers and applies the necessary statutory provisions, a sentence must be deemed, as a matter of law, consistent and proportionate to those imposed from similar crimes. *Id.*

In this case, the trial court clearly considered and applied the necessary statutory provisions when sentencing appellant. During the sentencing hearing, the court heard the arguments of counsel, appellant, on his own behalf, and his mother. During arguments, defense counsel repeatedly highlighted appellant’s age as a mitigating factor and, as such, requested community control sanctions rather than prison time. Thereafter, but prior to sentencing, the court expressly announced its consideration of the purposes and principles enunciated in R.C. 2929.11 as well as the factors listed in R.C. 2929.12. Additionally, the court acknowledged appellant’s intelligence and the support of his family, but was greatly concerned with his continued drug use and extensive criminal history as a juvenile.

After reviewing his presentence investigation report, the court noted that appellant committed the crimes in these two cases less than three months after being released from the Ohio Department of Youth Services (“ODYS”) and while still on parole. Then the court listed each of appellant’s nine prior juvenile adjudications, paying particular attention to his many arrests for failure to comply with police orders. In light of the foregoing, the court concluded that appellant

was a danger to people in his community and had a greater likelihood of recidivism. Finally, the court sentenced appellant well within the statutory range of prison sentences prescribed for each felony under R.C. 2929.14.

Because his sentence is clearly and convincingly supported by the record, we find that, as a matter of law, appellant's sentence is consistent with and not disproportionate to similar crimes committed by similar offenders. See *Marker*, supra. Accordingly, appellant has not suffered any prejudice and his counsel was not ineffective. His sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

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. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

ANN DYKE, JUDGE

MARY J. BOYLE, J., CONCURS;  
SEAN C. GALLAGHER, A.J., CONCURS IN JUDGMENT ONLY