[Cite as *State v. Pratt*, 2010-Ohio-1426.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93123

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ELBERT PRATT

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-518042

BEFORE: Cooney, J., McMonagle, P.J., and Sweeney, J.

RELEASED: April 1, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANT

Johnny M. Chandler, Sr.
614 W. Superior Avenue
Suite 1106
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Lorraine Debose
Assistant County Prosecutor
9th Floor, Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Elbert Pratt ("Pratt"), appeals his sentence for domestic violence. Finding no merit to the appeal, we affirm.

{¶ 2} In November 2008, Pratt was charged with domestic violence,[1] kidnapping, and criminal damaging involving his attack of his girlfriend at gunpoint in their shared home. In February 2009, Pratt pled guilty to domestic violence, a third degree felony, with a forfeiture specification. The remaining counts were nolled. The trial court sentenced him to five years in prison.

{¶ 3} Pratt now appeals. In his sole assignment of error, he claims that the trial court erred in sentencing him for a third degree felony when he had only one prior domestic violence conviction.

{¶ 4} Pratt was convicted of domestic violence under R.C. 2919.25(A), which provides, "No person shall knowingly cause or attempt to cause physical harm to a family or household member." The sentencing provision of the statute provides, in pertinent part:

"(D)(1) Whoever violates this section is guilty of domestic violence, and the court shall sentence the offender as provided in divisions (D)(2) to (6) of this section.

* * *

[1]The domestic violence charge carried specifications for prior domestic violence and menacing by stalking convictions.

"(3) Except as otherwise provided in division (D)(4) of this section, if the offender previously has pleaded guilty to or been convicted of domestic violence, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to domestic violence, a violation of section 2903.14, 2909.06, 2909.07, 2911.12, 2911.211, or 2919.22 of the Revised Code if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the commission of the offense, a violation of division (A) or (B) of this section is a felony of the fourth degree * * *.

"(4) If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in division (D)(3) of this section involving a person who was a family or household member at the time of the violations or offenses, a violation of division (A) or (B) of this section is a felony of the third degree * * * ."

{¶ 5} In the instant case, Pratt argues that because he had only one prior conviction for domestic violence and one prior conviction for menacing by stalking, but not two convictions of one or the other, he should not have been convicted and sentenced for a third degree felony. We disagree with Pratt's reading of the statute.

{¶ 6} R.C. 2919.25(D)(4) provides that if an offender has previously been "convicted of two or more offenses * * * of the type described in division (D)(3) * * * involving a person who was a * * * household member at the time of the

* * * offenses," and violates R.C. 2919.25(A), the offender will be guilty of a third degree felony. Pratt concedes that both domestic violence and menacing by stalking each fit under the category of offenses contemplated by R.C. 2919.25(D)(3). R.C. 2919.25(D)(3) includes, among other offenses, prior convictions for domestic violence and convictions for "any offense of violence" where the victim was a family or household member at the time of the commission of the offense. R.C. 2901.01(A)(9)(a) defines menacing by stalking under R.C. 2903.211 as an offense of violence, and Pratt's indictment specifies that the victim of Pratt's prior conviction for menacing by stalking was a family or household member. Therefore, he has two prior "(D)(3)" offenses. Accordingly, the trial court properly classified Pratt's conviction for domestic violence as a third degree felony and sentenced him to a prison term within the statutory guidelines for an offense of that degree.

{¶ 7} The sole assignment of error is overruled.

{¶ 8} Judgment is affirmed.

It is ordered that appellee recover of 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. 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.

_____

COLLEEN CONWAY COONEY, JUDGE

CHRISTINE T. McMONAGLE, P.J., and
JAMES J. SWEENEY, J., CONCUR