

[Cite as *State v. Perez*, 2010-Ohio-6170.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 94728 and 94729

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LUIS PEREZ

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeals from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-459311 and CR-459310

BEFORE: Stewart, J., Gallagher, A.J., and Kilbane, J.

RELEASED AND JOURNALIZED: December 16, 2010

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MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant, Luis Perez, appeals from a resentencing that imposed, among other things, a mandatory term of postrelease control. Although conceding that the concurrent five-year sentence imposed by the court is within applicable statutory limits, Perez argues that the court abused its discretion by failing to consider the relevant factors and guidelines for sentencing.

{¶ 2} In 2005, Perez pleaded guilty to three counts each of robbery, abduction, and impersonation of a police officer in case CR-459311. All of the counts were third degree felonies. The court sentenced Perez to five years on each count and ordered those counts to be served concurrently. These combined sentences were ordered to be served concurrent with sentences imposed in case CR-459310. The court also stated that “postrelease control is part of this prison sentence for the maximum time allowed for the above felony(s) [sic] R.C. 2967.28.” The parties agreed, however, that the court should have imposed a mandatory three-year term of postrelease control on one of the robbery counts. So in 2010, shortly before the expiration of Perez’s five-year prison term, the court resentenced Perez. It specifically informed Perez that postrelease control was mandatory for a term of three years and then reimposed the same five-year sentences on all counts.

{¶ 3} In paragraph seven of the syllabus to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, the supreme court held that “[t]rial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences.” See, also, *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, at paragraph three of the syllabus. While the trial court is required to consider certain statutory factors before issuing a sentence, the court is not required to

“use specific language or make specific findings on the record in order to evince the requisite consideration of the applicable seriousness and recidivism factors [of R.C. 2929.12.]” *State v. Arnett* (2000), 88 Ohio St.3d 208, 215, 724 N.E.2d 793. We have thus held that a recitation in a sentencing entry that the court considered “all required factors of the law” is sufficient to show the consideration required by the court. See *State v. Moon*, 8th Dist. No. 93673, 2010-Ohio-4483, at ¶14; *State v. Hawks*, 8th Dist. No. 93582, 2010-Ohio-4345, at ¶16; *State v. Howell*, 8th Dist. No. 92827, 2010-Ohio-3403, at ¶36. The court’s sentencing entry states that it “considered all required factors of the law,” so it fulfilled its duty to consider the relevant statutory criteria.

{¶ 4} We moreover find no abuse of discretion in the length of the sentence because the sentence ordered by the court was consistent with Perez’s own request that the court “sentence him basically to the original five year sentence with all counts in both cases being concurrent.” A defendant who agrees to a sentence cannot be heard to complain that the court abused its discretion by sentencing him to that which he sought. See *State v. Salce*, 6th Dist. No. H-06-032, 2007-Ohio-3687, at ¶11.¹

¹We are aware that R.C. 2953.08(D)(1) states that “[a] sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge.” While Perez certainly asked the court to resentence him to the original five-year term, there is no similar request from the state.

Judgment affirmed.

It is ordered that appellee recover of appellant its 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 Cuyahoga County Court of Common Pleas 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.

MELODY J. STEWART, JUDGE

SEAN C. GALLAGHER, A.J., and
MARY EILEEN KILBANE, J., CONCUR

The state told the court that the parties had an agreement on the necessity for a mandatory term of postrelease control, but it did not expressly state its desire for the court to reimpose the original sentence. Without an affirmative agreement with the state, we cannot find that there was a *joint* recommendation of a sentence for purposes of R.C. 2953.08(D)(1).