**[Cite as *State v. Cromwell*, 2010-Ohio-768.]**

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION
**No. 91452**

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## STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

## ADRIAN CROMWELL

DEFENDANT-APPELLANT

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**JUDGMENT:**
**AFFIRMED**

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Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-506721

**BEFORE:** Kilbane, P.J., Jones, J., and Cooney, J.

**RELEASED:** March 4, 2010

**JOURNALIZED:**

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MARY EILEEN KILBANE, P.J.:

**{¶ 1}** Appellant, Adrian Cromwell ("Cromwell"), appeals his eight-year sentence for aggravated robbery. Cromwell argues that the trial court incorrectly advised him of the implications of violating postrelease control at sentencing, and that his sentence is inconsistent with other sentences imposed for similar crimes committed by similar offenders. After a review of the law and pertinent facts, we affirm.

**{¶ 2}** On December 3, 2007, at approximately 9:30 p.m., Thomas Klingensmith ("Klingensmith") returned to his home located at 20503 Raymond Street, Maple Heights, Ohio. As Klingensmith approached his side door, he was approached by Cromwell, A.B.,[1] and Fred Booker ("Booker"). Two of these individuals pushed Klingensmith down to the ground, while the third placed a sawed-off shotgun into Klingensmith's stomach, demanded his money, and threatened to shoot Klingensmith if he refused to comply. Klingensmith gave them his wallet, and the three men fled through Klingensmith's backyard. (Tr. 16.)

**{¶ 3}** Maple Heights police officers arrived with their canine unit and were able to follow the tracks left in the snow to a house located at 20608 Watson Road, one block away. In the basement of the home, police officers

[1]Juveniles are referred to herein by their initials or title in accordance with this court's established policy regarding nondisclosure of the identities of juveniles.

located Cromwell, A.B., Booker, a sawed-off shotgun, and personal belongings of Klingensmith. (Tr. 16-17.)

**{¶ 4}** On February 8, 2008, a two-count indictment was issued against Cromwell. Count 1 charged Cromwell with aggravated robbery, in violation of R.C. 2911.01(A)(1), a felony of the first degree, with one- and three-year firearm specifications. Count 2 charged Cromwell with having a weapon while under disability, in violation of R.C. 2923.13(A)(2), a felony of the third degree, and contained a forfeiture specification.

**{¶ 5}** On April 14, 2008, the State amended the indictment to dismiss the three-year firearm specification on Count 1 and nolle Count 2. Cromwell then entered a plea of guilty to Count 1, aggravated robbery, with a one-year firearm specification. That same day, Cromwell was sentenced to seven years on the aggravated robbery conviction and one year on the firearm specification, for an aggregate sentence of eight years of imprisonment.

**{¶ 6}** Cromwell appealed, asserting two assignments of error for our review.

**{¶ 7}** ASSIGNMENT OF ERROR NUMBER ONE

**"THE SENTENCE IMPOSED IS CONTRARY TO LAW AND MUST BE VACATED BECAUSE THE TRIAL COURT INCORRECTLY ADVISED THE DEFENDANT ABOUT THE CONSEQUENCES OF VIOLATING POST-RELEASE CONTROL."**

**{¶ 8}** Cromwell argues that he was not properly advised of the

consequences of violating postrelease control at the sentencing hearing because the trial court informed him that a violation of his postrelease control would result in up to five years of imprisonment, when it would actually only result in up to four years of imprisonment. Cromwell has failed to demonstrate how he was prejudiced by the trial court's error. After a review of the applicable law, we affirm.

**{¶ 9}** In support of Cromwell's contention that erroneous information regarding the consequences for violating postrelease control renders a sentence void, he cites to both *State v. Evans*, Cuyahoga App. Nos. 84966 and 86219, 2005-Ohio-5971 and *State v. Jones*, Cuyahoga App. No. 89499, 2008-Ohio-802. However, both cases are clearly distinguishable. In both *Evans* and *Jones*, the defendants were erroneously misinformed that violations of their postrelease control would result in less prison time than mandated by statute. In *Evans*, the defendant was advised that a violation of postrelease control could result in up to three years of imprisonment, when it could have actually resulted in three years and five months of imprisonment. Similarly, in *Jones*, the defendant was advised that a violation of postrelease control could result in up to one year of imprisonment, when it could actually result in up to three years and six months of imprisonment.

**{¶ 10}** In a factually similar case, *State v. Spears*, Medina App. No. 07CA0036-M, 2008-Ohio-4045, the Ninth District held that when the trial

court erroneously overstates the amount of postrelease control, the defendant does not suffer a prejudice that renders his sentence void. *Spears* further stated that such an error at the sentencing hearing, when not present in the journal entry, is harmless.

**{¶ 11}** We find *Spears* to be persuasive and adopt its reasoning. The trial court's error in informing Cromwell that a violation of postrelease control could result in up to five years of imprisonment, instead of four, did not prejudice him in any way. The sentencing entry appropriately states that Cromwell will be subject to five years of postrelease control subject to R.C. 2967.28. The sentencing entry did not incorporate the trial court's misstatement that Cromwell could face up to five years of imprisonment for a violation of postrelease control and specifically refers to R.C. 2967.28 that states an offender could face up to one-half of his original sentence for a violation.

**{¶ 12}** Finding that Cromwell suffered no prejudice, his first assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER TWO

**"APPELLANT'S SENTENCE IS CONTRARY TO LAW AND VIOLATIVE OF DUE PROCESS BECAUSE THE TRIAL COURT FAILED TO CONSIDER WHETHER THE SENTENCE WAS CONSISTENT WITH THE SENTENCES IMPOSED FOR SIMILAR CRIMES COMMITTED BY SIMILAR OFFENDERS AND BECAUSE AN EIGHT-YEAR SENTENCE FOR A FIRST TIME OFFENDER IS INCONSISTENT WITH SUCH SENTENCES."**

**{¶ 13}** Cromwell argues that the eight-year prison sentence he received is inconsistent with sentences imposed on similar offenders for similar crimes.

**{¶ 14}** In *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, the Ohio Supreme Court recently established a two-prong test for reviewing sentences in a split decision. We must first review the sentence to determine whether the trial court adhered to all applicable rules and statutes when imposing its sentence. *Kalish* at 26. A sentence that is outside of the permissible statutory range is contrary to law and merits reversal. Id. Secondly, if the sentence falls within the applicable statutory range, and is not contrary to law, this court then reviews the sentence for an abuse of discretion. In order for a trial court to have abused its discretion, there must be "more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, citing *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.

**{¶ 15}** Cromwell argues that his sentence does not meet the first prong in *Kalish* because the trial court failed to follow all applicable statutes. Specifically, Cromwell maintains that the trial court did not follow R.C. 2929.11(B), which states that sentences shall be "consistent with sentences imposed for similar crimes committed by similar offenders." However, the

trial court's journal entry notes that it considered all factors required by law and that it determined prison to be consistent with the purpose of R.C. 2929.11.

**{¶ 16}** Cromwell argues that the trial court did not make sufficient reference to the proportionality of the sentence at the sentencing hearing. However, the trial court is no longer required to state the reasons for its sentence as long as it is within the statutory range. See *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. Cromwell was convicted of a first degree felony, carrying a prison term of up to ten years. Cromwell was sentenced to seven years of imprisonment, with an additional one-year imprisonment for the firearm specification. The sentence clearly falls within the statutory range, and although the trial court was not required to articulate its reasons, it gave a detailed explanation of its rationale.

**{¶ 17}** The trial court stated:

> **"Mr. Cromwell, as a juvenile you have a burglary case. That's significant with this Court. Your young age, 19, is also noted. The victim's age of 62 years old, close to a senior citizen's status, is noted. * * * And that weapon is the most significant thing that this Court will consider in imposing sentencing. That sawed-off shotgun I've seen in here in person is frightening just seeing it handled by the**

**prosecutor. I cannot imagine what Mr. Klingensmith felt when that thing was pointed at his stomach, because frankly, if your friend even accidently pulled the trigger, you could have drove a car through the hole that would have left in his stomach. The damage a sawed-off shotgun does is truly frightening. * * * Mr. Cromwell, the minimum sentence with your juvenile history and the type of crime you committed would seriously demean the seriousness of the offense."**

**{¶ 18}** The only case Cromwell cites in support of his sentence being disproportionate to those of other similar offenders is the sentence of Cromwell's juvenile accomplice, A.B. Cromwell argues that A.B. pled to the identical charge and was sentenced to probation. However, the two cases are factually distinct.

**{¶ 19}** A.B. was adjudicated in juvenile court, and there is no evidence in the record demonstrating that he had previous adjudications. In the instant case, Cromwell was 19 years old at the time of the offense, and he had previously been adjudicated delinquent as to burglary. The trial court specifically noted those factors, which were different from A.B.'s in reaching its sentence.

**{¶ 20}** As we have concluded that the sentence was consistent with all

applicable rules and statutes and was not contrary to law, under the second prong of *Kalish*, we next review the sentence for an abuse of discretion. Abuse of discretion is a high standard that "evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof * * *." *Aponte v. Aponte* (Feb. 15, 2001), Cuyahoga App. Nos. 77394 and 78090, citing *State v. Jenkins* (1984), 15 Ohio St.3d 164, 222, 473 N.E.2d 264.

**{¶ 21}** Based upon the facts in this case, we cannot conclude that the trial court abused its discretion. Cromwell and two of his friends approached the victim at night as he was entering his home, placed a sawed-off shotgun against his stomach, and stole his wallet. Cromwell was convicted of aggravated robbery, a first degree felony, and had been adjudicated delinquent as to burglary when he was a juvenile.

**{¶ 22}** Finding no error in Cromwell's sentence, this 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.

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

MARY EILEEN KILBANE, PRESIDING JUDGE

LARRY A. JONES, J., and
COLLEEN CONWAY COONEY, J., CONCUR