

[Cite as *State v. Page*, 2011-Ohio-346.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95092

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

COREY PAGE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-530795

BEFORE: Boyle, J., Kilbane, A.J., and Rocco, J.

RELEASED AND JOURNALIZED: January 27, 2011

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MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Corey Page, appeals his sentence. In his sole assignment of error, he maintains that he received ineffective assistance of counsel because his “trial counsel failed to raise the issue of a disproportionate sentence.” Finding no merit to his appeal, we affirm.

{¶ 2} In December 2009, the grand jury indicted Page on two counts of drug possession in violation of R.C. 2925.11(A). Page pleaded guilty to both

charges at his arraignment, but later withdrew his plea and entered a plea of guilty to one count of drug possession. The other count was nolle. The trial court set the date for sentencing and ordered a presentence investigation report be prepared before the hearing.

{¶ 3} After considering the presentence investigation report, Page's statement and the statement of his trial counsel, as well as R.C. 2929.11 and 2929.12, the trial court sentenced Page to 11 months in prison. It further notified him that he would be subject to three years of discretionary postrelease control. It is from this judgment that Page appeals.

Standard of Review

{¶ 4} In *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674, the Supreme Court of the United States set forth the two-pronged test for ineffective assistance of counsel. It requires that the defendant show (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defense. The first prong "requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687. The second prong "requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is unreliable." *Id.*

{¶ 5} Page contends that his trial counsel was ineffective for failing to raise the issue of disproportionate sentences with the trial court.

{¶ 6} R.C. 2929.11(B) provides that: “A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.”

{¶ 7} Page argues that this court has held on several occasions that to support a contention that a sentence is disproportionate to sentences imposed on other offenders, a defendant must raise the issue first to the trial court. Page is correct. We have held that a number of times. In *State v. Jordan*, 8th Dist. No. 91869, 2009-Ohio-3078, ¶18, we explained:

{¶ 8} “This court has repeatedly recognized that in order to support a contention that a “sentence is disproportionate to sentences imposed upon other offenders, a defendant must raise this issue before the trial court and present some evidence, however minimal, in order to provide a starting point for analysis and to preserve the issue for appeal.” *State v. Redding*, 8th Dist. No. 90864, 2008-Ohio-5739, at ¶18, fn. 7, quoting *State v. Edwards*, 8th Dist. No. 89181, 2007-Ohio-6068, ¶11.”

{¶ 9} Page contends that his trial counsel’s performance cannot be characterized as a strategic decision, but he does not establish how the outcome

would have been different had his counsel raised the issue to the trial court. Further, a thorough review of the record here shows that trial counsel was not deficient.

{¶ 10} The trial court carefully considered all of the required factors, as well as the presentence investigation report, and sentenced Page to less than the maximum sentence (11 months, as opposed to 12 months). The trial court stated:

{¶ 11} “Mr. Page, having considered the entirety of the information contained in the presentence report, having considered your statement here today and [your trial counsel’s] statement here today, and having considered Revised Code Sections 2929.11 and 2929.12, I think a prison term is necessary in this case[.]”

{¶ 12} His counsel asked the court to reconsider the amount of time and to consider probation, and the trial court replied:

{¶ 13} “Well, all of those things have been tried and haven’t worked over the past 16 years. Mr. Page has had many, many, many encounters with law enforcement. It may be argued that most or a lot or some of these are relatively minor offenses, but they are offenses that decrease the quality of life for the remainder of the community; and they are in their persistence suggestive to this Court of an unwillingness or an inability — one or the other — to change. So the point being, I don’t think probation would serve any purpose.”

{¶ 14} Thus, after reviewing the record, we find that trial counsel was not deficient for failing to raise the issue of disproportionate sentences to the trial court. Page’s sole assignment of error is overruled.

Judgment 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 Cuyahoga County 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.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, A.J., and
KENNETH A. ROCCO, J., CONCUR