

[Cite as *State v. Raimundy-Torres*, 2015-Ohio-1450.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101490

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAEN RAIMUNDY-TORRES

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-12-560319-A and CR-13-570741-A

BEFORE: Kilbane, P.J., S. Gallagher, J., Blackmon, J.

RELEASED AND JOURNALIZED: April 16, 2015

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MARY EILEEN KILBANE, P.J.:

{¶1} Defendant-appellant, Jaen Raimundy-Torres (“Raimundy-Torres”), appeals from his six-year sentence for drug trafficking, in violation of R.C. 2925.03(A)(2), a first-degree felony. For the reasons set forth below, we affirm.

{¶2} The record reflects that on April 4, 2012, Raimundy-Torres was charged by an information in Cuyahoga C.P. No. CR-12-560137 for drug trafficking, in violation of R.C. 2925.03(A). On this same date, he waived his rights and pled guilty to an amended charge of attempted trafficking in less than the bulk amount of Oxycodone, a first-degree misdemeanor. Also on April 4, 2012, Raimundy-Torres and codefendant, Jonathan Thillet (“Thillet”), were charged by an information in Cuyahoga C.P. No. CR-12-560319 for drug trafficking, in violation of R.C. 2925.03(A)(2) (less than 200 grams of marijuana), a fifth-degree felony, with multiple forfeiture specifications, and for carrying a concealed weapon, a fourth-degree felony. On this same date, Raimundy-Torres pled guilty to both charges. On May 2, 2012, the trial court imposed sentence in both matters. In Case No. CR-12-560137, Raimundy-Torres was sentenced to six months of incarceration, which was suspended, and he was ordered to serve 60 days in jail and then complete two years of community control sanctions. In Case No. CR-12-560319, he was sentenced to six months of incarceration, which was suspended, and he was ordered to serve 60 days in jail and then complete 18 months of community control sanctions.

{¶3} On January 31, 2013, Raimundy-Torres was indicted in Cuyahoga C.P. No. CR-13-570741, pursuant to a nine-count indictment in connection with the execution of a search warrant at his home. Counts 1 and 2 alleged trafficking in less than five grams of cocaine, in violation of R.C. 2925.03(A)(1) and 2925.03(A)(2); Count 3 alleged possession of the same substance, in violation of R.C. 2925.11(A). Count 4 alleged trafficking in between 200 and 1,000 grams of marijuana, in violation of R.C. 2925.03(A)(2); Count 5 alleged possession of the same substance, in violation of R.C. 2925.11(A). Count 6 alleged trafficking in 27 grams of cocaine, in violation of R.C. 2925.03(A)(2); Count 7 alleged possession of the same substance, in violation of R.C. 2925.11(A). Count 8 alleged having a weapon under disability, in violation of R.C. 2923.13(A)(3); Count 9 alleged possession of criminal tools, in violation of R.C. 2923.24(A). Counts 4, 5, 6, and 7 contained one-year firearm specifications and various forfeiture specifications.

{¶4} Following his indictment in Case No. CR-13-570741, Raimundy-Torres was charged with violating the terms of his community control sanctions in his prior cases. Several months later, on April 30, 2013, Raimundy-Torres entered into a plea agreement in Case No. CR-13-570741, whereby, in exchange for his guilty plea to Count 6, first-degree felony drug trafficking, and its specifications, the state dismissed the remaining charges. At the conclusion of the plea proceedings, the trial court ordered a presentence investigation report (“PSI”).

{¶5} On June 4, 2013, the trial court held a hearing on the alleged violations of community control sanctions in Case No. CR-12-560137 and Case No. CR-12-560319 and determined that Raimundy-Torres had violated the terms of his community control sanctions. It imposed a six-month term in Case No. CR-12-560137, to be served concurrently with an 18-month term in Case No. CR-12-560319. Proceeding to sentencing in Case No. CR-13-570741, the court outlined Raimundy-Torres’s record and acknowledged the PSI. The court then stated that it had “considered all of this information, all the principles and purposes of felony sentencing, [and] the appropriate recidivism and seriousness factors.” The court then sentenced Raimundy-Torres to a total of six years, to be served concurrently with the other cases. Raimundy-Torres now appeals and assigns the following errors for our review:

Assignment of Error I

The trial court abused its discretion and erred to the prejudice of appellant by sentencing him to a total of six years’ imprisonment in that the prison term is excessive for the purposes set forth in Ohio Revised Code section 2929.11(A) and (B), and is not necessary to protect the public. (Tr. 47-82.)

Assignment of Error II

The trial court abused its discretion to the prejudice of the appellant by imposing a six-year prison term, when consideration of the factors in R.C. 2929.12 tended to favor a lesser sentence. (Tr. 47-82.)

Assignment of Error III

The trial court erred to the prejudice of the defendant by imposing a fine of \$10,000 when appellant is indigent and has no means to pay. (Tr. 75-82.)

Sentencing Issues

{¶6} Raimundy-Torres argues that in imposing a six-year prison term, the trial court failed to properly consider the purposes and principles of sentencing set forth in R.C. 2929.11, and the court failed to consider the seriousness and recidivism factors listed in R.C. 2929.12.

{¶7} R.C. 2929.11 and 2929.12 outline the general purposes and principles to be achieved in felony sentencing. R.C. 2929.11(A) provides that the “overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes.” R.C. 2929.11(B) requires that, in addition to achieving these goals, a sentence must be “commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact upon the victim.”

{¶8} R.C. 2929.12 provides a nonexhaustive list of factors the court must consider in determining the relative seriousness of the underlying crime and the likelihood that the defendant will commit another offense in the future. *State v. Townsend*, 8th Dist. Cuyahoga No. 99896, 2014-Ohio-924, ¶ 11, citing *State v. Arnett*, 88 Ohio St.3d 208, 213, 2000-Ohio-302, 724 N.E.2d 793. The factors include: (1) the physical, psychological, and economic harm suffered by the victim, (2) the defendant’s prior criminal record, (3) whether the defendant shows any remorse, and (4) any other relevant factors. R.C. 2929.12(B) and (D).

{¶9} Although the trial court has a mandatory duty to “consider” the statutory factors, the trial court is not required to explain its analysis of those factors in a given case. *Townsend* at ¶ 11-12. The trial court’s statement that it considered the required statutory factors, without more, is sufficient to fulfill its obligations under the sentencing statutes. *State v. Kamleh*, 8th Dist. Cuyahoga No. 97092, 2012-Ohio-2061, ¶ 61, citing *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 18.

{¶10} Accordingly, the first and second assignments of error are without merit.

Imposition of Fine

{¶11} Pursuant to R.C. 2929.18(A)(3)(a), a trial court may impose a fine of not more than \$20,000 for a first-degree felony conviction. R.C. 2929.18(B)(1) requires the trial court to impose a mandatory minimum fine of one-half of the maximum fine of \$20,000 for felony drug offenses of the first-, second-, or third-degree. R.C. 2929.18(B)(1) further states:

If an offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine and if the court determines the offender is an indigent person and is unable to pay the mandatory fine described in this division, the court shall not impose the mandatory fine upon the offender.

{¶12} Accordingly, imposition of the mandatory fine is required unless: (1) the offender files an affidavit of indigence prior to sentencing, and (2) the trial court finds that the offender is an indigent person and is unable to pay the mandatory fines. *State v.*

Gipson, 80 Ohio St.3d 626, 634, 1998-Ohio-659, 687 N.E.2d 750; R.C. 2929.18(B)(1). Thus, before imposing a financial sanction under R.C. 2929.18, the court must also consider the offender's present and future ability to pay the amount of the sanction or fine. *See* R.C. 2929.19(B)(5). However, there "are no express factors that must be taken into consideration or findings regarding the offender's ability to pay that must be made on the record." *State v. Martin*, 140 Ohio App.3d 326, 338, 2000-Ohio-1942, 747 N.E.2d 318 (4th Dist.).

{¶13} In this case, the trial court noted that it received defendant's affidavit of indigency on the day of sentencing. The court concluded, however, that Raimundy-Torres is not indigent and stated:

[Y]ou were caught with \$3,300 some odd dollars in the last case. Not as much in this case. But you lost your car and some other accoutrements of the drug trade[,] and you have a retained attorney for all three of these cases so I'm going to find you are not indigent, that you have the resources available to you with the support of your family and whatever resources you're not reporting here because every indictment is that you are able to garner resources. So I'm going to impose the minimum mandatory find [of] \$10,000 for the felony of the first degree.

{¶14} In accordance with the foregoing, the record supports the conclusion that the Raimundy-Torres had the present and future ability to pay the mandatory fine so we find

no abuse of discretion. *State v. Williams*, 11th Dist. Lake No. 2012-L-111, 2014-Ohio-65, ¶17. This assignment of error therefore lacks merit.

{¶15} 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.

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

SEAN C. GALLAGHER, J., and
PATRICIA A. BLACKMON, J., CONCUR