

[Cite as *State v. Gates*, 2015-Ohio-1843.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
~~No. 101951~~

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GLENRISA GATES

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-584342-A

BEFORE: Blackmon, J., Jones, P.J., and Kilbane, J.

RELEASED AND JOURNALIZED: May 14, 2015

ATTORNEY FOR APPELLANT

Ruth R. Fischbein-Cohen
3552 Severn Road, Suite 613
Cleveland, Ohio 44118

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

John F. Hirschauer
Assistant Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.:

{¶1} Appellant Glenrisa Gates appeals her sentence and assigns the following error for our review:

I. The statutory findings made by the trial court were not supported by the record.

{¶2} Having reviewed the record and pertinent law, we affirm the trial court's decision. The apposite facts follow.

{¶3} On April 29, 2014, the Cuyahoga County Grand Jury indicted Gates on one count each of burglary, theft, and forgery. At her arraignment on May 13, 2014, Gates pleaded not guilty to the charges.

{¶4} On July 30, 2014, pursuant to a plea agreement with the state, Gates pleaded guilty to an amended count of burglary in violation of R.C. 2911.12(A)(3), a third-degree felony. Gates also pleaded guilty to one count of forgery in violation of R.C. 2913.31, a fifth-degree felony. Pursuant to the plea agreement, the state dismissed the remaining theft charge.

{¶5} On August 28, 2014, the trial court sentenced Gates to concurrent prison terms of three years for the burglary and one year for the forgery. The trial court ordered restitution and advised Gates of postrelease control. Gates now appeals.

Prison Sentence

{¶6} In the sole assigned error, Gates argues the trial court’s imposition of a prison sentence was not supported by the record.

{¶7} R.C. 2953.08(G)(2) states that when reviewing prison sentences, “[t]he appellate court’s standard for review is not whether the sentencing court abused its discretion.” Instead, the statute permits the appellate court to “‘increase, reduce, or otherwise modify a sentence * * * or may vacate the sentence and remand the matter to the sentencing court for resentencing’” if we determine that “‘the record clearly and convincingly * * * does not support the sentencing court’s findings under [various provisions]; [or] [t]hat the sentence is otherwise contrary to law.’” *State v. Bement*, 8th Dist. Cuyahoga No. 99914, 2013-Ohio-5437, ¶ 13, quoting R.C. 2953.08(G)(2).

{¶8} The trial court has the full discretion to impose any term of imprisonment within the statutory range, but it must consider the sentencing purposes in R.C. 2929.11 and the guidelines contained in R.C. 2929.12. *State v. Holmes*, 8th Dist. Cuyahoga No. 99783, 2014-Ohio-603, ¶ 8.

{¶9} 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. Wright*, 8th Dist. Cuyahoga No. 100283, 2014-Ohio-3321, ¶ 9, citing *State v. Townsend*, 8th Dist. Cuyahoga No. 99896, 2014-Ohio-924, ¶ 11. 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).

{¶10} Contrary to Gates’s assertion, the trial court was not required to make any factual findings under R.C. 2929.11 or 2929.12 before imposing a maximum sentence. *Bement*, 8th Dist. Cuyahoga No. 99914, 2013-Ohio-5437, ¶ 17. Indeed, “[a]lthough there is 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.” *Wright* at ¶ 10. And this court has consistently recognized that a trial court’s statement in the journal entry that it considered the required statutory factors, without more, is sufficient to fulfill its obligations under the sentencing statutes. *Id.*, citing *State v. Kamleh*, 8th Dist. Cuyahoga No. 97092, 2012-Ohio-2061, ¶ 61.

{¶11} Based on the record before us, we find that Gates’s sentence is not clearly and convincingly contrary to law. Here, the trial court imposed a sentence within the sentencing range and adequately considered the purposes and principles of sentencing under R.C. 2929.11, as well as the seriousness and recidivism factors listed in R.C. 2929.12. In doing so, the court expressly stated that “the purpose and principles of felony sentencing are to protect the public and punish the offender.”

{¶12} In addition, the trial court, who had ordered a presentence investigation report, considered Gates’s extensive criminal history. That history included, but was not limited to convictions for domestic violence, assault and battery with intent to kill, assault

and battery of a high and aggravated nature, robbery and abduction, two check fraud cases in one year, resisting arrest, and public disorderly conduct.

{¶13} Further, the trial court considered the impact Gates's actions had on the victim in this matter. The record indicates that the victim's house was damaged by fire and the insurance company hired Service Masters to clean the interior before repairs were undertaken. Gates, as part of the fire clean-up crew, gained access to the victim's home and stole a check from the victim's checkbook. Gates proceeded to write a check for \$2,500 to a friend, who cashed it and the two split the proceeds.

{¶14} At the sentencing hearing, despite stating that she was taking full responsibility for her actions, Gates claimed that she found the check while sweeping up debris outside the victim's home. However, to refute Gates's claim that she found the check in the soot-laden debris, the state presented a pristine copy of the negotiated check.

{¶15} The trial court stated in pertinent part as follows:

This is serious. You stole peace of mind from someone. That can't be satisfied with restitution. There's no dollar amount in the world that can restore peace to someone whose home has been violated, whose safety has been violated. You did that and you've done it before.

Tr. 33-34.

{¶16} Finally, the trial court specifically addressed the recidivism factors as follows:

In determining how to satisfy the statutory objectives of felony sentencing, I'm required to consider if you are likely to do this again. This is called recidivism. And every indication to me is that you are. I don't believe that you seem remorseful. I know you pleaded guilty. I will accept that for the weight it deserves. But when you come in here and you give this

farfetched story, I will tell you it does affect your credibility. You have not responded well to sanctions imposed in the past because you keep on re-offending. * * * When it comes to whether you're likely or unlikely to re-offend pursuant to a statutory consideration set forth in 2929.12 of the Ohio Revised Code, I certainly find you are likely to re-offend.

Tr. 33.

{¶17} In light of the foregoing, we find that the trial court considered the purposes and principles of sentencing under R.C. 2929.11 as well as the seriousness and recidivism factors listed in R.C. 2929.12, properly imposed postrelease control, and sentenced Gates within the permissible statutory range. Thus, the trial court's imposition of a prison sentence was fully supported by the record. Accordingly, we overrule the sole assigned error.

{¶18} 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 be sent to said 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.

PATRICIA ANN BLACKMON, JUDGE

LARRY A. JONES, SR., P.J., and
MARY EILEEN KILBANE, J., CONCUR

