

[Cite as *State v. Williams*, 2015-Ohio-2041.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 101885

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**MANUELLE WILLIAMS**

DEFENDANT-APPELLANT

---

**JUDGMENT:  
AFFIRMED**

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-12-567181-A

**BEFORE:** Laster Mays, J., Boyle, P.J., and S. Gallagher, J.

**RELEASED AND JOURNALIZED:** May 28, 2015

## **ATTORNEYS FOR APPELLANT**

Robert L. Tobik  
Cuyahoga County Public Defender

BY: John T. Martin  
Assistant Public Defender  
310 Lakeside Avenue, Suite 200  
Cleveland, Ohio 44113

## **ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor

BY: Eric L. Foster  
Assistant County Prosecutor  
1200 Ontario Street, 9th Floor  
Cleveland, Ohio 44113

ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Manuelle Williams (“Williams”) appeals from the sentence imposed after this court remanded his case for a resentencing hearing.

{¶2} Williams presents two assignments of error. He first argues that the trial court violated his constitutional rights at the resentencing hearing because the court did not conduct a de novo hearing, but rather relied upon improper information. Williams further argues that his sentences are contrary to law because the trial court imposed a prison term disproportionately higher than the ones imposed on his codefendants.

{¶3} Upon a review of the record, this court finds that neither of Williams’s assignments of error has merit. His sentence is accordingly affirmed.

{¶4} This court provided the following background in *State v. Williams*, 8th Dist. Cuyahoga No. 99901, 2014-Ohio-701:

In 2012, Williams was charged with one count each of attempted murder, aggravated robbery, and felonious assault. He was charged along with three codefendants in the severe beating of an autistic man. Williams entered into a plea agreement with the state in which he agreed to plead guilty to attempted murder and felonious assault. The state asked the court to dismiss the aggravated robbery charge.

At the plea hearing, the trial court informed Williams that his attempted murder and felonious assault convictions would merge for sentencing purposes. But at the sentencing hearing, the trial court sentenced Williams to seven years for attempted murder and a separate seven-year sentence for felonious assault.

\* \* \*

Williams claims that he was induced to plead guilty because the court made him think he would receive less than seven years in prison, but the record belies that claim. The trial court told Williams that it would make no promises as to the length of his sentence but that it would consider

giving him “the mid to *higher end range for a felony of the first degree.*” The court then indicated that *the range it would consider would be from six to nine years* in prison and it would make its final determination *after it reviewed his presentence investigation report.* Three times the court asked Williams if he understood the range in sentencing and each time Williams responded, “Yes.” Moreover, Williams told the trial court he understood his rights and the possible penalties associated with his plea.

\* \* \*

Williams argues that the trial court erred in failing to merge the felonious assault and attempted murder convictions. The state concedes the assignment of error, and we agree.

\* \* \*

The record here demonstrates that the attempted murder and the felonious assault convictions should have merged; moreover, the trial court indicated at the plea hearing that they would. Accordingly, the \* \* \* assignment of error is sustained and the case is remanded for resentencing, at which the state shall elect on which count to proceed. *See State v. Whitfield*, 124 Ohio St.3d 319, 2010-Ohio-2, 922 N.E.2d 182, ¶ 25.

(Emphasis added.)

{¶5} When the trial court called Williams’s case for resentencing, the trial court noted that, at the initial sentencing hearing, the state had failed to make its election between the allied offenses. The prosecutor informed the court that the state elected that Williams be sentenced on his attempted murder conviction.

{¶6} The trial court then stated:

THE COURT: \* \* \* I am intimately familiar with this case. I should indicate for the record that one of the defendants actually began a

trial in this particular matter that lasted several days. So this court was present for the testimony of the victim in this particular case and multiple witnesses. And I was also able to, during the course of that trial, observe a videotape of [Williams] in particular.

And so [Williams] ultimately plead (sic) guilty and was sanctioned by this court. And I would indicate for the record that I'm going to incorporate all of the statements that I made at the previous sentencing and all of the information that was presented by the prosecutor's office as well as original counsel in this particular case.

{¶7} Williams's defense counsel protested the trial court's statement that it would "incorporate" matters. The trial court responded:

THE COURT: There was a presentence investigation ordered. There were statements on behalf of [Williams]. Statements on behalf of the victim. So those are all things that the Court would absolutely consider in a resentencing, which is what this is.

[DEFENSE COUNSEL]: Right. But I mean, what happened at the other trial \* \* \*, he wasn't there. He didn't have a chance to contest that. So I don't think he should be —

THE COURT: That's not my — that's not my indication. What I'm indicating to you is that there were four defendants \* \* \* [a]nd that I ordered a presentence investigation on behalf of your client. That the victim came in to address the Court. \* \* \* All of those things were on the record previously in the prior sentencing hearing, and I'm incorporating them for the record into this case.

My other indication, for the record, is that I personally observed the victim in this case, his demeanor and all of the things that went into that sentencing hearing. I'd like that included for the record. That's all.

{¶8} After the trial court heard argument from defense counsel as to "consistency in sentencing" between Williams and his codefendants, the court observed that each person "had a different role in this particular attack." The court commented that "each person \* \* \* had different roles and different levels of responsibility \* \* \* ." The court

then engaged Williams in a colloquy regarding his role in the crime. Williams answered, “Yes” when the court asked him if he were the “instigator” of the attack on the victim. The court further noted that, after the other codefendants left, Williams returned to kick the victim in the head, and that the injuries the victim sustained from that kick “were significant, and he was severely injured in his face, his teeth, his jaw, his head.” The trial court explained that the victim “was on life support. He was in a medically-induced coma. He had a broken jaw. He had broken teeth.”

{¶9} The court permitted defense counsel to finish arguing on Williams’s behalf, listened to Williams’s allocution, and then heard from the prosecutor. The trial court then stated:

THE COURT: Thank you very much, [Ms. Prosecutor].

The Court, having considered all the required [statutory] factors \* \* \*, and, of course, incorporating all of the prior information from the original plea and sentencing hearing, along with the presentence investigation coupled with the statement of the victim as well as the defendant in this particular case and his most recent statement.

\* \* \*

With that being said, I am reimposing the seven-year sanction \* \* \* on Count One, which the State of Ohio has elected to proceed on, the attempted murder.

{¶10} Williams appeals from his sentence with two assignments of error.

I. The trial court violated Mr. Williams’ statutory and Sixth Amendment rights to be present with counsel at all critical stages of the proceedings against him when, in sentencing Mr. Cummings (sic), it referenced and relied upon statements made at his previous sentencing (sic) hearing as well as proceedings involving codefendants for which Mr. Williams was not present.

II. The trial court imposed a sentence contrary to law and violated Mr. Williams' due process rights when it imposed a sentence that was inconsistent with and disproportionate to the sentences imposed upon his codefendants.

{¶11} In his first assignment of error, Williams argues that the trial court violated his constitutional and statutory rights to a de novo sentencing hearing because the court "referenced" information presented at the original sentencing hearing and at a codefendant's trial. Williams cites *State v. Steimle*, 8th Dist. Cuyahoga Nos. 79154 and 79155, 2002-Ohio-2238, as authority for his argument; however, the law has changed since that case was decided. See *State v. Steimle*, 8th Dist. Cuyahoga No. 95076, 2011-Ohio-1071. Moreover, this court more recently has approved of actions such as those taken by the trial court in this case.

{¶12} This court noted in *State v. Ross*, 8th Dist. Cuyahoga No. 100708, 2014-Ohio-4566, ¶ 16, quoting *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, ¶ 37, that R.C. 2929.19(B) *requires* a trial court to consider before imposing sentence "the record, and information presented at the hearing, any presentence investigation report, and any victim impact statement." When challenged by Williams's defense counsel about the propriety of taking into account evidence presented at a codefendant's trial, the trial court in this case specified that it was considering only the record of Williams's case in deciding the appropriate sentence to impose. Even if the court had not specified that it was "only considering the record of Williams's case \* \* \*," we see no error or prejudice in the trial judge having viewed the victim in another

proceeding involving a codefendant. Moreover, that event was a public proceeding open to all. At a minimum, Williams's counsel was free to attend and make any assessment on his client's behalf of the victim's testimony or demeanor that was observed by the trial court. More importantly, even if considered, Williams has not shown how these observations (of the victim) by the trial court judge prejudiced him in any way. Because the trial court's consideration of that information did not violate Williams's due process or statutory rights, his first assignment of error is overruled. *Id.* at ¶ 17.

{¶13} Williams argues in his second assignment of error that his sentence was disproportionate to those imposed on his codefendants. This court addressed a similar argument in *State v. Blackley*, 8th Dist. Cuyahoga No. 100574, 2014-Ohio-3140, stating in pertinent part as follows:

Sentencing in Ohio is not accomplished according to a tightly controlled grid system similar to federal sentencing guidelines. *State v. Dawson*, 8th Dist. Cuyahoga No. 86417, 2006-Ohio-1083, ¶ 31. There is a statutory mandate for consistency in sentencing, however, ““consistency does not require that identical sentences be imposed for co-defendants.”” *State v. Harder*, 8th Dist. Cuyahoga No. 98409, 2013-Ohio-580, ¶ 7, and *State v. Drobny*, 8th Dist. Cuyahoga No. 98404, 2013-Ohio-937, ¶ 7, both quoting *State v. Pruitt*, 8th Dist. Cuyahoga No. 98080, 2012-Ohio-5418, ¶ 26.

Instead, an appellate court must examine the record, not in order to decide whether the trial court “imposed a sentence that is in lockstep with others,” but to determine “whether the sentence is so unusual as to be outside the mainstream of local judicial practice.” *Dawson* at ¶ 31. “[D]istinguishing factors may justify dissimilar treatment.” *Id.* Sentences should not be “one size fits all.” *State v. Torres*, 8th Dist. Cuyahoga No. 99596, 2013-Ohio-5030, ¶ 83.



{¶14} As in *Blackley*, Williams understood when he entered his guilty pleas that he faced a sentence for his attempted murder conviction on the “higher end” of the range. The trial court’s comments, moreover, explained its decision to impose a “stiffer” sentence on Williams, i.e., unlike his codefendants, who left after beating the victim, Williams came back and his additional action in kicking the victim in the head nearly caused the victim’s death. Under these circumstances, this court cannot find that his sentence is contrary to law. His second assignment of error, accordingly, also is overruled.

{¶15} Williams’s sentence is 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.

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

---

ANITA LASTER MAYS, JUDGE

MARY J. BOYLE, P.J., and  
SEAN C. GALLAGHER, J., CONCUR