

[Cite as *State v. Wilhoite*, 2015-Ohio-2394.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101933

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JARRELL J. WILHOITE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-582797-A

BEFORE: Boyle, J., E.A. Gallagher, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: June 18, 2015

ATTORNEYS FOR APPELLANT

Robert L. Tobik
Cuyahoga County Public Defender
BY: Jeffrey Gamso
Assistant Public Defender
310 Lakeside Avenue
Suite 200
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: Anthony Thomas Miranda
Assistant County Prosecutor
Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶1} Defendant-appellant, Jarrell Wilhoite, appeals his sentence, raising two assignments of error for our review:

1. The trial court committed error when it told Mr. Wilhoite that he would never be eligible for judicial release.
2. The trial court abused its discretion, imposed a sentence contrary to law, and violated Mr. Wilhoite's rights to fundamental fairness and due process when it imposed a sentence with the specific intention of denying itself the jurisdiction even to consider judicial release.

{¶2} Finding no merit to his appeal, we affirm.

Procedural History and Factual Background

{¶3} In February 2014, Wilhoite was indicted on eight counts: two counts of aggravated robbery, two counts of kidnapping, one count of aggravated burglary, one count of safecracking, and two counts of theft. All counts carried one- and three-year firearm specifications.

{¶4} In July 2014, Wilhoite pleaded guilty to an amended indictment of two counts of aggravated robbery and two counts of kidnapping, each with a one-year firearm specification. Per the plea agreement, each aggravated robbery merged with the corresponding kidnapping, but all four counts did not merge as there were two victims. Also per the plea agreement, the one-year firearm specifications merged. The remaining charges and specifications were nolle. The state elected to proceed on the two aggravated robbery convictions for purposes of sentencing.

{¶5} The trial court sentenced Wilhoite to a total of five years in prison: four years for each aggravated robbery, to be served concurrent to each other, but consecutive to one year for the merged firearm specifications. The trial court ordered that Wilhoite pay \$1,408.38 in restitution to the victim. The trial court further notified Wilhoite that he would be subject to five years of mandatory postrelease control. It is from this judgment that Wilhoite appeals.

Judicial Release

{¶6} In his first assignment of error, Wilhoite contends that the trial court made an incorrect statement at sentencing regarding judicial release. Essentially, he is requesting this court to educate the trial court on a matter that may happen in the future to this defendant, or any defendant, for that matter. It is the long-standing practice of courts, however, to decide only issues presented by the facts and to refrain from deciding issues that the facts do not place directly in issue. If we were to address Wilhoite's assignment of error, it would be tantamount to issuing an advisory opinion, which is not the role of this court. *State ex rel. White v. Kilbane Koch*, 96 Ohio St.3d 395, 2002-Ohio-4848, 775 N.E.2d 508.

{¶7} Wilhoite's first assignment of error is overruled.

Contrary to Law

{¶8} In his second assignment of error, Wilhoite argues that the trial court abused its discretion by attempting to deprive itself of future discretion that is afforded to it by the legislature regarding judicial release. Wilhoite claims that "[t]he fact that the

judge was mistaken [in that it did not deprive itself of jurisdiction] is, essentially, irrelevant.” He further maintains that the trial court “chose a sentence with the specific intention of depriving himself of jurisdiction to grant judicial release,” and is, therefore, contrary to law. We disagree.

{¶9} R.C. 2953.08(G)(2) provides that our review of felony sentences is not an abuse of discretion. An appellate court must “review the record, including the findings underlying the sentence or modification given by the sentencing court.” *Id.* If an appellate court clearly and convincingly finds either that (1) “the record does not support the sentencing court’s findings [where they are required],” or (2) “the sentence is otherwise contrary to law,” then “[t]he appellate court may increase, reduce, or otherwise modify a sentence * * * or may vacate the sentence and remand the matter to the sentencing court for resentencing.” *Id.*

{¶10} After review, we do not find that Wilhoite’s sentence was contrary to law. At the sentencing hearing, the trial court considered the guidelines and purposes of sentencing, as well as the presentence investigation report. The trial court stated that it found that in the context of aggravated robbery, there were circumstances in the case that made it less serious than other aggravated robbery cases (including the fact that Wilhoite made sure that there were no bullets in the gun during the robbery). But the trial court also noted that even though the gun did not have bullets, the two victims did not know that. As a result, they were subjected to a “terrorizing” situation. The trial court considered the fact that according to the victims’ mother, the victims were still having

issues due to Wilhoite and two other men coming into their home and robbing them at gunpoint.

{¶11} The trial court found that prison was appropriate, sentencing Wilhoite to four years for each aggravated robbery count. But the trial court ordered that the two terms be served concurrent to each other because it did not find that consecutive sentences were appropriate under the circumstances of the case.

{¶12} The trial court then stated:

Now, I'm fully aware that you're 21 years old, that your record, except for some juvenile matters a while ago and, while serious, the gap between — in time from those situations to here is significant. And but for those events this is the most significant trouble that you've been in. And I was — did not decide to give you less time because of the nature of the circumstances, but I am very well aware that selecting five years means that you cannot file for judicial release until you have served four years after the mandatory expires. And I made that decision because I think your conduct in this case and the impact on the victims and the nature of the charge warrants where I have placed you, and in my view I have placed you where I think you should be in relation to others because others I have placed at the upper end of this scale with conduct that I think is more serious than the serious conduct in this case.

I fully expect you to keep the attitudes that you've developed thus far and that you make the best use of your time in prison and take advantages of the opportunities that you have there.

I let people out of prison early who have gotten nearly a college degree in prison, who have gone on to get technical certifications in prison if it's not a college degree, or have otherwise conducted themselves in a way in which they've made this terrible mistake in their life something that they're putting in their past and shown by their conduct in prison the ability to do that. And I fully recognize that will not be easy on your part, nor on the part of your family.

{¶13} After review, we find that Wilhoite's sentence is not contrary to the law.

The trial court properly merged the two aggravated robbery counts with the corresponding kidnapping counts. The trial court also sentenced Wilhoite within the statutory range for each aggravated robbery count and ordered that they be served concurrent to each other. Wilhoite's claim that the trial court sentenced him with improper intent is simply not supported by the record. Indeed, the trial court's sentence of only five years for robbing two victims at gunpoint was not only lawful, it was fair, considering the fact that the trial court could have sentenced Wilhoite to eleven years for each aggravated robbery charge, plus order that they be served consecutively (if the findings warranted it), for a total of 23 years in prison with the one-year firearm specification.

{¶14} Accordingly, Wilhoite's second assignment of error is overruled.

{¶15} Judgment affirmed.

It is ordered that appellee recover from appellant the 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. 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

EILEEN A. GALLAGHER, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR