

[Cite as *State v. Vangilder*, 2015-Ohio-5420.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102669

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TIMOTHY VANGILDER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AS MODIFIED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-590383-A

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

RELEASED AND JOURNALIZED: December 24, 2015

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LARRY A. JONES, SR., P.J.:

{¶1} Defendant-appellant, Timothy Vangilder, appeals the sentence on his grand theft conviction. We affirm his sentence as modified.

{¶2} During the period of May 2013 through October 2014, Vangilder, who was employed as a janitor at the Cleveland Plain Dealer newspaper building, stole \$49,352.32 worth of aluminum lithograph plates from his employer and sold them for scrap to a local recycler. Vangilder was indicted by information on one count of grand theft, R.C. 2913.01(A)(1), a fourth-degree felony. He pleaded guilty to the charge and the trial court sentenced him to five years of community control sanctions with 120 days to be served in the county jail. He was also ordered to pay restitution in the amount of \$49,352.32 to his former employer.

{¶3} Vangilder filed a timely appeal, and assigns one error for our review:

I. The trial court abused its discretion in imposing a 120 day jail term and five years [of] probation on a first time offender as a community control sanction for grand theft.

{¶4} In his assignment of error, Vangilder argues that the trial court erred in sentencing him to 120 days in jail and community control sanctions. For a variety of factual-based reasons, Vangilder asks this court to vacate his community control sanctions and order the trial court to impose a shorter term of community control sanctions.

{¶5} In imposing any felony sentence, the trial court must consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the seriousness and

recidivism factors set forth in R.C. 2929.12. In accordance with R.C. 2929.11, a sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing: (1) “to protect the public from future crime by the offender and others”; and (2) “to punish the offender using the minimum sanctions that the court determines accomplish those purposes.” R.C. 2929.11(A).

{¶6} Under R.C. 2929.12(A), trial courts must consider a nonexhaustive list of factors, including the seriousness of the defendant’s conduct, the likelihood of recidivism, and “any other factors that are relevant to achieving those purposes and principles of sentencing.” A sentencing court is not required, however, to engage in any factual findings under R.C. 2929.11 or 2929.12. *State v. Bement*, 8th Dist. Cuyahoga No. 99914, 2013-Ohio-5437, ¶ 17.

{¶7} Vangilder argues that the trial court abused its discretion in sentencing him to five years of community control sanctions. But contrary to Vangilder’s claim, in reviewing felony sentencing we do not review whether the sentencing court abused its discretion. R.C. 2953.08(G)(2). Instead, if we clearly and convincingly find that the sentence is contrary to law, we may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. *Id.*

{¶8} In reviewing whether a felony sentence is clearly and convincingly contrary to law, we are constrained by the fact that the sentencing range is determined by the legislature and any sentence imposed within that range, after the sentencing court has

considered all the sentencing factors, is presumptively valid. *State v. Collier*, 8th Dist. Cuyahoga No. 95572, 2011-Ohio-2791, ¶ 15, citing *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

{¶9} A court imposing a felony sentence may impose any sanction or combination of sanctions as found in R.C. 2929.14 to 2929.18. R.C. 2929.13(A). “A ‘community control sanction’ is defined by R.C. 2929.01(E) as a sanction that is not a prison term and is described in R.C. 2929.15 (community control), 2929.16 (residential sanctions), 2929.17 (nonresidential sanctions), and 2929.18 (financial sanctions).” *State v. Peterson*, 8th Dist. Cuyahoga No. 102428, 2015-Ohio-4581, ¶ 15, citing *State v. Farner*, 5th Dist. Ashland No. 2011-COA-025, 2012-Ohio-317, ¶ 12.¹

{¶10} If a sentencing court determines that a community control sanction, or a combination of community control sanctions, is appropriate, the court is vested with broad discretion to decide which sanctions may be imposed. *State v. Jordan*, 4th Dist. Scioto No. 03CA2878, 2004-Ohio-2111, ¶ 12, citing R.C. 2929.13(A) and 2929.15. R.C. 2929.16 and 2929.17 currently provide 19 different nonprison sanctions that can be used to restrict an offender’s freedom, including a jail term of up to 180 days, and R.C. 2929.18 delineates five types of financial sanctions a trial court may impose on an offender.

{¶11} The trial court in this case was vested with broad discretion in imposing a

¹In *Peterson*, this court found that a sentence combining two residential sanctions for a single conviction was not contrary to law.

combination of community control sanctions and sentenced Vangilder to a combination of residential and nonresidential sanctions pursuant to R.C. 2929.16, 2929.17, and 2929.18: the court sentenced him to a 120-day jail term under R.C. 2929.16(A)(2), a term of probation under R.C. 2929.17(F), and ordered to pay restitution under R.C. 2929.18(A)(1).

{¶12} The record shows that the trial court considered the relevant statutory factors set forth under R.C. 2929.11 and 2929.12. In sentencing Vangilder to a jail term and a five-year term of probation, the trial court stated that it was measuring his conduct and comparing it to “what should be the appropriate penalty.” The court considered that Vangilder repeatedly stole from his then-employer over the course of a year and determined that, based on this course of conduct, a jail term was appropriate. The court further stated that it was sentencing Vangilder to a long term of probation after he was released from jail for the purposes of paying his restitution, but if Vangilder was able to pay his restitution in less than five years “you’ll be released from probation, unless you otherwise violate.”

{¶13} For the reasons that follow, however, we do find that Vangilder’s sentence should be modified so that his combined community control sanctions total five years. During the sentencing hearing the court stated: “I’m going to keep you on probation for the entire five-year period to keep you in the system for the purposes of paying back * * * your restitution.” The sentencing journal entry stated: “It is therefore ordered that the defendant is sentenced to 5 year(s) of community control * * * 5 years is needed to pay

the restitution amount. * * * Defendant to serve 120 days in jail (mandatory probation by law under these circumstances). Jail credit of 3 days.”

{¶14} R.C. 2929.16(A)(2) authorizes a felony offender who is eligible for a community control sanction to be incarcerated for a jail term of up to six months. That jail sentence may be followed by other community control sanctions. R.C. 2929.15(A)(1). But there is a limit: R.C. 2929.15(A)(1) states that “[t]he duration of all community control sanctions imposed upon an offender under this division shall not exceed five years.” *Id.*

{¶15} When the trial court sentenced Vangilder to a combination of community control sanctions, it sentenced him to serve 120 days in jail, with credit given for three days already served, to be followed by five years of probation. Therefore, the trial court sentenced Vangilder to a combination of community control sanctions lasting five years and four months. Consequently, Vangilder’s sentence exceeds the maximum five-year duration to which a court may sentence a defendant under R.C. 2929.15(A)(1) and falls outside of the statutory range for his crime.

{¶16} Pursuant to R.C. 2953.08(G)(2), we modify Vangilder’s sentence to a total of five years of community control sanctions, which includes the 120-day jail sentence, with credit for time served, and four years and eight months of probation.

{¶17} The sole assignment of error is overruled. Vangilder’s sentence is affirmed as modified and the case is remanded to the trial court to issue a new journal entry stating Vangilder’s sentence.

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 Court of Common Pleas 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.

LARRY A. JONES, SR., PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
MELODY J. STEWART, J., CONCUR