

[Cite as *State v. White*, 2016-Ohio-2638.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103474

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

THOMAS E. WHITE, JR.

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-594436-A

BEFORE: E.T. Gallagher, P.J., Laster Mays, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: April 21, 2016

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EILEEN T. GALLAGHER, P.J.:

{¶1} Defendant-appellant, Thomas E. White, Jr. (“White”), appeals from his sentence following a guilty plea. He raises one assignment of error for our review:

1. The trial court erred when it did not consider on the record whether the sentence imposed constituted the minimum sentence necessary to achieve the goals of sentencing without imposing an unnecessary burden on governmental resources.

{¶2} After careful review of the record and relevant case law, we affirm White’s sentence.

I. Procedural History

{¶3} In July 2015, White pleaded guilty to one count of felonious assault in violation of R.C. 2903.11, a felony of the second degree. At sentencing, the trial court imposed a two-year prison term after considering the victim’s extensive injuries and White’s criminal history.

{¶4} White now appeals from his sentence.

II. Law and Analysis

{¶5} In his sole assignment of error, White argues the trial court erred when it did not state on the record whether the sentence imposed constituted “the minimum sentence necessary to achieve the goals of sentencing without imposing an unnecessary burden on governmental resources.” *See* R.C. 2929.11(A).

{¶6} R.C. 2953.08 provides the grounds on which a defendant may appeal from a felony sentence. Under R.C. 2953.08(A)(4), a criminal defendant may appeal his sentence if it is contrary to law, and the statute provides two separate grounds for

claiming that a sentence is contrary to law. *State v. Bonds*, 8th Dist. Cuyahoga No. 100481, 2014-Ohio-2766. First, a sentence is contrary to law if it falls outside the statutory range for the particular degree of offense. *State v. Holmes*, 8th Dist. Cuyahoga No. 99783, 2014-Ohio-603, ¶ 10. Second, a sentence is contrary to law if the trial court fails to comply with sentencing statutes. *Id.* Relevant to the arguments raised in this appeal, a sentence is therefore contrary to law if the court fails to consider the purposes of felony sentencing set forth in R.C. 2929.11. *State v. Hodges*, 8th Dist. Cuyahoga No. 99511, 2013-Ohio-5025, ¶ 7.

{¶7} R.C. 2929.11(A) provides, in pertinent part, 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 without imposing an unnecessary burden on state or local government resources.” R.C. 2929.11(A). In advancing these purposes, sentencing courts are instructed to “consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.” *Id.*

{¶8} White correctly states that R.C. 2929.11 requires the trial court to consider the minimum sanctions necessary for accomplishing the overriding purposes of felony sentencing without imposing an unnecessary burden on state or local government resources. However, contrary to White’s position, the trial court is not required to use any particular language or make any specific findings on the record. *See State v. Evans*,

8th Dist. Cuyahoga No. 101485, 2015-Ohio-1022, ¶ 34, citing *State v. Brown*, 8th Dist. Cuyahoga No. 100874, 2014-Ohio-4381, ¶ 10. The court’s consideration of the criteria set forth in R.C. 2929.11(A) may be presumed unless the defendant affirmatively shows otherwise. *Id.*, citing *State v. Jones*, 8th Dist. Cuyahoga No. 99759, 2014-Ohio-29, ¶ 13.

{¶9} In this case, the trial court imposed a sentence within the permissible statutory range for a second-degree felony and carefully considered relevant sentencing factors, including White’s criminal record, his prior conviction of assault against the same victim, his violation of postrelease control, his history of substance abuse, the impact of his post-traumatic stress disorder, and the severe injuries suffered by the victim in this case. Moreover, while the court did not expressly state on the record that it considered whether a sentence of imprisonment was consistent with its obligation to minimize the expenditure of government resources, it stated in its judgment entry of sentence that it “considered all the required factors of law,” and that it found “prison is consistent with the purpose of R.C. 2929.11.”

{¶10} Based on the record before this court, we find White has not affirmatively shown that the trial court failed to consider the purposes of felony sentencing under R.C. 2929.11 before imposing his sentence. Moreover, we are unable to find by clear and convincing evidence that the record does not support White’s sentence. *State v. Marcum*, Slip Opinion No. 2016-Ohio-1002, ¶ 23. Accordingly, the trial court’s imposition of a two-year sentence is not contrary to law.

{¶11} White’s sole assignment of error is overruled.

{¶12} Judgment 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.

EILEEN T. GALLAGHER, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR