

[Cite as *State v. Simmons*, 2016-Ohio-2644.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
**No. 103538**

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**MARLON SIMMONS**

DEFENDANT-APPELLANT

---

**JUDGMENT:**  
**AFFIRMED**

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-15-595003-A

**BEFORE:** Blackmon, J., Keough, P.J., and E.A. Gallagher, J.

**RELEASED AND JOURNALIZED:** April 21, 2016

**ATTORNEY FOR APPELLANT**

Allison S. Breneman  
1220 W. 6th Street  
Suite 303  
Cleveland, Ohio 44113

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor

By: John D. Kirkland  
Assistant County Prosecutor  
9th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.:

{¶1} Marlon Simmons (“Simmons”) appeals his 12-month prison sentence and assigns the following error for our review:

I. The trial court abused its discretion by imposing a prison sentence contrary to R.C. 2929.14 and the purposes and principles of the felony sentencing guidelines.

{¶2} Having reviewed the record and pertinent law, we affirm. The apposite facts follow.

{¶3} On August 3, 2015, Simmons pled guilty to attempted domestic violence in violation of R.C. 2923.02 and 2919.25(A), a fifth-degree felony. On August 26, 2015, the court sentenced Simmons to the maximum term of 12 months in prison. It is from this sentence that Simmons appeals.

{¶4} R.C. 2953.08(G)(2) provides, in part, that when reviewing felony sentences, the appellate court’s standard of review is not whether the sentencing court abused its discretion; rather, if this court “clearly and convincingly” finds that (1) “the record does not support the sentencing court’s findings under R.C. 2929.14(C)(4),” or that (2) “the sentence is otherwise contrary to law,” then we may conclude that the court erred in sentencing. *See also State v. Marcum*, Slip Opinion No. 2016-Ohio-1002.

{¶5} A sentence is not clearly and convincingly contrary to law “where the trial court considers 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 applies

post-release control, and sentences a defendant within the permissible statutory range.”

*State v. A.H.*, 8th Dist. Cuyahoga No. 98622, 2013-Ohio-2525, ¶ 10.

{¶6} In the instant case, Simmons is not challenging the imposition of postrelease control. Furthermore, there is no question that a 12-month prison sentence is within the statutory range for a fifth-degree felony. Simmons argues, however, that “the Court failed to appropriately access [sic] the seriousness and recidivism factors necessary for the purposes and principles of the felony sentencing guidelines.”

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. To achieve those purposes, the sentencing court shall 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.

R.C. 2929.11(A).

{¶7} Pursuant to 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.”

{¶8} In the case at hand, the factors “indicating that the offender’s conduct is more serious than conduct normally constituting the offense” are that the “offender’s relationship with the victim facilitated the offense” and “the offense is a violation of 2919.25,” which is the statute governing domestic violence offenses. R.C. 2929.12(B)(6) and (9).

{¶9} The factors “indicating that the offender’s conduct is less serious than conduct normally constituting the offense” include that “[t]he victim induced or facilitated the offense” and that there is inconsistent evidence as to whether the defendant caused physical harm. R.C. 2929.12(C)(1).

{¶10} As to recidivism, the court detailed Simmons’s eight prior convictions for domestic violence, assault, arson, violating a protective order, and menacing. The victim in the instant case was also the victim in four of Simmons’s prior convictions. The court additionally noted that Simmons was adjudicated delinquent as a juvenile. Simmons apologized to the court and the victim.

{¶11} The victim gave a statement to the court at the sentencing hearing, explaining that she invited Simmons to her house on the day in question to pick up his medication despite the protective order she had against him. She stated that she has a “tendency to argue” with Simmons and that she can be “very vindictive and very spiteful” to him. She stated that Simmons has never hit her and that she fabricated “a majority” of the allegations against him.

{¶12} The court did not find the victim’s testimony credible, stating that, “none of what you say is the truth. The only thing that you’ve said that’s the truth is that you’re a chronic liar.”

{¶13} Upon review, we find that the court properly considered the purposes and principles of sentencing as well as the seriousness and recidivism factors listed in the felony sentencing statutes.

{¶14} Accordingly, Simmons's assigned error is overruled and his prison sentence is 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 the Cuyahoga County Court of Common Pleas 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

KATHLEEN ANN KEOUGH, P.J., and  
EILEEN A. GALLAGHER, P.J., CONCUR