

[Cite as *State v. Simmons*, 2016-Ohio-3460.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103462

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**BRANDON A. SIMMONS**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-15-593047-A

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

**RELEASED AND JOURNALIZED:** June 16, 2016

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KATHLEEN ANN KEOUGH, P.J.:

{¶1} Defendant-appellant, Brandon Simmons, appeals the eight-year prison sentence imposed after his guilty plea to felonious assault, criminal damaging, and aggravated menacing. Finding no merit to the appeal, we affirm.

{¶2} The record reflects that on the evening of October 18, 2014, Simmons parked his car in front of his ex-girlfriend's house. Simmons's ex-girlfriend and her new boyfriend, Michael Wallace, returned home around midnight. Simmons confronted Wallace, and they exchanged words. Simmons then drove his car over the curb and across the yard, and rammed his ex-girlfriend's car three or four times while she was still in the driver's seat. Simmons stated, "I'm going to kill you both," before fleeing the scene.

{¶3} Simmons was charged with one count of attempted murder, two counts of felonious assault, one count of criminal damaging, and two counts of aggravated menacing. He subsequently pleaded guilty to one count of felonious assault in violation of R.C. 2903.11(A)(1); one count of criminal damaging in violation of R.C. 2909.06(A)(1), and two counts of aggravated menacing in violation of R.C. 2903.21(A). The remaining charges were dismissed.

{¶4} At sentencing, the trial court heard from the prosecutor and defense counsel. Simmons also addressed the court. He apologized for the incident and then stated: "It

was pure accident. I didn't do it on purpose. I acted out of my feelings. I'm very apologetic."

{¶5} Before sentencing Simmons, the trial court reviewed Simmons's presentence investigation report. The trial court noted that Simmons had a criminal history in juvenile court for aggravated robbery. The trial court further found that as an adult, in Case No. CR-09-530800, Simmons had pleaded guilty to robbery and attempted felonious assault, and been sentenced to 15 months of community control sanctions. While on community control in that case, Simmons was charged in Case No. CR-10-544519, and after a jury trial, was found guilty of felonious assault and sentenced to 24 months of community control sanctions. The trial judge noted that Simmons committed the offenses in this case only shortly after the community control sanctions imposed in CR-10-544519 had expired.

{¶6} The trial court stated that in light of the purposes and principles of sentencing of Senate Bill 2, and the seriousness and recidivism factors, it would be imposing a prison sentence. It found that Simmons would likely commit felonious assault again, and that Simmons's assertion that the incident was an "accident" was insulting to the court. Accordingly, the court sentenced Simmons to eight years incarceration on the felonious assault conviction, and six months each on the criminal damaging and aggravated menacing convictions, to be served concurrently. The court also imposed three years mandatory postrelease control. Simmons now appeals his sentence.

{¶7} In his first assignment of error, Simmons contends that the eight-year term imposed by the trial court was excessive in light of the principles and purposes of sentencing set forth in R.C. 2929.11. In his second assignment of error, Simmons contends that his eight-year sentence was excessive because the seriousness and recidivism factors in R.C. 2929.12 indicate he should have received a lesser sentence. We consider these assignments of error together because they are related.

{¶8} When reviewing felony sentences, this court may increase, reduce, modify a sentence, or vacate and remand for resentencing if we clearly and convincingly find that the record does not support the sentencing court's statutory findings, if applicable, or the sentence is contrary to law. R.C. 2953.08(G)(2). A sentence is contrary to law if (1) the sentence falls outside the statutory range for the particular degree of offense, or (2) the trial court failed to consider the purpose and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors in R.C. 2929.12. *State v. Price*, 8th Dist. Cuyahoga No. 103023, 2016-Ohio-591, ¶ 12.

{¶9} When sentencing a defendant, the court must consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12. *State v. Hodges*, 8th Dist. Cuyahoga No. 99511, 2013-Ohio-5025, ¶ 7. R.C. 2929.11(A) provides that 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 will accomplish these purposes.

{¶10} The sentencing court must consider the seriousness and recidivism factors set forth in R.C. 2929.12 in determining the most effective way to comply with the purposes and principles of sentencing set forth in R.C. 2929.11. *Hodges* at ¶ 9. R.C. 2929.12 provides a non-exhaustive list of factors a trial court must consider when determining the seriousness of the offense and the likelihood that the offender will commit future offenses.

{¶11} Simmons contends that under R.C. 2929.11, an eight-year sentence was not necessary to protect the public or to punish him in this case because he admitted what he did and asked for forgiveness from the victim, the victim's injuries were not serious, his two prior offenses were committed while he was a juvenile, and he was working on dealing with his depression and how to resolve problems in his life. He further contends that his assertion at sentencing that the incident was an "accident" was misconstrued by the trial judge and meant only that he should have left the scene before getting into an altercation.

{¶12} With respect to R.C. 2929.12, Simmons contends that the trial court did not properly apply the seriousness and recidivism factors when imposing his sentence because he admitted and accepted responsibility for the crime and was genuinely remorseful. He further contends that because he had not previously served a prison sentence, he should have received the minimum two-year sentence, instead of the maximum eight-year sentence imposed by the court.

{¶13} Simmons's arguments are without merit. Simmons pleaded guilty to felonious assault arising out of an incident in which he purposely rammed his car three or four times into the victim's car while the victim was in the car. The victim was injured as a result. Although Simmons argues that the eight-year prison sentence was excessive because the victim's injuries were not serious, as evidenced by the attempted murder charge in Count 1, it is apparent that Simmons was fortunate the victim's injuries were not more severe.

{¶14} Furthermore, the record supports the trial court's finding that Simmons is likely to reoffend. R.C. 2929.12(D)(2) provides that an offender is more likely to commit future crimes if the offender was a juvenile offender or has a history of criminal convictions. R.C. 2929.12(D)(5) provides that an offender is more likely to commit future crimes if the offender shows no genuine remorse for the offense.

{¶15} The record reviewed by the court demonstrated that Simmons had a juvenile record involving aggravated robbery. As an adult, he had twice previously committed felonious assault and been sentenced to community control. The second felonious assault offense occurred while Simmons was still on community control sanctions in the first case. The incident giving rise to the charges in this case occurred only shortly after the community control sanctions were completed in the second case. As the trial court found, Simmons is apparently unable to control his anger and very likely to repeat this crime in the future.

{¶16} Moreover, although Simmons argues that a sentence of less than eight years would have been effective in punishing him, it is apparent that community control sanctions were not effective in deterring Simmons from committing felonious assault. Furthermore, despite Simmons's argument otherwise, the prior felonious assault offenses were committed while he was an adult; they were not juvenile offenses. Thus, Simmons's argument that he should have been sentenced to the minimum two-year sentence because he was a first-time offender is without merit.

{¶17} Finally, we note that Simmons failed to show any genuine remorse for the incident that led to the charges in this case. Although Simmons told the court that he was "very apologetic" for what happened, he also asserted that the incident was a "pure accident" and that he "didn't do it on purpose" but only because of his "feelings." Such a qualified "apology" is not genuine remorse or acceptance of responsibility for one's actions.

{¶18} The eight-year prison sentence imposed by the trial court is within the statutory range for second-degree felonies. R.C. 2929.14(A)(2). Furthermore, before sentencing Simmons, the trial court stated that it had considered the principles and purposes of sentencing set forth in R.C. 2929.11, and the seriousness and recidivism factors of R.C. 2929.12. The record supports the trial court's sentence and it is not contrary to law. Therefore, the first and second assignments of error are overruled.

{¶19} 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. 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.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and  
EILEEN T. GALLAGHER, J., CONCUR