

[Cite as *State v. Holt*, 2016-Ohio-5246.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103772

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANDRE J. HOLT

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-597696-A

BEFORE: E.A. Gallagher, P.J., Kilbane, J., and Stewart, J.

RELEASED AND JOURNALIZED: August 4, 2016

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EILEEN A. GALLAGHER, P.J.:

{¶1} Defendant-appellant Andre Holt appeals the sentence following his guilty pleas in the Cuyahoga County Court of Common Pleas. We affirm the decision of the trial court.

Facts and Procedural Background

{¶2} Holt pled guilty to felonious assault, domestic violence and endangering children. At sentencing, the state detailed the underlying facts of the offenses as follows: on July 18, 2015, Holt and his wife, Haymanot Holt, began arguing over separating. Holt attacked his wife by punching her repeatedly in the face, banging her head on the wood floor of their bedroom and choking her to near unconsciousness. Mrs. Holt told the court at sentencing that Holt indicated he intended to kill her. The attack ended when the couple's ten-year old daughter and Mrs. Holt's mother entered the room.

{¶3} Police arrived to find Holt with blood on his hands, arms, stomach, legs and shorts. Police observed serious injuries to Mrs. Holt's face with blood covering her head and upper body, her right eye was swollen, she had a cut and swelling on her forehead, she was missing a front tooth and had marks on her neck, consistent with being strangled. Mrs. Holt's tooth was recovered from a pool of blood inside the home. Haymanot told police that Holt had attacked her, slammed her face on the ground and choked her.

{¶4} At sentencing, Mrs. Holt stated that she lost a tooth as a result of her head being slammed on the floor. Mrs. Holt also suffered a permanent bruise on her eyebrow, a

fractured right eye socket, a broken nose bone and nerve damage to side of her face. She told the court that she and her daughter suffer from nightmares regarding the incident. A victim advocate told the court that she has not often seen worse injuries and that when she had previously interacted with Mrs. Holt following the incident, her face was twice the size that it was at the time of Holt's sentencing.

{¶5} Holt downplayed the severity of the attack and blamed Mrs. Holt's consumption of alcohol and/or a conspiracy to induce him to violence. The trial court imposed a seven-year prison term for Holt's felonious assault charge and six-months of local incarceration terms for both the domestic violence and endangering children offenses. The sentences were ordered to run concurrently.

Law and Analysis

{¶6} Each of Holt's arguments pertain to his seven-year prison sentence for felonious assault. Holt presents no challenges to his misdemeanor sentences for domestic violence and endangering children.

I. The Trial Court's Weighing of Individual Sentencing Factors

{¶7} In his first assignment of error, Holt argues that the trial court violated his due process rights by accepting the state's and victim's version of events over his own that were offered at the sentencing hearing. Holt concedes that the trial court imposed a sentence within the statutory range for his offense but argues that by rejecting his version of events, the trial court imposed an unfair sentence.

{¶8} We are unable to review Holt’s assigned error as argued. In *State v. Ongert*, 8th Dist. Cuyahoga No. 103208, 2016-Ohio-1543, this court held that R.C. 2953.08 precludes appellate review of sentences other than the maximum term allowed for an offense or a sentence otherwise specified as appealable pursuant to R.C. 2953.08(A)(1)-(5). Prior to *Ongert* and pursuant to the language found in paragraph 23 of *State v. Marcum*, Slip Opinion No. 2016-Ohio-1002, the only potential avenue of review for Holt’s sentence would have been that the sentence was “contrary to law” under R.C. 2953.08(A)(5). However, *Ongert* held that:

A sentence within [the appropriate statutory range] cannot then be deemed contrary to law because a defendant disagrees with the trial court’s discretion to individually weigh the sentencing factors. As long as a trial court considered all sentencing factors, the sentence is not contrary to law and the appellate inquiry ends.

Ongert at ¶ 12.

{¶9} Concerning *Marcum*, *Ongert* clarified that:

The *Marcum* decision does not expand R.C. 2953.08(G)(2) to allow appellate courts to independently weigh the sentencing factors in appellate review. *Marcum* only alters the appellate sentencing review inasmuch as appellate courts must now focus on R.C. 2953.08 as the source and limits of our authority. Pursuant to R.C. 2953.08, as is pertinent to *Ongert*’s assigned error, appellate courts can only review to determine whether the sentencing factors were considered; we cannot independently review the weight of each factor in the trial court’s sentencing decision.

Ongert at ¶ 14.

{¶10} Holt’s arguments regarding the trial court’s weighing of the conflicting descriptions of the underlying events at sentencing fall directly within the province of *Ongert* and renders this assignment of error unreviewable.¹

{¶11} Holt’s first assignment of error is overruled.

II. Compliance with R.C. 2929.11 and 2929.12

{¶12} We address Holt’s second, third and fourth assignments of error together because they present interrelated arguments. Within these assignments of error, Holt argues that his sentence is contrary to law because the trial court failed to consider the required statutory factors at sentencing and due process required the trial court to state in writing its reasons for imposing the selected sentence. Holt further argues that the trial court must have been influenced by impermissible considerations because it failed to explain why a prison term was necessary in this instance. We find no merit to Holt’s arguments.

¹We note that even if our appellate review was not precluded by *Ongert*, the rules of evidence do not apply in sentencing hearings. *State v. Hinton*, 8th Dist. Cuyahoga No. 84582, 2005-Ohio-3427, ¶ 12. The trial judge may consider “any reliable evidence in the record” in sentencing a defendant. *Id.* Further, R.C. 2929.19 provides that “[a]t the [sentencing] hearing, the offender, the prosecuting attorney, the victim or the victim’s representative * * * and, with the approval of the court, any other person may present information relevant to the imposition of sentence in the case” and that the trial court shall consider such information along with the record, and any presentence report or victim impact statement, prior to imposing a sentence. R.C. 2929.19(A) and (B). In sentencing a defendant, a trial court may consider any factors that are relevant to achieve the purposes and principles of sentencing and any factors that are relevant to determine the seriousness of the offender’s conduct and whether the offender is likely to commit future crimes. *See* R.C. 2929.11 and 2929.12.

{¶13} A trial court has discretion to impose a prison sentence that is within the statutory range. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, ¶ 37. But, in exercising that discretion, the trial court must “carefully consider” the statutory sentencing guidelines set forth in R.C. 2929.11 and 2929.12, as well as the “statutes that are specific to the case itself.” *Id.* at ¶ 38.

{¶14} This court has consistently recognized that a sentencing court complies with its mandatory duty to consider the sentencing factors of R.C. 2929.11 and 2929.12 if its sentencing entry states that it has considered those factors. *See State v. Szakacs*, 8th Dist. Cuyahoga No. 101787, 2015-Ohio-1382, ¶ 4; *State v. Evans*, 8th Dist. Cuyahoga No. 101485, 2015-Ohio-1022, ¶ 35. Here, the court’s sentencing entry not only indicates that it considered the sentencing factors but the trial court expressly stated as much in open court during the sentencing hearing.

{¶15} Holt’s arguments that the trial court failed to provide reasons for the prison sentence it imposed or that, implicitly, the trial court must have considered impermissible factors by not providing such reasons are equally without solid legal footing. It is well established that trial courts have full discretion to impose prison sentences within the statutory range and are no longer required to make findings or provide reasons for imposing sentences, including even maximum sentences. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph seven of the syllabus. However, we note that the trial court in this instance did, in fact, provide an explanation of its rationale in imposing a prison term:

After consideration of the record, the oral statements made today, looking at the presentence investigation report, the purposes and principles of sentencing under Ohio Revised Code Section 2929.11, looking at the seriousness and recidivism factors relevant to the offense and the offender, pursuant to Revised Code Section 2929.12, and the need for deterrence, incapacitation, rehabilitation, and restitution, the Court finds that a prison term is consistent with the purposes and principles of sentencing set forth in Section 2929.11 of the Revised Code, and finds that the offender is not amenable to an available community control sanction.

Furthermore, this Court has considered the factors set forth in 2929.12, and finds that a prison term is commensurate with the seriousness of the Defendant's conduct and its impact on the victims that is reasonably necessary to deter the offender in order to protect the public from future crimes and would not place an unnecessary burden on government resources.

{¶16} In light of the above, we find no merit to Holt's second, third and fourth assignments of error and overrule them accordingly.

{¶17} The judgment of the trial court is 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.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN A. GALLAGHER, PRESIDING JUDGE

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