

[Cite as *State v. Capezio*, 2016-Ohio-703.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103033

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANTHONY J. CAPEZIO

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-592601-A

BEFORE: Jones, A.J., Kilbane, J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: February 25, 2016

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

{¶1} Defendant-appellant, Anthony Capezio, appeals his sentence, rendered after he pleaded guilty to menacing by stalking and telecommunications harassment. We affirm.

{¶2} In 2015, Capezio was charged with two counts of menacing by stalking and one count each of telecommunications harassment and aggravated menacing. At his plea hearing, he pleaded guilty to one count each of menacing by stalking and telecommunications harassment. The trial court ordered a presentence investigation report.

{¶3} At the sentencing hearing, Capezio's counsel noted that Capezio was intoxicated during the incident that led to his arrest. Capezio apologized to the court and stated he had a steady job, a house, and a car. He was looking forward to his son moving in with him and also was responsible for caring for his sick grandmother. The victim told the court how scared she was of the defendant, whom she used to date. The state summarized Capezio's criminal history to the court, which included a 2008 domestic violence conviction, a 2011 felonious assault and intimidation conviction for which he was sentenced to one year in prison, and a prior telecommunications harassment conviction. The state informed the court that incident that led to the charges in this case began when the victim was at a bar with a friend. Capezio showed up and repeatedly tried to talk to the victim. He grabbed the victim by the arm to pull her out of the bar, but he was removed from the premises by some other people. The police called Capezio

and told him not to contact the victim.

{¶4} Capezio continued to leave threatening and harassing voicemails and text messages for the victim, stating he would harm her, press charges against her, and have her child taken from her. He also showed up where the victim worked and harassed her.

{¶5} The trial court questioned Capezio about his previous convictions, noting he had convictions against his deceased former wife and four other women he had previously dated. The court found him to be a “dangerous menace to women.” The trial court sentenced Capezio to 16 months in prison.

{¶6} Capezio appealed, raising one assignment of error for our review, in which he argues that “[t]he trial court erred when it sentenced Appellant to a prison term without properly considering R.C. 2929.11 and R.C. 2929.12.”

{¶7} 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 serious and recidivism factors set forth in R.C. 2929.12.

{¶8} 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). 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.”

{¶9} The 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; *State v. Combs*, 8th Dist. Cuyahoga No. 99852, 2014-Ohio-497, ¶ 52. While trial courts must carefully consider the statutes that apply to every felony case, it is not necessary for the trial court to articulate its consideration of each individual factor as long as it is evident from the record that the principles of sentencing were considered. *State v. Roberts*, 8th Dist. Cuyahoga No. 89236, 2008-Ohio-1942, ¶ 10. Instead, the trial court still has the discretion to determine whether the sentence satisfies the overriding purpose of Ohio’s sentencing structure. *Bement* at *id.*, citing *State v. Jones*, 12th Dist. Butler No. CA2012-03-049, 2013-Ohio-150, ¶ 49.

{¶10} Thus, while the trial court must consider the principles and purposes of sentencing as well as the mitigating factors, the court is not required to use particular language or make specific findings of its consideration of those factors. *State v. Jones*, 8th Dist. Cuyahoga No. 99759, 2014-Ohio-29, ¶ 13, citing *State v. Carman*, 8th Dist. Cuyahoga No. 99463, 2013-Ohio-4910, ¶ 14. This court has stated that

[a]lthough the trial court’s consideration of these factors is mandatory, proof of that consideration is not — “where the trial court does not put on the record its consideration of R.C. 2929.11 and 2929.12, it is presumed that the trial court gave proper consideration of those statutes.”

State v. Esner, 8th Dist. Cuyahoga No. 90740, 2008-Ohio-6654, ¶ 10, quoting *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 18, fn. 4; *Jones* at *id.*

{¶11} Capezio has not affirmatively demonstrated that the trial court failed to consider the factors set forth under R.C. 2929.11 and 2929.12. The sentencing journal entry the court issued stated that it considered “all factors required by law” and “[found] that prison was consistent with the principles of R.C. 2929.11.” The record also reflects that the trial court considered Capezio’s sentencing memorandum and letters various people sent to the court on his behalf, his criminal history, and the serious and repetitive nature of his crimes against women. We are therefore not persuaded by his argument.

{¶12} The sole assignment of error is overruled.

{¶13} Judgment 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 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.

LARRY A. JONES, SR., ADMINISTRATIVE JUDGE

MARY EILEEN KILBANE, J., and
SEAN C. GALLAGHER, J., CONCUR