

[Cite as *State v. Houston*, 2003-Ohio-6119.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

Appellee

v.

TERRY LEE HOUSTON

Appellant

C.A. No. 21551

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 03 03 0710

DECISION AND JOURNAL ENTRY

Dated: November 19, 2003

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BATCHELDER, Judge.

{¶1} Appellant, Terry Lee Houston, challenges the maximum sentence imposed by the Summit County Court of Common Pleas. We reverse and remand for resentencing.

I.

{¶2} On March 13, 2003, the Summit County Prosecutor filed a bill of information charging Mr. Houston with two separate counts: (1) sexual battery, in violation of R.C. 2907.03(A)(5); and (2) unlawful sexual conduct with a minor, in violation of R.C. 2907.04. Mr. Houston subsequently pled guilty to both counts. The trial court sentenced Mr. Houston to the maximum prison term of five years for each count; these sentences were to run concurrently. Mr. Houston timely appeals, and asserts one assignment of error for review.

II.

Assignment of Error

“AS [MR. HOUSTON] WAS SENTENCED TO THE MAXIMUM PRISON TERM UNDER OHIO [R.C.] SECTIONS 2929.12 AND 2929.14, PURSUANT TO OHIO [R.C.] 2953.08 [AN APPELLANT] WHO IS CONVICTED OF OR PLEADS GUILTY TO A FELONY MAY APPEAL AS A MATTER OF RIGHT THE SENTENCE IMPOSED UPON THE [APPELLANT].”

{¶3} In his sole assignment of error, Mr. Houston avers that the trial court erroneously sentenced him to the maximum term without setting forth the requisite statutory findings to support such sentence. We agree.

{¶4} An appellate court may modify a sentence or remand the matter for resentencing if it finds that the trial court clearly and convincingly acted contrary

to the law. R.C. 2953.08(G)(2)(b). Clear and convincing evidence is that “which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established.” *State v. Eppinger*, 91 Ohio St.3d 158, 164, 2001-Ohio-247, quoting *Cross v. Ledford* (1954), 161 Ohio St. 469, 477. Furthermore, as the trial court has the best opportunity to examine the demeanor of the defendant and evaluate the impact of the crime on the victim and society, it is in the best position to make the fact-intensive evaluations required by the sentencing statutes. *State v. Martin* (1999), 136 Ohio App.3d 355, 361.

{¶5} The general purpose of the sentence imposed is “to protect the public from future crime by the offender and others and to punish the offender.” R.C. 2929.11(A). Therefore, when sentencing the defendant, the trial court must consider factors relating to the “seriousness of the conduct” and the “likelihood of the offender’s recidivism[,]” which are contained in R.C. 2929.12. R.C. 2929.12. See, also, *State v. Gibson*, 3rd Dist. No. 2-01-15, 2001-Ohio-2297. When addressing these factors, the trial court need not use specific language or make specific findings on the record in order to evince the required consideration of the applicable factors. *State v. Arnett*, 88 Ohio St.3d 208, 215, 2000-Ohio-302; *State v. Neptune*, 9th Dist. No. 3171-M, 2001-Ohio-1768. Rather, the trial court need only state that it considered the applicable factors of R.C. 2929.12 in arriving at its decision. See *Neptune*, supra. See, also, *State v. Marks*, 7th Dist. No. 823, 2001-Ohio-3300.

{¶6} In regard to the imposition of maximum sentences, the trial court may impose maximum prison terms upon offenders falling into one of the following four categories: (1) those offenders committing the worst forms of the offense; (2) those posing the greatest likelihood of committing future crimes; (3) certain major drug offenders as set forth in R.C. 2929.14(D)(3); and (4) certain repeat violent offenders as set forth in R.C. 2929.14(D)(2). R.C. 2929.14(C).

{¶7} In order for a sentence to withstand appellate scrutiny, the trial court must make a finding with respect to one of the four categories and specify its reasons for imposing the maximum sentence. R.C. 2929.19(B)(2)(e). See, also, *State v. Edmonson* (1999), 86 Ohio St.3d 324, 329.

{¶8} After a careful review of the transcript of the sentencing hearing and the judgment entry, we find that the trial court has failed to set forth the requisite findings for its imposition of the maximum sentence. To impose the maximum sentence, the trial court was required to find that Mr. Houston committed the worst form of the offense, posed the greatest likelihood of committing future crimes, or fell within one of the two special categories of certain major drug offenders or repeat violent offenders. See R.C. 2929.14(C). As the trial court has not done so, we sustain Mr. Houston's assignment of error to the extent that a maximum sentence without these findings is improper.

III.

{¶9} Mr. Houston's sole assignment of error is sustained. Accordingly, Mr. Houston's sentence is vacated, and his case is remanded for resentencing.

Judgment reversed,
and cause remanded
for resentencing.

WILLIAM G. BATCHELDER
FOR THE COURT

SLABY, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

LAWRENCE R. SMITH, Attorney at Law, 209 South Main Street, 8th Floor-
Malone Building, Akron, Ohio 44308, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney and RICHARD S. KASAY Assistant
Prosecuting Attorney, Summit County Safety Building, 53 University Avenue, 6th Floor,
Akron, Ohio 44308, for Appellee.