

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 25240

Appellee

v.

DONALD J. LEE

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 09 04 1360

Appellant

DECISION AND JOURNAL ENTRY

Dated: October 20, 2010

CARR, Judge.

{¶1} Appellant, Donald Lee, appeals his sentence out of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} Lee pleaded guilty to one count of aggravated vehicular assault in violation of R.C. 2903.08(A)(1) and one count of driving under the influence of alcohol in violation of R.C. 4511.19(A)(1)(a). The charges stemmed from a collision Lee caused when, while driving under the influence of alcohol, he drove his car head-on into the path of an oncoming car. The driver of the other car suffered serious injuries, leading to lengthy hospitalization, surgeries, and a lengthy recovery.

{¶3} Lee was sentenced to four years in prison on the aggravated vehicular assault conviction and one year in jail on the driving under the influence conviction. He filed a timely appeal, raising one assignment of error for review.

II.

ASSIGNMENT OF ERROR

“THE TRIAL COURT ABUSED ITS DISCRETION IN SENTENCING MR. LEE TO FOUR YEARS IN PRISON.”

{¶4} Lee argues that the trial court erred and abused its discretion by imposing a four-year sentence on his conviction for aggravated vehicular assault. Specifically, he argues that the trial court abused its discretion when it imposed his sentence. This Court disagrees.

{¶5} The Ohio Supreme Court held in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, at paragraph seven of the syllabus, that “[t]rial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences.” Trial courts must still consider the statutes applicable to felony cases, including R.C. 2929.11, regarding the purposes of sentencing, and R.C. 2929.12, delineating factors relating to the seriousness of the offense and the offender’s likelihood of recidivism. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, at ¶38.

{¶6} After *Foster*, the Ohio Supreme Court, in a plurality opinion, developed a two-step analysis for reviewing sentences. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912. The *Kalish* court held:

“First, [appellate courts] must examine the sentencing court’s compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court’s decision shall be reviewed under an abuse-of-discretion standard.” *Id.* at ¶4.

{¶7} Lee neither cited nor applied *Kalish* in his brief. Nevertheless, we first conclude that the four-year sentence the trial court imposed falls within the statutory sentence allowed for this offense. Lee takes issue with what he argues is the trial court’s failure to consider the

statutory purposes and principles of sentencing as set forth in R.C. 2929.11, as well as the seriousness and recidivism factors set forth in R.C. 2929.12.

{¶8} As it relates to these provisions, the sentencing entry specifically states that the trial court “has considered the record, oral statements, as well as the principles and purposes of sentencing under O.R.C. 2929.11, and the seriousness and recidivism factors under O.R.C. 2929.12.” Furthermore, the trial court heard from the victim about the horrible injuries she suffered as a result of Lee’s driving while under the influence of alcohol and crashing his car into hers head-on. The sentencing judge also had some familiarity with Lee’s past as he had participated in DUI court when she presided over that program in the Akron Municipal Court. The trial court judge also considered the letters Lee’s family wrote, his year of sobriety, his choice to drive while intoxicated and without a driver’s license, and the injuries he caused to the victim because of his conduct.

{¶9} The trial court considered the statutory factors before imposing sentence, as reflected by the transcript of the sentencing hearing and the trial court’s sentencing entry. Based on this Court’s review of the record, this Court concludes that the trial court did not abuse its discretion when it imposed a four-year sentence. The trial court neither erred nor acted unreasonably when it imposed a four-year sentence based on Lee’s conduct. Accordingly, Lee’s assignment of error is overruled.

III.

{¶10} Lee’s assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
BELFANCE, P. J.
CONCUR

APPEARANCES:

SCOT A. STEVENSON, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, AND HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.