

STATE OF OHIO                     )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.       25250

Appellee

v.

TURON JENARD MURRAY

Appellant

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     CR 09 10 3044

DECISION AND JOURNAL ENTRY

Dated: December 8, 2010

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BELFANCE, Judge.

{¶1} Appellant, Turon Jenard Murray, appeals his sentence from the Summit County Court of Common Pleas. For the reasons that follow, we affirm.

BACKGROUND

{¶2} On December 15, 2009, a jury convicted Turon Jenard Murray of three counts of violating a protection order. The charges stemmed from three separate incidents in 2008 during which Mr. Murray had contact with his estranged wife, thereby violating a civil protection order. It was also alleged at trial that during one of the incidents in 2008, Mr. Murray broke into his wife's house and physically assaulted her, however, the jury found him not guilty of the burglary and domestic violence charges. The State also introduced evidence of Mr. Murray's prior conviction for violating the protection order and two prior convictions for domestic violence.

{¶3} One of Mr. Murray's convictions was classified as a misdemeanor of the first degree, and the remaining two were classified as fifth-degree felonies. The trial court sentenced

Mr. Murray to a total of two years incarceration: six months for the misdemeanor and twelve months for each felony. The misdemeanor sentence and one of the felony sentences were ordered to be served concurrently with each other, but consecutively with the sentence for the other felony conviction.

{¶4} Mr. Murray has appealed his sentence. He argues that the trial court erred in sentencing him to consecutive, maximum sentences without considering and articulating reasons to justify the sentence.

#### STANDARD OF REVIEW

{¶5} Contrary to precedent of the Ohio Supreme Court, Mr. Murray suggests that his sentence should be generally reviewed under the abuse of discretion standard. However, when reviewing a felony sentence, a plurality of the Supreme Court of Ohio held that appellate courts should implement a two-step process. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, at ¶26. The Court stated:

“First, they 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 in imposing the term of imprisonment is reviewed under the abuse-of-discretion standard.” *Id.*

{¶6} Mr. Murray does not mention *Kalish* in his merit brief and has not framed his argument in terms of the two-step process outlined in *Kalish*. Notwithstanding, we construe Mr. Murray’s assignment of error as challenging the trial court’s compliance with the applicable sentencing rules and statutes.

#### CONSECUTIVE, MAXIMUM SENTENCES

{¶7} Mr. Murray argues that the trial court did not take any of the sentencing factors into consideration and did not specify any of the reasons for sentencing Mr. Murray to

maximum, consecutive sentences. It is unclear whether Mr. Murray is complaining in part that the trial court failed to consider the purposes and principles of R.C. 2929.11 and the factors listed in R.C. 2929.12. It is true that when sentencing an offender found guilty of a felony, the trial court must consider the overriding purposes of felony sentencing enumerated in R.C. 2929.11 and the factors relevant to achieving those purposes as outlined in R.C. 2929.12. See *Kalish* at ¶13. In the instant matter, the trial court stated in its judgment entry that it had considered the pertinent statutory provisions. Mr. Murray has not pointed to any legal authority that provides that the trial court was required to make specific findings on the record or in its journal entry concerning its consideration of R.C. 2929.11 or 2929.12.

{¶8} Mr. Murray also argues that the trial court erred in failing to make findings and give reasons supporting the imposition of maximum, consecutive sentences. Mr. Murray contends that the trial court failed to follow *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, which held that pursuant to R.C. 2929.14(E)(4) and 2929.19(B)(2)(c), a trial court is required to make findings and give reasons supporting its findings when imposing consecutive sentences. *Comer* at paragraph one of the syllabus. However, Mr. Murray's reliance on *Comer* is incorrect as *Comer* has been effectively overruled by subsequent decisions of the Supreme Court of Ohio. See *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, at ¶26 ("The judicial fact-finding that *Comer* mandated at sentencing hearings for consecutive or non[-]minimum sentences \* \* \* no longer survives."). In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, the Supreme Court of Ohio held 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." *Foster* at paragraph seven of the syllabus. The Court determined that certain portions of Ohio's sentencing statutes were unconstitutional to

the extent that they required trial courts to make findings of fact with respect to sentencing and declared that the unconstitutional portions of the statutes be “severed.” *Foster* at paragraphs one through seven of the syllabus. Specifically, the *Foster* Court excised, inter alia, R.C. 2929.14(B), (E)(4) and R.C. 2929.19(B)(2); the precise portions of the statutes analyzed by *Comer*. *Foster* at paragraphs two and four of the syllabus; *Comer* at syllabus. Accordingly, Mr. Murray’s contention that the trial court was required to provide reasons for its imposition of consecutive, maximum sentences is not supported by current law.

#### PREFERENCE FOR COMMUNITY CONTROL

{¶9} Mr. Murray also contends that the trial court erred in failing to follow the statutory preference for community control for fifth-degree felonies and failed to set forth its findings to support a prison sentence.

{¶10} Specific to fourth- and fifth-degree felonies, the Revised Code provides that the court shall impose community control or a combination of community control sanctions if the court does not make one of the findings enumerated in R.C. 2929.13(B)(1)(a)-(i) and if the trial court determines that a community control sentence will achieve the purposes of felony sentencing described in R.C. 2929.11. R.C. 2929.13(B)(2)(b). However, the trial court may sentence an offender to prison in the absence of findings pursuant to division (B)(1) if the court determines that community control will not achieve the purposes of felony sentencing outlined in R.C. 2929.11. *Foster* at ¶69. In this case, the court found that Mr. Murray was not amenable to community control and that a prison sentence was consistent with the R.C. 2929.11 purposes of sentencing. Thus, there was no preference for community control because the court determined that a prison term was necessary to achieve the purposes of felony sentencing and there was no error. See *id.*

{¶11} Mr. Murray has not demonstrated that the trial court's sentence was contrary to law. Furthermore, Mr. Murray has not demonstrated that the trial court abused its discretion in its imposition of the term of imprisonment. See *Kalish* at ¶26. Accordingly, Mr. Murray's assignment of error is overruled.

### CONCLUSION

{¶12} Mr. Murray's sole assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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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.

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EVE V. BELFANCE  
FOR THE COURT

WHITMORE, J.  
DICKINSON, P. J.  
CONCUR

APPEARANCES:

MICHELE A. TOMER, Attorney at Law, for Appellant.

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