

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee,

-v-

SABRINA M. COBB

Appellant.

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CASE NO.

14-1698

ON APPEAL FROM THE MEDINA
COUNTY COURT OF APPEALS,
NINTH JUDICIAL DISTRICT

COURT OF APPEALS
CASE NO. 13CA0087-M

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT SABRINA M. COBB

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State of Ohio v. Sabrina M. Cobb, 9th Dist. No. 13CA0087-M, 2013-Ohio-3530
Decision and Journal Entry filed August 19, 2014.

EXPLANATION OF WHY LEAVE TO APPEAL SHOULD BE GRANTED

This appeal presents a case of great public or general interest concerning the issue of a trial court's sentencing of a criminal defendant, Ms. Cobb, with a life-threatening medical condition, who was convicted of non-violent felony offenses and may be eligible for community control, to a 12-month prison term without first determining whether the medical needs of the defendant can be met in the prison system.

Ohio case law indicates that a prison sentence is not illegal or unconstitutional where such a defendant's medical needs can in be met in the prison system. *See State v. Suarez*, 11th Dist. No. 2103-G-3167, 2104-Ohio-1350 at ¶19; *State v. Martin*, 12th Dist. No. CA2103-03-055, 2013-Ohio-3676 at ¶25; and *State v. O'Shannon* (10th Dist. 1988), 44 Ohio App. 3d 197, 200-01 542 N.E.2d 69. However, those cases also suggest the reverse legal proposition—namely, that a prison sentence is illegal or unconstitutional where such a defendant's medical needs cannot be met in the prison system. *Id.*

In the instant case, Ms. Cobb has serious health problems, suffering from both lupus and a severe case of non-immune hemolytic anemia. (Tr. 13, 30). She is being treated by a physician specialist for bone marrow failure and has to have blood transfusions approximately every 2 weeks or so. (Tr. 13-14, 30). Otherwise, Ms. Cobb's red blood cell count "crashes" and she could go into a coma. (Tr. 13-14). Her medical conditions prevent her from continuing to attend university or maintaining employment. (Tr. 30). Ms. Cobb's medical needs cannot be met in the prison system, but can be met if she is placed on community control which would allow her to continue her life-saving medical treatment.

Wherefore, Appellant Sabrina M. Cobb respectfully urges this Honorable Court to accept jurisdiction in this case to clarify the issue of whether, before imposing a prison sentence upon a criminal defendant with a verified life-threatening medical condition who may be eligible for

community control, a trial court must consider whether the medical needs of the defendant can be met in the prison system. If the defendant's medical needs cannot be met in the prison system, it is Ms. Cobb's assertion that the trial court must impose a lesser sentence of community control which would allow the defendant to continue to receive life-saving medical treatment.

STATEMENT OF THE CASE AND FACTS

On May 23, 2013, a three-count indictment was filed in the Medina County Court of Common Pleas charging Defendant-Appellant Sabrina M. Cobb (hereinafter "Ms. Cobb") as to Counts I and II with aggravated trafficking in drugs (oxycodone, schedule II controlled substance) in violation of R.C. 2925.03(A)(1)(C)(1)(a), both felonies of the fourth degree, and as to Count III with aggravated trafficking in drugs (oxycodone, schedule II controlled substance) in violation of R.C. 2925.03(A)(1)(C)(1)(c), with possession of drugs (fentanyl, schedule II controlled substance), a felony of the third degree. Ms. Cobb was subsequently arrested on a warrant issued pursuant to that indictment.

On June 17, 2013, Ms. Cobb was arraigned before the Honorable Christopher J. Collier, Judge of Medina County Court of Common Pleas. The trial court appointed Attorney Kenneth C. Staiduhar of Medina to represent Ms. Cobb. She entered pleas of "not guilty" as to all three counts of the indictment.

Ms. Cobb is twenty (20) years-old and a high school graduate. (Tr. 6). She was previously enrolled at the University of Akron and employed at Bob Evans restaurant. (Tr. 29). Ms. Cobb had no prior felony offenses, but had been convicted of two misdemeanors shortly after turning eighteen (18) years-old for using marijuana and for criminal damaging to some vehicles. (Tr. 9-10, 29-30). In the instant case, Ms. Cobb admittedly took oxycodone pills and fentanyl patches, which had been prescribed for her brother-in-law, from her brother-in-law's and sister's home. (Tr. 14-16). She then sold those prescribed medications to a close male friend

named “Dylan Tingle” on three separate occasions—December 27, 2012; January 18, 2013; and February 20, 2013—for a few hundred dollars on each occasion because she needed the money to pay various bills. (Tr. 14-18, 23-24). Unbeknownst to Ms. Cobb, her friend Mr. Tingle was working as a confidential informant for the Medina County Drug Task Force (MCDTF). Ms. Cobb admittedly had a problem in the past with smoking marijuana. (Tr. 14, 17, 35-42).

On September 16, 2013, a change of plea hearing was held before Judge Collier. (Tr. 4-25). Ms. Cobb was present in the courtroom and represented Attorney Staiduhar. (Id). The State of Ohio was represented by Scott G. Salisbury, Assistant Prosecuting Attorney. (Id). Ms. Cobb entered a change of plea from “not guilty” to “no contest” as to all three counts of the indictment. (Tr. 12-13). The trial court thereupon referred Ms. Cobb for a pre-sentence investigation (PSI) report to be prepared by the Medina County Adult Probation Department. (Tr. 13).

On October 28, 2013, a sentencing hearing was held (Tr. 29-43; Trial Court Judgment Entry filed November 1, 2013). Ms. Cobb was present in the courtroom and represented by Attorney Staiduhar. (Id). The State of Ohio was represented by Scott G. Salisbury, Assistant Prosecuting Attorney. (Id). Ms. Cobb apologized and accepted responsibility for her actions. (Tr. 35-42).

Ms. Cobb has serious health problems, suffering from both lupus and a severe case of non-immune hemolytic anemia. (Tr. 13, 30). She is being treated by a physician specialist for bone marrow failure and has to have blood transfusions approximately every 2 weeks or so. (Tr. 13-14, 30). Otherwise, Ms. Cobb’s red blood cell count “crashes” and she could go into a coma. (Tr. 13-14). Her medical conditions prevent her from continuing to attend university or maintaining employment. (Tr. 30).

With respect to Ms. Cobb's physical health, the PSI report prepared by the Medina County Adult Probation Department indicated at page 5 that:

[S]he receives blood transfusions approximately every 2-3 weeks at Summa. Per Dr. Jakob of Summa, the defendant has been diagnosed with profound non-immune hemolytic anemia and undergoes transfusions every 2 weeks. She is also under the care of Dr. Hord of Akron Children's Hospital who is attempting to clarify whether she suffers from bone marrow failure syndrome. (all verified).

Despite that verification of Ms. Cobb's life-threatening medical conditions, and without determining whether Ms. Cobb could receive adequate medical care for her life-threatening medical conditions if sentenced to a prison term, the trial court imposed a prison sentence of twelve (12) months as to Count I, twelve (12) months as to Count II, and twelve (12) months as to Count III, with all three sentences ordered to run concurrently with each other for a total prison term of twelve (12) months. (Tr. 42-43; Trial Court Judgment Entry filed November 1, 2013). Fines and courts costs were ordered to be waived. (Id).

A timely appeal to the Ohio Court of Appeals for the Ninth Judicial District followed, Upon motion of Ms. Cobb to stay the prison sentence and grant an appeal bond, the trial court granted Ms. Cobb a recognizance bond on November 13, 2013 and stayed her prison sentence .

In her Motion to Stay Sentence Pending Outcome of Direct Appeal, it was noted that:

Ms. Cobb has suffered from systemic lupus for several years and suffers from asthma. Dr. Christina Peters of Wadsworth is her treating and family physician.

More importantly, Ms. Cobb has also been diagnosed with bone marrow failure and chronic anemia, which requires her to receive blood transfusions two (or three) times per month to remain alive. Dr. John Jacobs in Medina, Ohio is her treating specialist. Dr. Jacobs has been in contact with the nurses at the Medina County Jail out of his concern for Ms. Cobb's continued well-being.

On August 19, 2014, the Court of Appeals erroneously affirmed the Ms. Cobb's sentence. This discretionary appeal followed.

PROPOSITION OF LAW

Before imposing a prison sentence upon a defendant with a verified life-threatening medical condition, who may be eligible for community control, a trial court must consider whether the medical needs of the defendant can be met in the prison system. If the defendant's medical needs cannot be met in the prison system, then the trial court must impose a lesser sentence of community control which would allow the defendant to continue to receive life-saving medical treatment.

The Court of Appeals below incorrectly determined that the trial court did not abuse its discretion in sentencing Ms. Cobb to a total prison term of 12 months, given her serious life-threatening medical condition(s) and her medical needs which cannot be met in the prison system. *See State v. Cobb*, 9th Dist. No. 13CA0087-M, 20014-Ohio-3530 at ¶19.

R.C. 2953.08(A) expressly provides that:

In addition to any other right to appeal and except as provided in division (D) of this section, a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed upon the defendant on one of the following grounds:

(4) The sentence is contrary to law.

(G) (1) If the sentencing court was required to make the findings required by division (B) or (D) of section 2929.13, division (D)(2)(e) or (E)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code relative to the imposition or modification of the sentence, and if the sentencing court failed to state the required findings on the record, the court hearing an appeal under division (A), (B), or (C) of this section shall remand the case to the sentencing court and instruct the sentencing court to state, on the record, the required findings.

(2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is

not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

- (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (D)(2)(e) or (E)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;
- (b) That the sentence is otherwise contrary to law.

Appellate courts must apply a two-step approach when reviewing felony sentences. 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. State v. Kalish, 120 Ohio St. 3d 23, 2008 Ohio 4912, 896 N.E.2d 124 at ¶ 26. An abuse of discretion implies an attitude on the part of the trial court that is unreasonable, arbitrary, or unconscionable. Blakemore v. Blakemore, (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

The record below indicates that Ms. Cobb has serious health problems, and is suffering from lupus and from a severe case of non-immune hemolytic anemia. (Tr. 13, 30). She is being treated by a specialist in Cleveland for bone marrow failure and has to have blood transfusions at Summa approximately every 2 weeks or so. (Tr. 13-14, 30). Otherwise, Ms. Cobb's red blood cell count "crashes" and she could go into a coma. (Tr. 13-14). Her medical conditions prevent her from continuing to attend university or maintaining employment. (Tr. 30). The PSI report prepared by the Medina County Adult Probation Department verified the statements made on the record, indicating at page 5 that:

[S]he receives blood transfusions approximately every 2-3 weeks at Summa. Per Dr. Jakob of Summa, the defendant has been diagnosed with profound non-immune hemolytic anemia and undergoes transfusions every 2 weeks. She is also under the care of Dr. Hord of Akron Children's Hospital who is attempting to clarify whether she suffers from bone marrow failure syndrome. (all verified).

In her Motion to Stay Sentence Pending Outcome of Direct Appeal filed on November 5, 2013, which the trial court granted the following week, it was noted that:

Ms. Cobb has suffered from systemic lupus for several years and suffers from asthma. Dr. Christina Peters of Wadsworth is her treating and family physician.

More importantly, Ms. Cobb has also been diagnosed with bone marrow failure and chronic anemia, which requires her to receive blood transfusions two (or three) times per month to remain alive. Dr. John Jacobs in Medina, Ohio is her treating specialist. Dr. Jacobs has been in contact with the nurses at the Medina County Jail out of his concern for Ms. Cobb's continued well-being.

In the instant case, the sentencing hearing record did not indicate that the trial court had considered whether Ms. Cobb's medical needs could be met in the prison system prior to imposing a total 12-month prison sentence at the Ohio Reformatory for Women in Marysville, Ohio. (Tr. 26-43). The trial court granted Ms. Cobb's request for a stay of her prison sentence based on the above-cited information, only after being advised in the Motion for Stay Pending Direct Appeal that her life was endangered by being incarcerated and that her Summa medical specialist, Dr. Jacob, had been in contact with the Medina County Jail nurses out of concern for Ms. Cobb's continued well-being.

Unlike the cases relied upon by the Court of Appeals in erroneously affirming Ms. Cobb's prison sentence, the record in this case did not establish or otherwise indicate that Ms. Cobb's medical needs could be met in the prison system. See State v. Suarez, 11th Dist. No. 2103-G-3167, 2104-Ohio-1350 at ¶19; State v. Martin, 12th Dist. No. CA2103-03-055, 2013-Ohio-3676 at ¶25; and State v. O'Shannon (10th Dist. 1988), 44 Ohio App. 3d 197; 542 N.E.2d 69. Instead, the record established that Ms. Cobb needs to have life-saving blood transfusions at the hospital every two weeks or else she will slip into a coma. (Tr. 13-14, 30; PSI report at page 5).

In Suarez, supra, both the PSI and defendant's statements made at the sentencing hearing, which were considered by the trial court as expressly stated in the sentencing judgment entry, indicated that the defendant had medical problems, including Hepatitis C, liver disease, and diabetes. However, the defendant in Suarez, supra., who was convicted in that case of Having Weapons Under a Disability, had an extensive and violent criminal past, had been incarcerated multiple times before, and there was no indication in the record that his medical needs could not again be met in the prison system. Therefore, the Eleventh District Court of Appeals upheld that prison sentence.

In Martin, supra., the trial court had sentenced the defendant to a total prison term of 12-months for two counts of felony theft and one count of felony forgery. Although the defendant needed a kidney transplant, he acknowledge on the record at his change of plea hearing that he is "on home dialysis where * * * I'm not required to be in the center for my treatment or to be in the hospital any more [sic]." Martin, supra. at ¶25. The Twelfth District Court of Appeals affirmed the prison sentence, indicating that if Martin's medical needs can be met at his home, then they can also be met in this state's prison system. Id.

In O'Shannon, supra., the trial court had sentenced the defendant to a total prison term of 18-months for two counts of felony theft. Although the defendant was a 56-year-old amputee who had lost his right leg above the knee and was confined to wheelchair, and had also undergone facial reconstruction surgery, the Tenth District Court of Appeals upheld that prison sentence where there was no assertion by the defendant or indication that his medical needs could not be met in the prison system.

It is verified that Ms. Cobb suffers from profound non-immune hemolytic anemia and bone marrow failure. (Tr. 13-14, 30; PSI report at page 5) Unlike the defendants in Suarez, supra., Martin, supra., and O'Shannon, supra. Ms. Cobb is being treated by a Summa medical

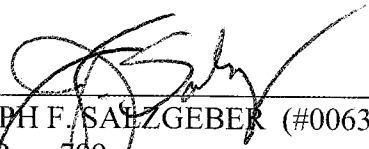
specialist, Dr. Jacobs, and has to have blood transfusions at the hospital approximately every 2 weeks or so. (Tr. 13-14, 30; PSI report at page 5). Otherwise, Ms. Cobb's red blood cell count "crashes" and she could go into a coma. (Tr. 13-14). Her medical conditions prevent her from attending university or maintaining employment. (Tr. 30). Unlike the defendants in Suarez, supra, Martin, supra, and O'Shannon, supra, the record therefore reflects that Ms. Cobb's medical needs cannot be met in the prison system, especially in small town Marysville, Ohio where the Ohio Reformatory for Women is located.

Where a defendant such as Ms. Cobb, who has been convicted of only non-violent felony drug offenses, has a documented life-threatening medical condition, or conditions, and her medical needs cannot be met in the prison system, a lesser sentence of community control must be imposed which would allow the defendant to continue to receive life-saving medical treatment from her medical specialist. Otherwise, a prison sentence would be contrary to law and constitute cruel and unusual punishment contrary to the Eighth Amendment to the United States Constitution, as applied to the State of Ohio by the Fourteenth Amendment to the United States Constitution, and to Section 9, Article I of the Ohio Constitution. Based on the foregoing, this Honorable Court should grant jurisdiction with respect to this proposition of law.

CONCLUSION

For the foregoing reasons, this appeal clearly presents a case of great public or general interest concerning the issue of a trial court's consideration of whether the medical needs of a non-violent defendant with a verified life-threatening medical condition can be met in the prison system, before imposing a prison term instead of a lesser sentence of community control that would allow the defendant to continue to obtain life-saving treatment from her medical specialist, Dr. Jacobs, in the form of blood transfusions at the hospital. Therefore, Appellant Sabrina M. Cobb respectfully urges this Honorable Court to grant jurisdiction to hear this appeal.

Respectfully submitted,



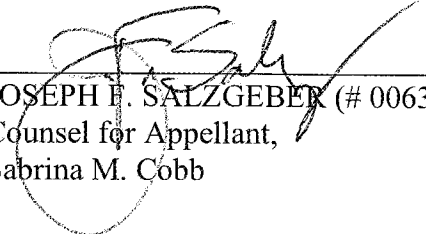
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PROOF OF SERVICE

Undersigned counsel hereby certifies that a copy of the foregoing *Memorandum In Support Of Jurisdiction Of Appellant Sabrina M. Cobb* was served by ordinary first-class U.S. mail on this 2nd day of October, 2014, upon:

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STATE OF OHIO COURT OF APPEALS
COUNTY OF MEDINA 14 AUG 19 PM 2:03

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

FILED
DAVID B. WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

C.A. No. 13CA0087-M

Appellee

v.

SABRINA M. COBB

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 13 CR 0311

DECISION AND JOURNAL ENTRY

Dated: August 18, 2014

WHITMORE, Judge.

{¶1} Appellant, Sabrina Cobb, appeals from the judgment of the Medina County Court of Common Pleas, sentencing her to a 12-month prison term. This Court affirms.

I

{¶2} Cobb stole prescription oxycodone and fentanyl from her sister and brother-in-law's home in Pennsylvania. Cobb, then, negotiated with a friend to sell the drugs to him. In December 2012, Cobb sold 63 oxycodone tablets to the friend. The next month, Cobb again met her friend, who was accompanied by an undercover agent, and sold them 90 oxycodone tablets. The following month, Cobb sold 10 fentanyl patches to the same friend and undercover agent.

{¶3} Cobb was indicted for two counts of aggravated trafficking in drugs, in violation of R.C. 2925.03(A)(1)/(C)(1)(a), which are felonies of the fourth degree. Cobb was also indicted for one count of aggravated trafficking in drugs, in violation of R.C. 2925.03(A)(1)/(C)(1)(c), which is a felony of the third degree. At her arraignment, Cobb pleaded not guilty. She was

released on bond with conditions including that she enter into a substance abuse monitoring ("SAM") program.

{¶4} Following discovery, Cobb changed her plea to no contest. The trial court found her guilty of all charges and referred her to adult probation for a presentence investigation report. After reviewing the presentence investigation report and listening to Cobb and her counsel, the court sentenced Cobb to 12 months in prison for each count and ordered all three prison terms to run concurrently.

{¶5} Cobb now appeals and raises one assignment of error for our review.

II

Assignment of Error

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY FAILING TO ADEQUATELY CONSIDER REQUIRED STATUTORY SENTENCING FACTORS IN IMPOSING A TOTAL PRISON SENTENCE OF TWELVE (12) MONTHS ON THE DEFENDANT, INSTEAD OF COMMUNITY CONTROL/PROBATION WHERE DEFENDANT HAD NO PRIOR FELONY RECORD, WHERE PRISON TERM(S) WERE NOT MANDATORY FOR HER NON-VIOLENT OFFENSES, SHE APOLOGIZED AND ACCEPTED RESPONSIBILITY FOR HER ACTIONS, AND SHE SUFFERS FROM SERIOUS HEALTH PROBLEMS WHICH ENDANGER HER LIFE UNLESS SHE RECEIVES PERIODIC MEDICAL CARE IN THE FORM OF BLOOD TRANSFUSIONS.

{¶6} In her sole assignment of error, Cobb argues that the trial court failed to consider the statutory sentencing guidelines and factors contained in R.C. 2929.11, 2929.12, and 2929.13. More specifically, Cobb argues had the court adequately considered the factors she would have been sentenced to community control. We disagree.

{¶7} In reviewing a felony sentence, this Court follows the two-step approach set forth in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912. *E.g.*, *State v. Shank*, 9th Dist. Medina No. 12CA0104-M, 2013-Ohio-5368, ¶ 31. First, we "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.” *Kalish* at ¶ 26. If the sentence is not contrary to law, then we review the trial court’s sentence under an abuse-of-discretion standard. *Id.* An abuse of discretion indicates that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶8} In the present matter, Cobb was convicted of three counts of aggravated trafficking in drugs. Two of the counts were fourth-degree felonies, with a possible prison term from six to eighteen months. *See* R.C. 2929.14(A)(4). One count was a third-degree felony, with a possible prison term from nine to thirty-six months. *See* R.C. 2929.14(A)(3)(b). Cobb was sentenced to twelve months for each count, all to run concurrently. Cobb’s sentence fell within the permitted statutory range and it is not contrary to law.

{¶9} We next examine whether the trial court abused its discretion in imposing a prison term, rather than community control. In analyzing whether a prison term is appropriate for a fourth-degree or third-degree felony drug violation of R.C. Chapter 2925, the court must look at the specific provision within that Chapter that was violated. R.C. 2929.13(E)(1). In this case, Cobb was convicted on two counts of violating R.C. 2925.03(A)(1)/(C)(1)(a) for her sales of oxycodone. R.C. 2925.03(C)(1)(a) directs that R.C. 2929.13(C) applies in determining whether to impose a prison term for these offenses. R.C. 2929.13(C) specifies that in determining whether to impose a prison term, “the sentencing court shall comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code and with section 2929.12 of the Revised Code.”

{¶10} Cobb was also convicted of aggravated trafficking in violation of R.C. 2925.03(A)(1)/(C)(1)(c) for her sale of the fentanyl patches. R.C. 2925.03(C)(1)(c) provides this

is a third-degree felony and “there is a presumption for a prison term for the offense.” “[F]or a felony drug offense that is a violation of any provision of Chapter 2925 * * * for which a presumption in favor of a prison term is specified as being applicable * * * it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code.” R.C. 2929.13(D)(1).

{¶11} Despite this presumption, the sentencing court may impose community control sanctions if it makes both of the following findings:

(a) A community control sanction or a combination of community control sanctions would adequately punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a lesser likelihood of recidivism outweigh the applicable factors under that section indicating a greater likelihood of recidivism.

(b) A community control sanction or a combination of community control sanctions would not demean the seriousness of the offense, because one or more factors under section 2929.12 of the Revised Code that indicate that the offender’s conduct was less serious than conduct normally constituting the offense are applicable, and they outweigh the applicable factors under that section that indicate that the offender’s conduct was more serious than conduct normally constituting the offense.

R.C. 2929.13(D)(2).

{¶12} “[T]here is no requirement under R.C. 2929.12 that the trial court on the record provide an analysis of the factors it considered. Rather, pursuant to *Foster*, the trial court was simply required to *consider* these factors.” (Emphasis sic.) *State v. Bigley*, 9th Dist. Medina No. 08CA0085-M, 2009-Ohio-2943, ¶ 14. “A silent record raises the presumption that the trial court considered the factors contained in R.C. 2929.12.” *Id.*, quoting *State v. Adams*, 37 Ohio St.3d 295 (1988), paragraph three of the syllabus.

{¶13} In its sentencing entry, the trial court noted it considered the record, oral statements, the presentence report, and the principles and purposes of sentencing under R.C.

2929.11. The court specifically found “a prison term is consistent with the purposes and principles of sentencing in [R.C.] 2929.11.” The record also reflects that the court considered the factors in R.C. 2929.12.

{¶14} Cobb argues that she should have been granted community control because she had no prior felony convictions, apologized, and has serious health problems.

{¶15} First, Cobb argues that she had no prior “felony record.” The recidivism factors contained in R.C. 2929.12 do not distinguish between “felony” convictions¹ and others. Rather, pursuant to R.C. 2929.12(D)(2), the sentencing court shall consider whether the offender was “adjudicated a delinquent child” or “has a history of criminal convictions.” *See also* R.C. 2929.12(E)(1) and (2). The record reflects that Cobb had been previously adjudicated a delinquent child and had a criminal conviction as an adult. In addition, Cobb had not led a law-abiding life for a number of years prior to the current offenses. *See* R.C. 2929.12(E)(3). The trial court observed that Cobb had a drug possession conviction in February 2012. Her current offenses arose out of drug sales occurring later that same year and in early 2013.

{¶16} The trial judge further noted Cobb’s “adjustment to the SAM program was troubling.” Not only did she test positive for marijuana, she denied having any drinking or drug problems. *See* R.C. 2929.12(D)(4). According to Cobb, she began using marijuana at age 13 and drinking at age 15. In 2010, she was assessed and diagnosed with cannabis and alcohol abuse, but after attending one or two meetings, she failed to complete treatment. In relation to

¹ We note whether an offender who is convicted of a non-violent, fourth-degree felony had been previously convicted of a “felony” offense would be relevant for determining eligibility for community control under R.C. 2929.13(B)(1)(a)(i). But R.C. 2929.13(B) is not applicable to Cobb’s offenses. *See* R.C. 2929.13(E) and R.C. 2925.03(C)(1). Even if R.C. 2929.13(B) were applicable, Cobb would not necessarily qualify for community control because her most serious charge was a third-degree felony. *See* R.C. 2929.13(B)(1)(a)(ii).

the current offenses, the court observed that Cobb negotiated the price for which she would sell the drugs in a “very sophisticated way.” Although Cobb’s later drug tests in the SAM program were negative, we cannot say the trial court abused its discretion.

{¶17} Cobb further argues that she “apologized and accepted responsibility for her actions.” As one factor indicating an offender is not likely to commit future crimes, “R.C. 2929.12(E)(5) requires an offender express ‘*genuine* remorse.’” (Emphasis sic.) *State v. Smith*, 9th Dist. Summit No. 26585, 2013-Ohio-4682, ¶ 26. At the sentencing hearing, Cobb stated, “I’m sorry. I know what I did was stupid and I’m willing to take ownership for it.” After some discussion back and forth, the trial court stated, “I don’t believe you. * * * It’s really not taking ownership of this. It’s really just another story.” As “a reviewing court [we] must defer to the trial court as to whether a defendant’s remarks are indicative of genuine remorse because it is in the best position to make that determination.” *State v. Suarez*, 11th Dist. Geauga No. 2013-G-3167, 2014-Ohio-1350, ¶ 18, quoting *State v. Davis*, 11th Dist. Lake No. 2010-L-148, 2011-Ohio-5435, ¶ 15.

{¶18} Finally, Cobb argues that the trial court failed to address her “serious health problems as a mitigating factor in favor of community control.” Cobb suffers from lupus, non-immune hemolytic anemia, and possibly bone marrow failure. As a result, she requires frequent blood transfusions. When Cobb initially informed the trial court of her health problems, the trial court did not ignore the issue but expressed concern regarding the impact her continued drug use might have on those medical conditions. At the sentencing hearing, the trial court again addressed her medical conditions stating that it was not a reason to “give her a pass.” As noted by our sister districts, “a defendant’s medical condition does not require the imposition of a

lesser sentence, since [her] medical needs can be met in the prison system.” *Suarez* at ¶ 19, citing *State v. Martin*, 12th Dist. Butler No. CA2013-03-055, 2013-Ohio-3676, ¶ 25.

{¶19} Having reviewed the sentencing entry, change of plea and sentencing transcripts, and the presentence investigation report, we cannot conclude that the trial court abused its discretion in sentencing Cobb. Cobb’s sole assignment of error is overruled.

III

{¶20} Cobb’s assignment of error is overruled. The judgment of the Medina 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 Medina, 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(C). 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.



BETH WHITMORE
FOR THE COURT

HENSAL, P. J.
MOORE, J.
CONCUR.

APPEARANCES:

JOSEPH F. SALZGEBER, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and MATTHEW A. KERN, Assistant Prosecuting Attorney, for Appellee.