[Cite as *State v. Jackson*, 2015-Ohio-2608.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2014-L-124**
- vs -	:	
LARRY M. JACKSON,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 14 CR 000345.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Teri R. Daniel*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Charles R. Grieshammer, Lake County Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Larry M. Jackson, appeals his sentencing entry arguing that the trial court failed to consider required statutory factors before sentencing him on his "failure to comply" charge. For the following reasons, we affirm.

{¶2} In July 2014, the Lake County Grand Jury returned a six-count indictment against appellant. The charges stemmed from a heroin sale to a confidential informant at a bus terminal in Willowick, Ohio. After the sale, appellant got into his vehicle, drove

through the terminal parking lot, and turned left unto Lakeshore Boulevard. At that time, at least two police cruisers activated their overhead lights and sirens, and pursued appellant. Appellant did not comply to stop; instead, he quickly accelerated and led the officers on a high-speed chase lasting approximately five minutes. After going into a neighboring county, appellant rammed an innocent motorist while attempting to proceed through a busy intersection. The motorist suffered serious physical injuries.

{¶3} Ultimately, after negotiation with the state, appellant entered a plea. In exchange for dismissal of three of the six counts, appellant plead guilty to: (1) trafficking in heroin, a fourth-degree felony under R.C. 2925.03; (2) failure to comply with an order or signal of a police officer, a third-degree felony under R.C. 2921.331; and (3) vehicular assault, a third-degree felony under R.C. 2903.08. The trial court accepted the plea and found him guilty of the foregoing three charges. A presentence investigation was ordered and the case was set for sentencing.

{¶4} The presentence report contained both appellant's and the police officers' descriptions of the car chase. At the the separate sentencing hearing, the trial court stated that it had fully reviewed the presentence report prior to sentencing. After affording appellant an opportunity to speak and hearing arguments from both sides, the court imposed a thirty-six month term for the vehicular assault, a twenty-four month term for failure to comply, and a twelve-month term for trafficking in heroin. The court further ordered, pursuant to R.C. 2921.331(D), that the term for failure to comply would be served consecutively to the vehicular assault term, but that the trafficking term would run concurrently. Accordingly, appellant was sentenced to an aggregate term of sixty months.

{¶5} Appellant appeals asserting one assignment of error:

{¶6} "The trial court erred by sentencing the defendant-appellant to 60 months in prison without considering statutorily-required sentencing factors."

{¶7} Although the wording of the assignment appears to implicate the entire sixty-month term, appellant's argument is limited to the twenty-four month term for failure to comply. He contends that the twenty-four month term was improper because there is nothing in the record to establish that, prior to imposing the sentence, the trial court considered required statutory factors for determining the seriousness of his violation in comparison to other versions of the offense. While not directly stated, the implication is that if the trial court had considered the listed factors, a shorter prison term would have been warranted.

{¶8} Failure to comply prohibits a person from operating a motor vehicle "so as willfully to elude or flee a police officer after receiving a visible or audible sign from a police officer to bring the person's motor vehicle to a stop." In the absence of any aggravating circumstances, a violation of R.C. 2921.331(B) is deemed a first-degree misdemeanor. R.C. 2921.331(C)(3). But, pursuant to R.C. 2921.331(C)(5)(a)(i), the violation is a third-degree felony if the "operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property." Appellant also pled guilty to vehicular assault for causing serious physical harm, while fleeing.

{¶9} Appellant's failure to comply was, therefore, a third-degree felony and his sentence is governed by R.C. 2921.331(C)(5)(b). This provision states:

{¶10} "(b) If a police officer pursues an offender who is violating division (B) of this section and division (C)(5)(a) of this section applies, the sentencing court, in determining the seriousness of an offender's conduct for purposes of sentencing the offender for a violation of division (B) of this section, shall consider, along with the

factors in sections 2929.12 and 2929.13 of the Revised Code that are required to be considered, all of the following:

{¶11} "(i) The duration of the pursuit;

{¶12} "(ii) The distance of the pursuit;

{¶13} "(iii) The rate of speed at which the offender operated the motor vehicle during the pursuit;

{¶14} "(iv) Whether the offender failed to stop for traffic lights or stop signs during the pursuit;

{¶15} "(v) The number of traffic lights or stop signs for which the offender failed to stop during the pursuit;

{¶16} "(vi) Whether the offender operated the motor vehicle during the pursuit without lighted lights during a time when lighted lights are required;

{¶17} "(vii) Whether the offender committed a moving violation during the pursuit;

{¶18} "(viii) The number of moving violations the offender committed during the pursuit;

{¶19} "(ix) Any other relevant factors indicating that the offender's conduct is more serious than conduct normally constituting the offense."

{¶20} In asserting that the trial court did not properly consider these nine factors prior to imposing the twenty-four month term, appellant emphasizes that the trial court did not expressly refer to any facts pertaining to the factors during sentencing. In response, the state argues that it is not necessary for the court to expressly reference the pertinent facts so long as the court was aware of those facts when the sentence is rendered.

{¶21} In relation to the general sentencing factors of R.C. 2929.12, a trial court is only obligated to *consider* the relevant factors; there is no requirement to make specific findings or use specific language during the sentencing hearing. *State v. Long*, 11th Dist. No. 2013-L-102, 2014-Ohio-4416, ¶79. In determining whether a trial court has fulfilled its duty under R.C. 2921.331(C)(5)(b), the appellate courts of this state have applied a similar standard. That is, a trial court is not required to state its consideration of the pertinent factors on the record or make specific findings on the factors. *See State v. Jordan*, 3rd Dist. Hardin No. 6-11-05, 2011-Ohio-6015, ¶16, quoting *State v. Anderson*, 8th Dist. Cuyahoga No. 83285, 2004-Ohio-2858, ¶22. Rather, it is only necessary for the record to show that the trial court was informed of the pertinent facts so that the court had an opportunity to consider them in light of the listed statutory factors. *Jordan*, at ¶17-19; *State v. Blanton*, 2nd Dist. Montgomery No. 23745, 2010-Ohio-6212, ¶28-30.

{¶22} In *Jordan*, the appellate court concluded that R.C. 2921.331(C)(5)(b) had been satisfied because, as part of its factual recitation during the plea hearing, the state provided a detailed description of the defendant's acts. In *Blanton*, in addition to citing two general comments made by the trial court, the appellate court upheld the sentence because the "record" contained a detailed statement of what occurred during the chase.

{¶23} During appellant's sentencing, the trial court indicated that it had reviewed the presentence report prior to that proceeding. That report contains appellant's and the police officers' descriptions of the chase. Thus, before sentencing, the trial court knew that the duration of the chase was nearly five minutes; appellant's vehicle was travelling at a "high" rate of speed during the entire chase; appellant travelled from Lake County into a neighboring county; and the chase ended when appellant crashed into a

motorist while entering a busy intersection without stopping.

{¶24} Furthermore, during the plea hearing, appellant admitted that he violated "some" traffic laws and did not comply with traffic signals as part of the chase. In addition, during the sentencing hearing, the prosecutor stated that if the trial court had proceeded on appellant's motion to suppress, the state would have introduced evidence showing that multiple school buses were on the road during the chase, and that appellant "cut off" one of those buses as he was exiting the terminal parking lot at the outset of the chase.

{¶25} Since appellant admitted as part of his guilty plea that his actions were the proximate cause of serious physical harm, his violation of R.C. 2921.331(B) was a third-degree felony. Pursuant to R.C. 2929.14(A)(3)(b), the trial court's available sentencing options were a prison term of nine, twelve, eighteen, twenty-four, thirty or thirty-six months. Sufficient facts were before the court to support the conclusion that the trial court considered the sentencing factors in R.C. 2921.331(C)(5)(b) prior to imposing twenty-four months for the failure to comply.

{¶26} Accordingly, appellant's sole assignment of error lacks merit and the trial court's judgment is affirmed.

CYNTHIA WESTCOTT RICE, J.,

COLLEEN MARY O'TOOLE, J.,

concur.