

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

COREY D. HOFFMAN,

Defendant-Appellant.

CASE NO. 2022-T-0124

Criminal Appeal from the
Court of Common Pleas

Trial Court No. 2021 CR 00911

OPINION

Decided: July 31, 2023

Judgment: Affirmed

Dennis Watkins, Trumbull County Prosecutor, and *Ryan J. Sanders*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

John B. Juhasz, 7081 West Boulevard, Suite 4, Youngstown, OH 44512 (For Defendant-Appellant).

JOHN J. EKLUND, P.J.

{¶1} Appellant, Corey Hoffman, appeals his sentence of 54-months imprisonment after pleading guilty to Aggravated Vehicular Assault, a third-degree felony in violation of R.C. 2903.08, and Failure to Stop after Accident, a fifth-degree felony, in violation of R.C. 4549.02. For the following reasons, we affirm the judgment of the Trumbull County Court of Common Pleas.

{¶2} On September 19, 2021, Appellant drank alcoholic beverages at the Iron Horse Bar. On his drive home, Appellant's vehicle struck a woman while she was driving

her motorcycle. Appellant claimed that he did not know what his vehicle had hit, and he kept driving. Appellant reported the incident to the police department and filed a police report. The victim sustained serious injuries, including a severed leg, leaving her permanently disabled.

{¶3} On December 6, 2021, the Trumbull County Grand Jury indicted Appellant on two counts: Aggravated Vehicular Assault and Failure to Stop after Accident. On September 28, 2022, Appellant pled guilty and the court accepted his guilty plea. At sentencing, Appellant apologized for his actions. The victim spoke as to how the accident has impacted her life. The court told Appellant:

I have to make some sense of this at this point, and it is my hope and desire that after you serve your prison term that you do become a productive member of society. Everything that I see in your PSI tells me that that's probably correct. But you hit the big time one time and you caused very, very serious physical harm in this case. And sentencing is not only about rehabilitation or maybe what society wants, there's also a factor called retribution, and what that means is when you do a serious crime, there are serious consequences that must be adhered to because of the consequences that you caused. Because you did enter a plea of guilty, that you did cooperate with the police in this case, and some other things, I have decided not to give you a consecutive sentence and I have taken it one notch down from the maximum. You're going to receive a mandatory term of 54 months at the Lorain Correctional Institute on Count 1; 12 months at the Lorain Correctional Institute on Count 2, which will run concurrently.

{¶4} Appellant timely appeals and raises one assignment of error:

“The trial court erred in imposing a sentence for a non-homicide offense that was disproportionate to the sentences being generally imposed for vehicular assault offenses.”

{¶5} The appellate standard of review for felony-sentencing is governed by R.C. 2953.08(G)(2). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 21. That provision states:

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 of 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 (B)(2)(e) or (C)(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.

{¶6} Appellant offers two arguments in support of his assignment of error. He first asserts that his sentence is disproportional to “sentences being imposed for the same offense over the last 10 years or so in Trumbull County.”

{¶7} Appellant’s argument is founded on R.C. 2929.11(B), which states:

“A sentence imposed for a felony shall be reasonably calculated to achieve the three overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, *and consistent with sentences imposed for similar crimes committed by similar offenders.*” (Emphasis added.)

{¶8} We first note that Appellant argues that his sentence is disproportional, but rather, his argument is one of consistency. “For purposes of R.C. 2929.11(B), ‘consistency’ relates to the sentences in the context of sentences given to other offenders; ‘proportionality’ relates solely to the punishment in the context of the offender's conduct (does the punishment fit the crime).” *State v. Moore*, 2014–Ohio–5135, 24 N.E.3d 1197, ¶ 17 (8th Dist.).

{¶9} This court has previously explained “consistency,” providing:

The legislature's purpose for inserting the consistency language contained in R.C. 2929.11(B) is to make consistency rather than uniformity the aim of the sentencing structure. See Griffin and Katz, Ohio Felony Sentencing Law (2001), 59. Uniformity is produced by a sentencing grid, where all persons convicted of the same offense with the same number of prior convictions receive identical sentences. Consistency, on the other hand, requires a trial court to weigh the same factors for each defendant, which will ultimately result in an outcome that is rational and predictable. Under this meaning of 'consistency,' two defendants convicted of the same offense with a similar or identical history of recidivism could properly be sentenced to different terms of imprisonment.

State v. Sheffey, 11th Dist. Ashtabula No. 2016-A-0075, 2017-Ohio-5634, ¶ 8, quoting *State v. Quine*, 9th Dist. Summit No. 20968, 2002–Ohio–6987.

{¶10} “[A] sentence is not contrary to law because the trial court failed to impose a sentence that is the same as another offender who committed similar conduct.” *State v. Graham*, 12th Dist. Warren No. CA2013–07–066, 2014-Ohio-1891, ¶ 15, citing *State v. Lee*, 12th Dist. Butler No. CA2012–09–182, 2013-Ohio-3404, ¶ 13.

{¶11} “[C]onsistency in sentencing is accomplished by the trial court's application of the statutory sentencing guidelines and, to show a sentence is inconsistent, a defendant must show the trial court failed to properly consider the statutory purposes and factors of felony sentencing.” *State v. Oliver*, 3d Dist. Union No. 14-20-23, 2021-Ohio-1002, ¶ 26; *State v. Brody*, 11th Dist. Lake Nos. 2010–L–095, et al., 2011–Ohio–4884, ¶ 43.

{¶12} Other appellate districts have held that reviewing the record to ensure compliance with the statutory sentencing guidelines is not the only avenue to review whether a sentence is “consistent.” The Tenth, Fifth, and First District Appellate Courts have held that in determining whether a sentence is consistent, “[t]he task of an appellate court is to examine the available data, not to determine if the trial court has imposed a

sentence that is in lockstep with others, but to determine whether the sentence is so unusual as to be outside the mainstream of local judicial practice. Although offenses may be similar, distinguishing factors may justify dissimilar sentences”. *State v. Battle*, 10th Dist. Franklin. No. 06AP–863, 2007-Ohio-1845, ¶ 24, quoting *State v. King*, 5th Dist. Muskingum No. CT06–0020, 2006-Ohio-6566, ¶ 23, quoting *State v. Ryan*, 1st Dist. Hamilton App. No. C–020283, 2003-Ohio-1188, ¶ 10. We acknowledge that approach as an additional analytical tool.

{¶13} Appellant’s argument fails under both frameworks. It is uncontested that Appellant’s sentence is within the statutory range for the offense and that the trial court considered R.C. 2929.11 and 2929.12.

{¶14} Appellant has not demonstrated that his sentence is so unusual as to be outside the mainstream of local judicial practice. Appellant offers a chart displaying misdemeanor and felony offenders who have been convicted of similar offenses in Trumbull County that have been sentenced to a lesser sentence than Appellant. The chart only demonstrates that Appellant’s sentence may not be in “lockstep” with how the trial court has sentenced other offenders. Moreover, there were distinguishing factors in this case, such as the severity of the victim’s injuries, that justified a dissimilar sentence.

{¶15} Appellant also argues that his sentence is contrary to law because the trial court should have considered his remorse, lack of prior criminal record, and because he cooperated with the police investigation. “A trial court is not required to give any particular weight or emphasis to a given set of circumstances; it is merely required to consider the statutory factors in exercising its discretion.” *State v. Delmanzo*, 11th Dist. Lake No. 2007-L-218, 2008-Ohio-5856, ¶ 23. “Nothing in R.C. 2953.08(G)(2) permits an appellate

court to independently weigh the evidence in the record and substitute its judgment for that of the trial court concerning the sentence that best reflects compliance with R.C. 2929.11 and 2929.12.” *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649 at ¶ 42. A sentencing court fulfills its duty when it states that it has considered the factors under R.C. 2929.11 and 2929.12. *State v. DeLuca*, 11th Dist. Lake No. 2020-L-089, 2021-Ohio-1007, ¶ 18.

{¶16} Under *Jones*, this court is without authority to independently weigh mitigating factors or to second guess the trial court’s weighing of those factors.¹ *Jones* at ¶ 42. The sentencing court fulfilled its duty by providing in its judgment entry that it considered all factors under R.C. 2929.11 and 2929.12.

{¶17} Appellant’s assignment of error is without merit.

{¶18} The judgment of the Trumbull County Court of Common Pleas is affirmed.

MATT LYNCH, J.,

EUGENE A. LUCCI, J.,

concur.

1. Appellant cites to *State v. Mays* (2000), 139 Ohio App.3d 177, 743 N.E.2d 447 to support his argument that a sentence is contrary to law when the trial court does not properly consider a defendant’s remorse and a lack of criminal record. *Mays* was decided before *Jones* and the law applied in that case has been overruled.