

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

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

RALPH R. THOMPSON,

Defendant-Appellant.

CASE NO. 2024-L-030

Criminal Appeal from the
Court of Common Pleas

Trial Court No. 2023 CR 001110

OPINION

Decided: September 16, 2024

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 (For Plaintiff-Appellee).

Christina Brueck, 333 Babbitt Road, Suite 301, Euclid, OH 44123 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Appellant, Ralph R. Thompson (“Mr. Thompson”), appeals the judgment of the Lake County Court of Common Pleas that sentenced him to a total term of imprisonment of 47-months after a jury found him guilty of receiving stolen property, possession of cocaine, and two counts of failure to comply with an order or a signal of a police officer.

{¶2} Mr. Thompson raises one assignment of error on appeal, contending the trial court committed reversible and plain error by imposing sentence without making the required findings pursuant to R.C. 2929.12.

{¶3} After a careful review of the record and pertinent law, we find Mr. Thompson's assignment of error to be without merit. Although not required, the trial court explicitly reviewed the seriousness/recidivism factors pursuant to R.C. 2929.12 at the sentencing hearing and in the sentencing judgment entry. Further, antithetical to Mr. Thompson's assertion, the trial court is only required to consider the factors that apply, and the factors listed are non-exhaustive. Most fundamentally, we are not permitted to independently reweigh the R.C. 2929.12 factors on appeal, and there is nothing to suggest Mr. Thompson's sentence is contrary to law.

{¶4} The judgment of the Lake County Court of Common Pleas is affirmed.

Substantive and Procedural History

{¶5} In December 2023, the Lake County Grand Jury indicted Mr. Thompson on seven counts: (1) receiving stolen property, a motor vehicle, a fourth-degree felony, in violation of R.C. 2913.51(A); (2) failure to comply with an order or a signal of a police officer, while fleeing immediately after committing a felony, a fourth-degree felony, in violation of R.C. 2921.331(B); (3) failure to comply with an order or a signal of a police officer, causing a substantial risk of serious physical harm to persons or property, a third-degree felony, in violation of R.C. 2921.331(B); (4) possession of cocaine, a fifth-degree felony, in violation of R.C. 2925.11; (5) resisting arrest, a second-degree misdemeanor, in violation of R.C. 2921.33(A); (6) illegal use or possession of drug paraphernalia, a fourth-degree misdemeanor, in violation of R.C. 2925.14(C)(1); and (7) driving under a

financial responsibility law suspension or a cancellation, an unclassified misdemeanor, in violation of R.C. 4510.16(A).

{¶6} Mr. Thompson pleaded not guilty at his arraignment and the case proceeded to a jury trial on counts one through four.

{¶7} The State introduced testimony and evidence that revealed Mr. Thompson stole a vehicle outside of a convenience store in Euclid, Ohio. The owner of the vehicle had left it running directly outside the store while he went inside for a few items. When he discovered his car was missing, the owner asked the store clerk to call 911 and reported it stolen. Because the car was equipped with GPS, the Euclid Police, with the help of the car dealer, were able to locate the vehicle in Willowick, Ohio. The Willowick Police attempted to stop the vehicle, but the driver evaded the police blockade and led them in a chase. The driver, later identified as Mr. Thompson, was unable to maintain his high speed as he rounded a curve, and he crashed the vehicle into a utility pole.

{¶8} The police ordered Mr. Thompson to step out of the vehicle, however, he continued to attempt to move the now three-wheeled vehicle. Eventually, Mr. Thompson was arrested and transported to the Lake County Jail where a search revealed his sock contained a small bag of cocaine. The police also found a pipe typically used for drugs, a razor blade, and “a ton” of bundles of dollars wrapped around coins that were taped together with painter’s masking tape.

{¶9} The jury returned a guilty verdict on all four counts.

{¶10} The case proceeded to a sentencing hearing, at which the trial court found counts two and three, failure to comply with an order or a signal of a police officer, were allied offenses, and following the State’s election, merged count two into count three.

{¶11} The court heard from the State, defense counsel, Mr. Thompson, and Mr. Thompson's sister. The court also reviewed the presentence investigation and report, as well as the sentencing factors set forth in R.C. 2929.11.

{¶12} As relevant to this appeal, the court explicitly reviewed the sentencing factors pursuant to R.C. 2929.12. In reviewing the seriousness factors, the court found that the victim, the owner of the stolen vehicle, suffered economic harm; and that Mr. Thompson fled in the middle of the day, in a busy neighborhood, on side streets and through hectic intersections. The court further found no factors present that made Mr. Thompson's conduct less serious.

{¶13} In reviewing the recidivism factors, the court found "all of them present," noting Mr. Thompson has a lengthy criminal history spanning over 40 years, he was in prison on seven different occasions for seven different crimes, and he violated his probation multiple times. He engaged in the same behavior and carried out similar offenses each time he was released from prison. Further, he committed these offenses while out on bond in multiple jurisdictions, with outstanding warrants for failure to appear in those jurisdictions, as well as a suspended driver's license. In addition, he showed no genuine remorse. The court found no factors present that indicated recidivism less likely.

{¶14} The court sentenced Mr. Thompson to 17 months in prison on count one, receiving stolen property; 30 months on count three, failure to comply with an order or a signal of a police officer; and six months in prison on count four, possession of cocaine. The trial court ordered the sentences imposed on counts one and four to be served concurrent with each other, and, pursuant to statute, consecutive to the sentence imposed on count three, for a total 47-month term of imprisonment.

{¶15} Mr. Thompson raises one assignment of error for our review:

{¶16} “The trial court committed reversible and plain error by imposing sentence without making the proper findings required by R.C. 2929.12.”

Standard of Review

{¶17} In his assignment of error, Mr. Thompson contends the trial court erred by failing to consider all the seriousness/recidivism factors contained in R.C. 2929.12.

{¶18} We apply the standard of review for felony sentences, which is governed by R.C. 2953.08(G)(2). *State v. Marcum*, 2016-Ohio-1002, ¶ 16. Pursuant to R.C. 2953.08(G)(2):

{¶19} “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.

{¶20} “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:

{¶21} “(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;

{¶22} “(b) That the sentence is otherwise contrary to law.”

{¶23} “Clear and convincing evidence {is that measure or degree of proof which is more than a mere “preponderance of the evidence,” but not to the extent of such certainty

as is required “beyond a reasonable doubt” in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Marcum*, 2016-Ohio-1002, at ¶ 22, quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶24} The Supreme Court of Ohio in *State v. Jones*, 2020-Ohio-6729, clarified that contrary to the “dicta” in *Marcum*, R.C. 2953.08(G)(2)(a) does not provide a basis for an appellate court to modify or vacate a sentence based on the lack of support in the record for the trial court’s findings under R.C. 2929.11 and 2929.12. *Id.* at ¶ 29; see *Marcum* at ¶ 23. See also *State v. Patrick*, 2020-Ohio-6803, ¶ 67, fn. 2 (Donnelly, J., concurring) (the failure to observe the statutory requirements of R.C. 2929.11 and 2929.12 is not subject to appeal pursuant to R.C. 2953.08). “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.” *Jones* at ¶ 42.

{¶25} While Mr. Thompson contends *Marcum* should not be totally excluded from an analysis of whether the trial court properly considered the factors of R.C. 2929.12, the *Jones* majority clarified that the term “otherwise contrary to law” under R.C. 2953.08(G)(2)(b) does not encompass an appellate court’s conclusion that a sentence is not supported by the record. *Id.* at ¶ 32. See also *State v. Toles*, 2021-Ohio-3531 (affirming on the authority of *Jones* where the appellant challenged whether his sentence was supported by the record).

{¶26} Thus, following precedent, R.C. 2953.08(G)(2) does not allow an appellate court to review whether the record supports the sentence under R.C. 2929.12.

R.C. 2929.12

{¶27} R.C. 2929.11 and R.C. 2929.12 apply as a general judicial guide for every sentencing. *State v. Foster*, 2006-Ohio-856, ¶ 36.

{¶28} R.C. 2929.12(A) grants the sentencing judge discretion “to determine the most effective way to comply with the purposes and principles of sentencing.” *Foster* at ¶ 37, quoting R.C. 2929.12(A). “[I]n exercising that discretion, the court shall consider, along with any other ‘relevant’ factors, the seriousness factors set forth in divisions (B) and (C) and the recidivism factors in divisions (D) and (E) of R.C. 2929.12.” *Id.*, quoting R.C. 2929.12(A). These statutory sections provide a nonexclusive list for the court to consider. *Id.*

{¶29} At the outset we note the trial court possesses broad discretion to determine the most effective way to comply with the purposes and principles of sentencing within the statutory guidelines. *State v. Phifer*, 2020-Ohio-4694, ¶ 52; R.C. 2929.12(A). The statutes do not mandate judicial fact-finding, and when a sentencing court states that it has considered these factors, it fulfills its duty. *State v. DeLuca*, 2021-Ohio-1007, ¶ 18. Even a silent record raises the presumption that the sentencing court considered all the relevant factors. *Id.*; *State v. Adams*, 37 Ohio St.3d 295 (1988), paragraph three of the syllabus.

{¶30} In this case, the trial court explicitly stated it reviewed the R.C. 2929.12 sentencing factors at the sentencing hearing and in the sentencing judgment entry. Further, the trial court directly reviewed each applicable factor, noting the economic harm suffered by the victim, the time and place of the offenses, Mr. Thompson’s extensive criminal history of similar offenses, probation violations, and the fact that he committed

these offenses while facing pending criminal charges in other jurisdictions. In addition, Mr. Thompson failed to demonstrate any genuine remorse.

{¶31} Contrary to Mr. Thompson's argument, the seriousness/recidivism factors contained in R.C. 2929.12(B) – (F) are non-exhaustive and the trial court is required to consider only those applicable. See, e.g. R.C. 2929.12(B) requiring the sentencing court to consider "all of the following *that apply*. . . and *any other relevant factors*. . . ." Simply because not all the factors were present does not make Mr. Thompson's crimes less serious under the circumstances.

{¶32} Most fundamentally, "the competing factors in R.C. 2929.11 and 2929.12 are for the sentencing court to weigh, not the court of appeals." *State v. Stanley*, 2021-Ohio-549, ¶ 12 (11th Dist.). Further, even if we could independently review and weigh the evidence, it cannot be said that Mr. Thompson's sentence is not supported by the record, and there is nothing in the record to suggest his sentence is contrary to law.

{¶33} Mr. Thompson's assignment of error is without merit.

{¶34} The judgment of the Lake County Court of Common Pleas is affirmed.

JOHN J. EKLUND, J.,

ROBERT J. PATTON, J.,

concur.