[Cite as *State v. Focht*, 2026-Ohio-4334.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY

STATE OF OHIO, Plaintiff-Appellee, - vs - AMY ARLENE FOCHT, Defendant-Appellant.	**CASE NO. 2026-A-0030** Criminal Appeal from the Court of Common Pleas Trial Court No. 2024 CR 00103

OPINION AND JUDGMENT ENTRY

Decided: November 2, 2026
Judgment: Vacated and remanded

April R. Grabman, Ashtabula County Prosecutor, and *Dane R. Hixon*, Assistant Prosecutor, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellee).

Gregory T. Stralka, 6509 Brecksville Road, P.O. Box 31776, Cleveland, OH 44131 (For Defendant-Appellant).

MATT LYNCH, P.J.

{¶1} Appellant, Amy Arlene Focht, appeals the March 31, 2026 judgment of the Ashtabula County Court of Common Pleas which revoked her community control and imposed an aggregate 36-month prison sentence. For the reasons that follow, we vacate the sentence and remand the matter for further proceedings.

{¶2} In August 2024, Focht was placed on community control for two years after pleading guilty to failure to comply with an order or signal of a police officer, a third-degree felony (Count One), and assault, a fourth-degree felony (Count Two). In the sentencing entry, the court imposed various conditions upon Focht's community control, including

that she "shall not possess nor consume any alcohol or marijuana, even if legalized, or THC, including vaping." The entry also advised that violating the terms of her community control may lead to a longer or more restrictive sanction, up to and including a 54-month prison sentence.

{¶3} During a hearing held on March 30, 2026, Focht admitted to violating the conditions of her community control by testing positive for marijuana on three occasions and requested the court to continue her community control sanctions. Focht addressed the court and explained that she was not using marijuana recreationally; she had a doctor's recommendation to use medical marijuana, which she mistakenly thought was an actual prescription. Focht apologized to the court, accepted accountability, and stated that she is in a 12-step program and is in touch with her sponsor daily. The court reviewed the sentencing entry with Focht, reciting the restriction that she shall not possess or consume any alcohol or marijuana, even if legalized. The prosecutor noted that Focht tested positive for marijuana on three occasions, despite being told after each time that she was not permitted to use marijuana, and requested the court to impose, at the minimum, 36 months in prison. The trial court agreed with the prosecutor, revoked Focht's community control, and sentenced her to concurrent prison terms of 36 months on Count One and 18 months on Count Two, for an aggregate prison sentence of 36 months.

{¶4} Focht timely appeals, advancing one assignment of error for our review:

{¶5} "The trial court's imposition of a period of incarceration was contrary to law."

{¶6} In her sole assignment of error, Focht contends "the trial court abused its discretion by sentencing [her] to 36 months in prison, the maximum for a third degree

felony, without giving any consideration to Ohio's sentencing guidelines." While we disagree with Focht's recitation of the standard of review, we find merit with appellant's assignment of error.

{¶7} We review felony sentences using the standard of review set forth in R.C. 2953.08(G)(2). *State v. Marcum*, 2016-Ohio-1002, ¶ 22. "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 (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.

R.C. 2953.08(G)(2).

{¶8} Our jurisdiction to review a sentencing court's application of the guidelines in R.C. 2929.11 (purposes and principles of felony sentencing) and R.C. 2929.12 (seriousness and recidivism factors) is limited by the "otherwise contrary to law" provision of R.C. 2953.08(G)(2)(b). *State v. Brunson*, 2022-Ohio-4299, ¶ 69. "Under that provision, the appellate court cannot modify or vacate a sentence based on its view that the sentence is not supported by the record under R.C. 2929.11 and 2929.12." *Id*., citing *State v. Jones*, 2020-Ohio-6729, ¶ 39. "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.

{¶9} It is well settled that a trial court is not required to make specific findings on the record under R.C. 2929.11 and 2929.12 or even to state on the record that it has considered them. *See, e.g., State v. Mayle*, 2017-Ohio-8942, ¶ 27-28 (11th Dist.), citing *State v. Chapdelaine*, 2010-Ohio-2683, ¶ 14 (11th Dist.) (collecting cases). Even a silent record raises a presumption that the court duly considered the relevant statutory factors before the sentencing determination was made. *Id*. at ¶ 29, citing *State v. Tenney*, 2010-Ohio-6248, ¶ 14 (11th Dist.), citing *State v. Adams*, 37 Ohio St.3d 295 (1988), paragraph three of the syllabus. "'By implication, as long as there is some indication that the factors were considered, a reviewing court is bound to uphold the sentence.'" *Id.* at ¶ 28, quoting *Chapdelaine* at ¶ 42.

{¶10} Thus, consistent with *Jones*, the question on appeal is not whether we would weigh the factors differently or whether the court needed to articulate its reasoning; rather, it is whether the sentence is contrary to law because the record clearly and convincingly shows the court did not consider R.C. 2929.11 and 2929.12 at all.

{¶11} Focht has not provided this court with transcripts of the initial plea and sentencing hearings. We therefore presume the validity of those hearings. *See State v. Martin*, 2013-Ohio-2833, ¶ 13-18 (11th Dist.), citing *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197 (1980).

{¶12} The trial court's initial sentencing entry, dated August 30, 2024, states the court considered the principles and purposes of sentencing under R.C. 2929.11 and balanced the seriousness and recidivism factors under R.C. 2929.12. This language

adequately reflects the trial court's consideration of R.C. 2929.11 and 2929.12, *State v. Hackathorn*, 2023-Ohio-410, ¶ 8 (11th Dist.), and no appeal was taken from the sentencing entry.

{¶13} Subsequently, on March 30, 2026, Focht appeared before the trial court on allegations that she had violated the terms of her community control by testing positive for marijuana on three occasions. Neither the transcript of the March 30, 2026 hearing nor the March 31, 2026 sentencing entry refer to any consideration of R.C. 2929.11 and 2929.12 by the trial court.

{¶14} The State contends that Focht's prison sentence should be upheld because the initial sentencing hearing was the time when the R.C. 2929.11 and 2929.12 factors would have been considered. This argument is similar to that raised in *State v. Thomas*, 2018-Ohio-1024 (11th Dist.), where the sentencing court failed to offer the defendant the opportunity to make a statement at his community-control revocation hearing. The State argued the court was not required to do so because the defendant was afforded his right of allocution during the initial sentencing hearing. *Id*. at ¶ 21. We observed that the State's position in *Thomas* misconstrued the nature of the revocation hearing:

> In [*State v. Heinz*, 2016-Ohio-2814], the [Supreme Court of Ohio] emphasized that the revocation of community control is an exercise of the sentencing court's criminal jurisdiction. To wit, pursuant to R.C. 2929.15(B)(1), "the court may extend the term of the offender's community control or impose a more restrictive sanction or a prison term if the conditions of community control are violated." *Heinz* at ¶ 15. As such, "'[f]ollowing a community control violation, the trial court conducts *a second sentencing hearing*. At this second hearing, the court sentences the offender anew and must comply with the relevant sentencing statutes." *Id.*, quoting *State v. Fraley*, 2004-Ohio-7110, ¶ 17; *see also* [*State v. Jackson*, 2016-Ohio-8127,] ¶ 11. Accordingly, the substance and procedure of the original sentencing hearing is of no moment; after a court finds a violation, a violator, pursuant to *Jackson* and the relevant statutes and rules upon

> which it relied, is entitled to make a statement anew prior to the court's imposition of sentence.

(Emphasis in original.) *Thomas* at ¶ 21-22. Likewise, this court and others have held that the sentencing court is required to consider R.C. 2929.11 and 2929.12 anew prior to imposing a reserved sentence upon a defendant's violation of community control. *See, e.g., State v. Osco*, 2025-Ohio-4532, ¶ 33 (11th Dist.) (when a trial court decides to revoke community control and impose a prison term, it should consider R.C. 2929.11, balance the factors in R.C. 2929.12, and impose a prison term within the statutory range for the underlying offense and of which the defendant was advised during the initial sentencing hearing); *see also State v. Peoples*, 2022-Ohio-953, ¶ 52 (10th Dist.); *State v. Motz*, 2020-Ohio-4356, ¶ 38 (12th Dist.); *State v. Jiminez*, 2017-Ohio-1553, ¶ 10 (8th Dist.).

{¶15} In support of her assignment of error, Focht contends that there is nothing in the record for this court to review why the positive marijuana tests over a period of almost two years by someone who holds a medical marijuana card constitute the worst form of the offense to justify a maximum sentence of 36 months. To this argument, we note that the offenses for which Focht was sentenced were those in the underlying indictment, not for the act of testing positive for marijuana. Moreover, Focht pleaded guilty to a third-degree felony—failure to comply with an order or signal of a police officer, in violation of R.C. 2921.331(B)&(C)(5)(a)(ii)—that generally carries a maximum prison sentence of 60 months, R.C. 2929.14(B)(3)(a). However, Focht's written plea agreement stated that the "range of basic prison term" for this offense was "9, 12, 18, 24, 30, or 36 months." Thus, although Focht was sentenced to the maximum term according to her written plea agreement, it was a mid-range term according to statute.

{¶16} Focht further submits, in support of her argument that the court failed to consider R.C. 2929.11 and 2929.12, "the trial court was clearly acting under the effects of 'passion or bias' . . . demonstrated when the trial court strong-armed [her,] stating that if she did not admit to the violation and accept the maximum penalty for a felony three offense, the court would impose consecutive sentences totaling 54 months."

{¶17} At the revocation hearing, the trial court referenced Focht's marijuana use and imposed the prison sentence as follows:

> If the probation officers, which are representatives of the Court and employed by the Court, tell you you can't do it, you can't do it. You were told in my sentencing entry you can't do it. Your probation officer repeatedly told you you can't do it. You can't do it. If there was a misunderstanding, that's not on me, that's not on [your probation officer]; it's on you.
>
> There was a discussion that if you admitted, you would get 36 months; if you refused to admit your wrongdoing, you were going to get 54 months.
>
> So, I'm going to sentence you to 36 months in prison.

{¶18} While we do not discern an element of passion or bias, the court's statements support the conclusion that the court would punish Focht if she chose to put the State to its proof rather than admitting the violation. Whereas there is no indication that the court considered the seriousness and recidivism factors when choosing a prison term within the statutory range for each offense, there is every indication that the court chose between two options—an aggregate prison sentence of 36 months or 54 months—based solely on whether Focht entered an admission to violating the terms of her community control. This runs dangerously close to an impermissible sentencing consideration, *see, e.g., State v. Blanton*, 2002 WL 538869, *2-3 (2d Dist. Apr. 12, 2002), and when coupled with a silent entry, affirmatively demonstrates that the trial court failed to consider the sentencing factors and guidelines in R.C. 2929.11 and 2929.12 before

imposing sentence at the revocation hearing. Accordingly, we are constrained to find, clearly and convincingly, that Focht's sentence is contrary to law. *See, e.g., State v. Scalf*, 126 Ohio App.3d 614, 620-621 (8th Dist. 1998) ("the augmentation of sentence based upon a defendant's decision to stand on his right to put the government to its proof rather than plead guilty is improper"); *State v. Morris*, 2005-Ohio-962, ¶ 11-15 (4th Dist.) (where quotations from the sentencing transcript created, at a minimum, the appearance that the court enhanced the sentence because the defendant exercised his right to trial, the sentence was vacated and remanded for resentencing).

{¶19} Focht's sole assignment of error has merit.

{¶20} This case must be remanded for a complete sentencing hearing at which time Focht's sentence is to be considered de novo. Focht personally admitted to the violation at the original hearing, however, which shall remain the law of the case. *See Jiminez*, 2017-Ohio-1553, at ¶ 11 (8th Dist.).

{¶21} We vacate the sentence entered by the Ashtabula County Court of Common Pleas and remand this matter for further proceedings in accordance with the law and this opinion.

JOHN J. EKLUND, J.,

ROBERT J. PATTON, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, it is the judgment and order of this court that the sentence of the Ashtabula County Court of Common Pleas is vacated, and this matter is remanded to the trial court for further proceedings in accordance with the law and this opinion.

Costs to be taxed against appellee.

PRESIDING JUDGE MATT LYNCH

JUDGE JOHN J. EKLUND,
concurs

JUDGE ROBERT J. PATTON,
concurs

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.