

[Cite as *State v. Bowshier*, 2009-Ohio-3429.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
CLARK COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

DANNY R. BOWSHIER

Defendant-Appellant

Appellate Case No. 08-CA-58

Trial Court Case No. 05-CR-252

(Criminal Appeal from  
Common Pleas Court)

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**OPINION**

Rendered on the 10<sup>th</sup> day of July, 2009.

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AMY M. SMITH, Atty. Reg. #0081712, Clark County Prosecutor's Office, 50 East Columbia Street, 4<sup>th</sup> Floor, P.O. Box 1608, Springfield, Ohio 45501  
Attorney for Plaintiff-Appellee

CARLO C. MCGINNIS, Atty. Reg. #0019540, Young, Pryor, Lynn & Jerardi, 130 West Second street, Suite 800, Dayton, Ohio 45402  
Attorney for Defendant-Appellant

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BROGAN, J.

{¶ 1} Danny Bowshier appeals from his conviction in the Clark County Common Pleas Court of three counts of drug trafficking. One of the counts involved crack cocaine, the other two powder cocaine. The trial court sentenced Bowshier to two consecutive five-year sentences on the powder cocaine charges and a concurrent three-year sentence on the crack cocaine charge. Bowshier raises eight assignments of error, all related to the sentences imposed by the trial court.

{¶ 2} Bowshier's convictions resulted from a number of controlled buys by a confidential informant working for the Springfield Police Department. Many of the purchases were made within 1,000 feet of a school or near a juvenile. Bowshier was originally indicted in April 2005 for eight counts of drug trafficking and eight counts of possession of a criminal tool (cell phone used to sell the drugs). In August 2005, Bowshier entered a negotiated plea to the three counts of trafficking and he was sentenced to fifteen years in prison. We reviewed Bowshier's convictions on April 6, 2007 upon the authority of *State v. Foster* and remanded the matter for re-sentencing. *State v. Bowshier*, Mont. App. No. 2005-CA-105.

{¶ 3} In June 2008, the trial court resentenced Bowshier to the ten-year term now under appeal. The trial judge did not explain why he reduced Bowshier's sentence upon the remand. The trial judge noted that he considered Bowshier to have been a major drug dealer in Springfield. Defense counsel did note that Bowshier had completed his GED while imprisoned and the Inside Out Program for transition into life after incarceration. Defense counsel noted that Bowshier regretted not accepting the State's offer to accept a five-year "deal" presented to him shortly after he was indicted. Counsel stated that the 15-year sentence originally imposed was too harsh, but a compromise between the five and

15-year sentence would serve the interest of justice. (Tr. 12.)

{¶ 4} Bowshier argues that the trial court abused its discretion in ordering him to serve consecutive sentences when the record does not support those sentences. He argues that the court abused its discretion in imposing consecutive sentences which exceed the maximum prison term for the most serious offense. He also argues the trial court abused its discretion in imposing consecutive sentences without making the findings required by R.C. 2929.14 and 2929.19, and in failing to consider the principles of sentencing and recidivism.

{¶ 5} Recently, this court reviewed the trial court's responsibilities after the *Foster* opinion was rendered. The trial court has full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum, consecutive, or more than minimum sentences. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, at paragraph 7 of the syllabus. Nevertheless, in exercising its discretion the trial court must consider the statutory policies that apply to every felony offense, including those set out in R.C. 2929.11 and 2929.12. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, at ¶37.

{¶ 6} When reviewing felony sentences, an appellate court must first determine whether the sentencing court complied with all applicable rules and statutes in imposing the sentence, including R.C. 2929.11 and 2929.12, in order to find whether the sentence is contrary to law. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912. If the sentence is not clearly and convincingly contrary to law, the trial court's decision in imposing the term of imprisonment must be reviewed under an abuse of discretion standard. *Id.* "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the trial

court's attitude is unreasonable, arbitrary, or unconscionable." *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶ 7} The overruling purpose of felony sentencing is to protect the public from future crime by the offender and others and to punish the offender. The court should consider the need for incapacitating the offender, deterring the offender and others, and rehabilitating the offender. R.C. 2929.11. The court should also consider the seriousness and recidivism factors set out in R.C. 2929.12.

{¶ 8} Bowshier was 25 years old at the time he was resentenced. He had an extensive juvenile record and he was involved extensively in drug trafficking. Additionally, the trafficking was done near schools and juveniles. Although Bowshier completed his GED in prison and a prisoner transition program, Bowshier told the judge he did not feel he should have received the 15-year sentence "from something I really don't feel like it was that serious." (Tr. 11.) The court told Bowshier his conduct was serious and had contributed to producing drug addicts who commit crime against others to get money to buy drugs. (Tr. 11.)

{¶ 9} There is no evidence that the trial court did not consider the purposes of sentences set out in R.C. 2929.11 and R.C. 2929.12. The sentences imposed were within statutory limits and reduced to reflect Bowshier's conduct while previously incarcerated. The Appellant's first four assignments of error are Overruled.

{¶ 10} In his fifth assignment, Bowshier argues that the trial court abused its discretion in imposing more than the minimum sentence for an offender who had not previously been in prison in violation of R.C. 2929.14(B).

{¶ 11} Even though *Foster* freed the trial court from making the R.C. 2929.14(B)

findings, the legislative policy remains. A first prison term should be the minimum sentence within the range absent reason to impose a greater sentence. After *Foster*, the sentencing judge does not have to make the 2929.14(B) findings to impose more than the minimum first prison sentence, but the statutory policy remains clear. It is submitted that a first prison sentence above the minimum that is unsupported in the record that “the shortest prison term will demean the seriousness of the offender’s conduct or will not adequately protect the public from future crime by the offender or others” is contrary to law. Even though *Foster* frees the trial judge from making the findings, support for the sentence should appear in the record to facilitate the appellate court’s review. *Ohio Felony Sentencing Law*, 2007 Edition, Griffin and Katz, at 208.

{¶ 12} From the comments made by the trial court at Bowshier’s re-sentencing, it is reasonably clear the trial court believed that a minimum prison term would demean the seriousness of Bowshier’s conduct and would not protect the public from future criminal conduct by him. The record supports the trial court’s sentence. The Appellant’s fifth assignment is Overruled.

{¶ 13} In his sixth assignment, Bowshier argues that the ten-year sentence he received was not consistent with sentences imposed for similar crimes committed by similar offenders. Bowshier never raised this issue in the trial court by offering evidence of similar offenders’ sentences nor has he provided us with such comparative evidence. The sixth assignment is Overruled.

{¶ 14} In his seventh assignment, he contends the sentence he received imposes an unnecessary burden upon the State of Ohio. Bowshier provides no argument in support of this assignment. In *State v. Ober* (Oct. 10, 1997), Greene App. No. 97CA0019, we held

that R.C. 2929.13(A) does not require trial courts to elevate resource conservation above the seriousness and recidivism factors. Where the interests of public protection and punishment are well served by a prison sentence, the claim is difficult to make that the prison sentence imposes an unnecessary burden on government resources. *Ohio Felony Sentencing*, at 966. Bowshier has not demonstrated that his sentence imposes an “unnecessary” burden on state resources. The seventh assignment of error is Overruled.

{¶ 15} In his last assignment, Bowshier argues that the trial court abused its discretion in imposing the ten-year sentence upon him in the absence of findings that a lesser sentence would not adequately protect the public and would not demean the seriousness of his conduct. The trial court was not required to make such findings to support its sentence. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. The judgment of the trial court is Affirmed.

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FROELICH and HARSHA, JJ., concur.

(Hon. William H. Harsha, from the Fourth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio)

Copies mailed to:

Amy M. Smith  
Carlo C. McGinnis  
Hon. Richard J. O’Neill