[Cite as *State v. Dillon*, 2025-Ohio-5394.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. 25CA3
v.	:	
RUSTY DILLON,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Chris Brigdon, Thornville, Ohio, for appellant[1].

Jayme Hartley Fountain, Pickaway County Prosecuting Attorney, Circleville, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:11-24-25
ABELE, J.

{¶1} This is an appeal from a Pickaway County Common Pleas Court judgment of conviction and sentence. Rusty Dillon, defendant below and appellant herein, raises one error for review:

ASSIGNMENT OF ERROR:

"THE PROPORTIONALITY OF THE SENTENCE WAS INCONSISTENT WITH THE PRINCIPLES SET FORTH [IN} O.R.C. 2929.11 AND FACTORS TO BE CONSIDRED [SIC.] IN O.R.C. 2929.12."

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[1] Different counsel represented appellant during the trial court proceedings.

{¶2} In January 2024, a Pickaway County Grand Jury returned an indictment that charged appellant with (1) one count of aggravated trafficking in drugs in violation of R.C. 2925.03(A)(2), and (2) one count of aggravated possession of drugs in violation of R.C. 2925.11(A), both second-degree felonies. Appellant entered not guilty pleas.

{¶3} At the June 12, 2024 plea hearing, the trial court recited the parties' plea agreement. The court conducted a Crim.R. 11 colloquy and advised appellant of his rights and the effects of his decision to plead guilty. The court advised and reviewed with appellant the constitutional rights he waived with his plea, including (1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require appellee to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self-incrimination. The court also explained the mandatory nature of appellant's prison term, and advised him of the maximum penalties and postrelease control. Counsel stated that appellant reviewed and signed the plea form knowingly, voluntarily, and intelligently.

{¶4} Appellee also acknowledged that it would dismiss the possession count in exchange for appellant's plea to the R.C. 2925.03(A)(2) trafficking count and the parties referred to a joint sentencing recommendation. Appellant thereupon entered a

plea of guilty to a second-degree felony count of aggravated drug trafficking in violation of R.C. 2925.03(A)(2).

{¶5} After the trial court accepted appellant's plea, counsel advised the court that appellant awaited surgery on July 11. Thus, counsel requested the court to allow appellant to sign a notice to appear for an August sentencing. Appellant then signed a notice to appear at his August 14, 2024 sentencing.

{¶6} When appellant failed to appear at his August 14, 2024 sentencing, the trial court ordered appellant's bond forfeited and a capias issued for appellant's arrest. The court stated:

> Well, he's failed to appear. He signed the notice, there's no excuse for being this late. It will be the order of the court that due to Mr. Dillon failing to appear, the court is going to order any bond posted be forfeited and a capias issued for his arrest.

{¶7} At the rescheduled sentencing hearing on December 11, 2024, the trial court stated that it had considered the oral statements, facts of the offenses, appellant's criminal record, including his institutional record, the R.C. 2929.11(A) principles and purposes of sentencing, and the R.C. 2929.12 recidivism factors. The court noted appellant's prior absence and observed that appellant's institutional report summary indicated that appellant had "been a bad boy the whole time you've been in prison. . . you haven't learned a thing." The

court noted that while in prison, appellant had "seven and a half suboxone pills in your underwear, 18 small packages, distribution bags of methamphetamine that weighed a total of 41 grams. You're in prison dealing drugs. . . You haven't learned a thing."

{¶8} The trial court sentenced appellant to: (1) serve a mandatory minimum 6-year prison term up to a maximum 9-year prison term, (2) serve a mandatory 18-month to 3-year postrelease control term, and (3) pay costs. This appeal followed.

I.

{¶9} In his sole assignment of error, appellant asserts that the proportionality of his sentence is inconsistent with the R.C. 2929.11 principles and R.C. 2929.12 factors. Specifically, appellant argues that the trial court did not adequately address the R.C. 2929.11 and R.C. 2929.12 factors. Appellee, however, contends that the trial court properly addressed the R.C. 2929.11 and 2929.12 factors, and the record supports appellant's prison term.

{¶10} When reviewing felony sentences, appellate courts apply the standard of review outlined in R.C. 2953.08(G)(2). *State v. Prater*, 2019-Ohio-2745, ¶ 12 (4th Dist.), citing *State v. Graham*, 2018-Ohio-1277, ¶ 13 (4th Dist.). Under R.C. 2953.08(G)(2), "[t]he appellate court's standard for review is

not whether the sentencing court abused its discretion." Instead, R.C. 2953.08(G)(2) specifies that an appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either:

> (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.

{¶11} "[C]lear 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." *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus. Thus, an appellate court may vacate or modify any sentence that is not clearly and convincingly contrary to law if the appellate court concludes, by clear and convincing evidence, that the record does not support the sentence.

R.C. 2929.11 provides:

> (A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the

> offender and others, to punish the offender, and to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.
>
> (B) 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.

{¶12} Moreover, R.C. 2929.12 sets forth several factors for the court to consider in exercising discretion in sentencing:

> (A) ... the court shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct, the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism, the factors set forth in division (F) of this section pertaining to the offender's service in the armed forces of the United States, and the factors set forth in division (G) of this section relating to Alford pleas and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.

{¶13} The Supreme Court of Ohio has summarized the applicability of R.C. 2929.11 and 2929.12 as follows:

> In Ohio, two statutory sections serve as a general guide for every sentencing. First, R.C. 2929.11(A) provides that the overriding purposes of felony sentencing "are to protect the public from future crime by the offender and others and to punish the offender." To achieve these purposes, the trial court "shall consider the need for

> incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution." *Id.* The sentence must be "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." R.C. 2929.11(B). * * *
>
> Second, R.C. 2929.12 specifically provides that in exercising its discretion, a trial court must consider certain factors that make the offense more or less serious and that indicate whether the offender is more or less likely to commit future offenses. * * *
>
> [A]n offender's conduct is considered less serious when there are "substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense." R.C. 2929.12(C)(4). R.C. 2929.12(C) and (E) also permit a trial court to consider "any other relevant factors" to determine that an offense is less serious or that an offender is less likely to recidivate.

State v. Day, 2019-Ohio-4816, ¶ 15 (4th Dist.), quoting *State v. Long*, 2014-Ohio-849, ¶ 17–18. Moreover, this court has held that, generally, a sentence is not contrary to law if a trial court considered the R.C. 2929.11 purposes and principles of sentencing, as well as the R.C. 2929.12 seriousness and recidivism factors, properly applied postrelease control, and imposed a sentence within the statutory range. *Prater* at ¶ 20; *Graham* at ¶ 16; *State v. Perry*, 2017-Ohio-69, ¶ 21 (4th Dist.); *State v. Bowling*, 2020-Ohio-813, ¶ 7 (4th Dist.); *State v. Bell*, 2024-Ohio-1502, ¶ 31 (4th Dist.). Finally, neither R.C. 2929.11 nor 2929.12 requires a trial court to make any specific factual

findings on the record. *State v. Jones*, 2020-Ohio-6729, ¶ 20, citing *State v. Wilson*, 2011-Ohio-2669, ¶ 31. However, a sentence is contrary to law if the trial court fails to consider the R.C. 2929.11 purposes and principles of felony sentencing and the R.C. 2929.12 sentencing factors. *State v. Neal*, 2015-Ohio-5452, ¶ 55 (4th Dist.).

{¶14} In the case sub judice, at the sentencing hearing the trial court stated that it considered the record, oral statements, appellant's prior criminal record, and appellant's prior institutional record. Further, the court referred to the R.C. 2929.11 purposes of felony sentencing and stated that it had "balanced the seriousness and recidivism factors under R.C. 2929.12." *See State v. Goss,* 2025-Ohio-3136, ¶ 16 (4th Dist.)(trial court referred to the R.C. 2929.11 purposes of felony sentencing and stated that it had "balanc[ed] the seriousness of recidivism factors of R.C. 2929.12.")

{¶15} Moreover, the trial court's decision stated that it had considered both the R.C. 2929.11 and R.C. 2929.12 sentencing factors. As we recently noted in *State v. Bell*, 2024-Ohio-1502 (4th Dist.), a trial court's statement in its sentencing entry that it considered the required statutory factors is alone sufficient to fulfill its obligations under R.C. 2929.11 and 2929.12. *Bell* at ¶ 32, citing *State v. Smith*, 2023-Ohio-681 (4th Dist.), *State v. Sutton*, 2015-Ohio-4074, ¶ 72 (8th Dist.),

citing *State v. Clayton*, 2014-Ohio-112, ¶ 9 (8th Dist.); *Goss* at ¶ 16.

{¶16} Appellant argues that "the trial court made no mention of mitigating factors under R.C. 2929.12(E), which include the offender's remorse, commitment to rehabilitation, and cooperation with the court process." However, appellant's current case involves the sale of a significant amount of narcotics in prison while already incarcerated for another crime, which indicates a lack of commitment to rehabilitation. *See State v. Morris,* 2024-Ohio-2683 (5th Dist.)(record supports conclusion that trial court duly considered factors such as "examples of the appellant's lack of rehabilitation during confinement, noting that he had engaged in fighting, intoxication, and propositioning a guard to set up another crime ring to bring in drugs and phones into prison").

{¶17} Moreover, appellant failed to appear at his initial sentencing hearing, despite signing a notice to appear. This signals a lack of seriousness and cooperation with the court process. *See State v. Chandler,* 2020-Ohio-164, ¶ 7 (1st Dist.)(defendant's failure to appear is an appropriate recidivism factor for the trial court to consider when determining whether to impose a maximum sentence); *State v. Nazir,* 2024-Ohio-577, ¶ 26 (8th Dist.)(appropriate for a trial court to consider a failure to appear when crafting a sentence);

State v. Taylor, 2012-Ohio-5733, ¶ 8 (8th Dist.)("[D]efendant's failure to appear at his sentencing hearing weighs in favor of finding that he would not be amenable to community control sanctions.").

{¶18} In the case sub judice, the trial court informed appellant at the plea hearing that the joint sentencing recommendation did not bind the trial court. Specifically, at appellant's plea hearing counsel stated:

> Thank you, Your Honor. Thank you! My client has proof that he has surgery, he has three hernias that are scheduled for surgery on July the 11th. My client has done a great job staying in contact with me, his fiancé has stayed in contact with me, she's also stayed in contact with the court, and I've had three different calls from the assignment commissioner about some of these issues regarding the surgery.
>
> I would ask the court to allow him to sign a notice for August the 18th. My client knows full well he is going to prison that day, and that should he not show, he will most likely get much more than the joint recommendation.

{¶19} The trial court set the August 14, 10:30 a.m. date, indicated that it would continue bond, and stated, "just a reminder Mr. Dillon, if you don't show up, this offer, or this recommendation of three years probably is going to be out the window." Appellant replied, "Yes, sir." Moreover, appellant's written plea agreement indicated that he understood that if he pleaded guilty to the charges against him, "the Court may impose the same punishment as if I had plead 'Not Guilty, stood trial,

and had been convicted by a jury," and the agreement indicated that appellant's maximum penalty is 8-12 years and a maximum $15,000 fine. Although appellant contends that his hospitalization following surgery precluded his court appearance for sentencing, the trial court selected the sentencing date based on appellant's upcoming surgery, advised appellant of the date, and appellant signed a notice to appear on that date. Both the court and counsel warned appellant of the consequences of a failure to appear, yet appellant failed to attempt to contact the court and failed to appear.

{¶20} Finally, appellant appears to argue that his sentence is disproportionate because it differed from the initial joint sentencing recommendation. However, it is well settled that "[t]rial courts may reject plea agreements and that they are not bound by a jointly recommended sentence." *State v. Underwood,* 2010-Ohio-1, ¶ 29, citing *State ex rel. Duran v. Kelsey*, 2005-Ohio-3674, ¶ 6. *See also State v. Dye,* 2025-Ohio-1973, ¶ 26 (4th Dist.)(written plea form and counsel's statements can be used to discern whether defendant forewarned that trial court not bound to follow joint-sentencing recommendation).

{¶21} It is well established that sentences do not violate the constitutional provisions against cruel and unusual punishment unless the sentences are "so disproportionate to the offense as to shock the moral sense of the community." *McDougle*

v. Maxwell, 1 Ohio St.2d 68, 69 (1964). Nonetheless, "[a]s a general rule, a sentence that falls within the terms of a valid statute cannot amount to a cruel and unusual punishment." *Id.*; *accord State v. Stevens*, 2017-Ohio-8692, ¶ 10 (5th Dist.). "Because the individual sentences imposed by the court are within the range of penalties authorized by the legislature, they are not grossly disproportionate or shocking to a reasonable person or to the community's sense of justice and do not constitute cruel and unusual punishment." *State v. Gwynne*, 2021-Ohio-2378, ¶ 30, citing *State v. Hairston*, 2008-Ohio-2338, ¶ 23; *State v. Netter*, 2024-Ohio-1068, ¶ 42 (4th Dist.).

{¶22} After our review, we conclude that the trial court complied with all pertinent sentencing requirements, reviewed and considered appellant's criminal history and institutional record, sentencing hearing testimony, and arrived at a sentence within the statutory range. Accordingly, based upon the foregoing reasons, we overrule appellant's assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed. Appellee shall recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pickaway County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted by the trial court or this court, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of the proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Hess, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.