

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

STATE OF OHIO,	:	
	:	Case No. 25CA4118
Plaintiff-Appellee,	:	
(Victim-Appellant, M.W.)	:	
	:	
v.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
WILLIAM P. WINN,	:	
	:	RELEASED: 08/10/2026
Defendant-Appellee.	:	

APPEARANCES:

Morgan Galle, Powell, Ohio, for victim-appellant.

John Haas, Portsmouth City Solicitor, Portsmouth, Ohio.¹

Pat Story, Middleport, Ohio, for appellee.

Wilkin, J.

{¶1} The victim, M.W., appeals from a judgment of the Portsmouth Municipal Court in which the trial court imposed sentencing on William P. Winn without providing M.W. the opportunity to provide a statement at sentencing. M.W. initiated this appeal pursuant to Ohio Const., art. I, §10(a), and requests that we reverse the trial court's sentencing order and remand the matter for resentencing. The record supports M.W.'s claim that the trial court failed to comply with her rights pursuant to Ohio Const., art. I, §10(a), and R.C. 2930.09. Accordingly, we remand the matter to the trial court for resentencing.

FACTS AND PROCEDURAL BACKGROUND

¹ City of Portsmouth Solicitor did not file any briefing in this appeal.

{¶2} While M.W. and Winn were married, M.W. obtained a civil protection order in October 2024. The protection order expires in October 2026. In October, 2025, Winn violated the protection order by sending mail correspondence directly to M.W. A complaint was filed and Winn was charged for violating the protection order, a first-degree misdemeanor, in Portsmouth Municipal Court. On the same day that the complaint was filed, M.W. completed an Ohio victim rights request form and checked, among others, that she wanted to receive “reasonable and timely notice of all proceedings[,]” and wanted to be appointed “a Victim’s Representative.” M.W. also checked that she was “proximately harmed” as a result of the crime.

{¶3} Winn was arraigned on December 31, 2024, pleaded not guilty, and the matter was scheduled for a pre-trial hearing on January 21, 2025. A notice of the January hearing was mailed to M.W. and informed her that “[s]hould you wish to be heard in this matter please plan on attending said hearing. Please check in with the Solicitor’s Office upon arrival.”

{¶4} At the January hearing, Winn pleaded no contest to the offense and the trial court proceeded directly to sentencing without any input from the prosecution, the victim, or the victim’s representative. The following is the complete colloquy of the hearing held on January 21, 2025:

JUDGE: Mr. Winn is here with his attorney, Nick Hoover. The court understands he is prepared to withdraw his former plea of Not Guilty and enter a plea of No Contest to a charge of Violating a Civil Protection Order.

ATTORNEY HOOVER: Yes, Your Honor.

JUDGE: Understand what we’re talking about sir?

DEFENDANT: Yes.

JUDGE: Is that what you choose to do today?

DEFENDANT: Yes.

JUDGE: Your plea of no contest is accepted. Statement of facts?

ATTORNEY HOOVER: We'll waive.

JUDGE: Waiver of statement of facts and review of the file, we'll enter a finding of guilty. By way of sentence there will be a fine of \$300.00 and order to pay the cost of the action. One hundred eighty days in the county jail. We'll suspend one hundred and sixty-five of them. Place you on probation for one year as to the suspended time, and dismiss the remaining charge. It is my understanding that you need until February 7th?

ATTORNEY HOOVER: Yes, Your Honor.

JUDGE: We'll stay the execution until February 7th at 8:30AM. You need to understand that if you don't show up that day, the deal is off and you will owe us one hundred eighty days in jail. And guy you just got to quit violating these orders. You have some of these up in Pickaway County. You are going to start spending a whole lot of time in jail if you don't quit violating these orders.

{¶15} On February 5, 2025, M.W.'s counsel filed an appearance on her behalf and filed a motion to reopen Winn's sentencing hearing in order to protect and enforce M.W.'s "rights to be present and heard during the sentencing proceedings and to seek restitution." The trial court set a hearing for February 19, to address M.W.'s motion; however, on February 12, M.W.'s counsel withdrew the motion, asserting that the hearing would occur after the deadline to appeal. On the deadline date of February 18, M.W. filed her notice of appeal from Winn's judgment of conviction and sentence in the Portsmouth Municipal Court.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT DENIED VICTIM-APPELLANT M.W., THE OPPORTUNITY TO BE PRESENT AND HEARD DURING THE SENTENCING HEARING, IN VIOLATION OF OHIO CONST. ART. I, § 10(a)(A)(2) AND (3) AND R.C. 2930.09.

{¶6} M.W. argues that she is a “victim” under Ohio Const., art. I, §10(a)(D) because she was the protected party and was directly harmed by Winn’s violation of the protection order. Therefore, she had a right to be present and heard at Winn’s sentencing hearing. Further, R.C. 2930.06 requires the trial court to inquire whether the prosecutor had conferred with the victim before imposing a sentence. That did not occur here. M.W. asserts that on January 21, she checked in with the solicitor’s office and waited to be called for Winn’s scheduled hearing. But she was not called, and the trial court accepted Winn’s no contest plea and imposed sentence that day without conferring with M.W. or even asking whether the prosecution had discussed the matter with M.W. Therefore, M.W. requests that we vacate Winn’s sentence and remand the matter for resentencing.

{¶7} Winn, in response, notes that M.W.’s assertion that she checked in and was waiting on January 21 at the courthouse is not supported by the record of the case. Absent a factual determination that M.W. was present, Winn argues any failure by the trial court to ask the prosecution whether M.W. wished to address the court was harmless. Additionally, Winn contends that because M.W. relies on facts outside the record, her claims are not suited for a direct appeal. Winn, thus, requests that we overrule M.W.’s assignment of error and dismiss the appeal.

{¶8} In M.W.’s reply, she maintains that even if we disregard her factual statement that she was present at the courthouse on January 21, her arguments are nonetheless supported by the record of the case. M.W. completed the

victim's rights request form, which was filed with the court. M.W. was notified of the January 21 hearing, but it was scheduled for a pre-trial, not a change of plea and sentencing hearing. Once the trial court proceeded to sentencing, the court was required pursuant to R.C. 2930.06(A)(3) to question the prosecutor if the victim was consulted and/or if M.W. wished to address the court. That did not occur here. Accordingly, M.W. asserts that her constitutional and statutory rights to be present and heard were not protected in this case. M.W., thus, maintains that Winn's sentence must be vacated and a new sentencing hearing should be held.

Law and analysis

{¶9} "Article I, Section 10a of the Ohio Constitution, commonly referred to as Marsy's Law, expanded the rights afforded to victims of crime ." *State v. Pennington*, 2024-Ohio-5681, ¶ 65 (4th Dist.). And there is no dispute that M.W. is a victim as defined by Ohio Const., art. I, §10(a)(D). The Supreme Court of Ohio in *State v. Brasher*, held that "[t]o bring our case law back in line with the text of Marsy's Law, when a victim of a crime seeks enforcement of his or her constitutional rights by submitting a request to the trial court, the victim has standing to file a direct appeal." 2022-Ohio-4703, ¶ 22 (lead opinion), citing *State v. Beach*, 2021-Ohio-4497, ¶ 16 (10th Dist.).

{¶10} Under Ohio Const., art. I, §10(a)(A)(2) and (3), M.W. has specific rights that are implicated in the matter at bar:

(A) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, which shall be protected in a manner no less vigorous than the rights afforded to the accused:

...

(2) upon request, to reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act against the victim, and to be present at all such proceedings;

(3) to be heard in any public proceeding involving release, plea, sentencing, disposition, or parole, or in any public proceeding in which a right of the victim is implicated[.]

{¶11} These constitutional rights were statutorily incorporated and expanded upon in R.C. 2930.09(A)(1) and (2)(a), which provides:

(A)(1) A victim and victim's representative in a case, if applicable, have the right to be present, during any public proceeding, other than a grand jury proceeding. . . . The victim, victim's representative, and victim's attorney, if applicable, have the right to be heard by the court at any proceeding in which any right of the victim is implicated. If present, the victim, victim's representative, and victim's attorney, if applicable, have the right to be heard orally, in writing, or both.

(2)(a) If the victim or victim's representative is not present at a court proceeding in which a right of the victim is at issue, the court shall ask the prosecutor all of the following:

(i) Whether the victim and victim's representative, if the victim or victim's representative requested notifications, were notified of the time, place, and purpose of the court proceeding;

(ii) To disclose to the court any and all attempts made to give each victim and victim's representative, if applicable, notice;

(iii) Whether the victim or victim representative were advised that the victim and victim's representative had a right to be heard at the court proceeding;

(iv) Whether the victim and victim representative were conferred with pursuant to section 2930.06 of the Revised Code.

{¶12} Moreover,

At a hearing at any of the stages listed in division (A)(1) of this section, the court *shall* inquire as to whether the victim or victim's representative, if applicable, requested to confer with the prosecutor, and whether or not the prosecutor conferred with the victim and the victim's representative, if applicable. (Emphasis added.)

R.C. 2930.06(A)(3).

{¶13} The above provisions, as applicable here, make clear that a victim has the right to be present and heard whether orally, in writing, or both, during any public proceeding of a defendant's criminal case. This is particularly emphasized at the sentencing hearing. See R.C. 2930.14(A) ("Before imposing sentence upon, or entering an order of disposition for, a defendant or alleged juvenile offender for the commission of a criminal offense or delinquent act, the court shall permit the victim and victim's representative, if applicable, to be heard orally, in writing, or both during the sentencing or disposition proceeding.")

{¶14} Moreover, even if the victim is not present, the trial court is mandated to inquire of the prosecution if the victim was notified of the hearing, what attempts were made to notify the victim, if the victim was informed she had a right to be heard at the hearing, and if the prosecution conferred with the victim. See R.C. 2930.09(A)(2)(a).

{¶15} In the matter at bar, M.W. completed a victim's rights form which was filed in Winn's proceedings. However, only one of her constitutional and statutory rights was protected here—M.W. was notified of the January 21 hearing.

{¶16} At the hearing, which was transcribed in just 22 lines, the trial court accepted Winn's no contest plea and imposed sentence. The transcript reveals that the only statement the prosecution made at the hearing was the first line of calling Winn's case. The remaining colloquy was between the trial court, Winn, and Winn's counsel. The trial court accepted Winn's no contest plea, and, after Winn's counsel waived the statement of facts, the trial court proceeded to

sentencing. The trial court did not request any input from the prosecution, let alone inquire whether M.W. was notified of the hearing, wished to make a statement as to sentencing, or whether the prosecution conferred with M.W.

{¶17} The record reveals that the trial court was aware that M.W. was the victim and the crime was serious, in which the trial court advised Winn: “you just got to quit violating these orders. You have some of these up in Pickaway County. You are going to start spending a whole lot of time in jail if you don’t quit violating these orders.”

{¶18} R.C. 2930.09(A)(2)(b) directs the trial court not to “rule on any substantive issue that implicates a victim’s right, . . . or impose a sentence and shall continue the court proceeding” if “the prosecutor failed to confer with the victim and victim’s representative as required by section 2930.06 of the Revised Code.”

{¶19} In *State v. Anderson*, the Fifth District Court of Appeals reversed the trial court’s judgment and remanded the matter for resentencing for denying the relatives of the murdered victim the right to be heard at the sentencing hearing. 2025-Ohio-1226, ¶ 28 (5th Dist.). Here, M.W. is the sole direct victim in Winn’s continuous conduct of violating the protection order that M.W. obtained for her safety. Winn’s violation of the protection order is a first-degree misdemeanor with a maximum jail-time of 180 days. The trial court, without any input from the prosecution or M.W., imposed the maximum sentence, but suspended 165 days and permitted Winn not to report until February 7, which is more than 2 weeks after his sentence was imposed.

{¶20} We find merit to M.W.'s assignment of error and conclude that the trial court violated her rights as a victim by failing to inquire whether she had been notified of the hearing and, if she so chose, to afford her an opportunity to be heard at sentencing. Accordingly, we reverse the trial court's judgment entry and remand the matter for resentencing.

CONCLUSION

{¶21} Having sustained M.W.'s assignment of error, we reverse Winn's sentencing disposition and remand the matter to the trial court for a new sentencing hearing.

JUDGMENT IS REVERSED AND CAUSE IS REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS REVERSED and the CAUSE IS REMANDED. Appellee shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Portsmouth Municipal Court to carry this judgment into execution.

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

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

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.