

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

State of Ohio,	:	Case No. 26CA2
Plaintiff-Appellee,	:	<u>DECISION AND</u>
v.	:	<u>JUDGMENT ENTRY</u>
Kristi Day,	:	
Defendant-Appellant.	:	RELEASED 9/15/2026

APPEARANCES:

Colin P. Cochran, Cochran Legal, LLC, Dayton, Ohio, for appellant.

Daniel W. Everson, Esq., Assistant Washington County Prosecutor, Marietta, Ohio, for appellee.

Hess, J.

{¶1} Kristi Day appeals from a judgment of the Washington County Common Pleas Court convicting her, following a guilty plea, of four counts of aggravated trafficking in drugs. Day presents one assignment of error asserting that her sentence was contrary to law where the sentencing entry contradicts the trial court's statements at sentencing and where the sentence was not supported by the record. For the reasons which follow, we overrule the assignment of error and affirm the trial court's judgment.

I. FACTS AND PROCEDURAL HISTORY

{¶2} In August 2025, Day was indicted on: (1) Count One – aggravated possession of drugs, a fifth-degree felony; (2) Count Two – aggravated trafficking in drugs, a fourth-degree felony; (3) Count Three – aggravated possession of drugs, a third-degree felony; (4) Count Four – aggravated trafficking in drugs, a third-degree felony; (5) Count Five – aggravated possession of drugs, a third-degree felony; (6) Count Six – aggravated trafficking in drugs, a third-degree felony; (7) Count Seven – aggravated possession of drugs, a second-degree felony, with specifications for the forfeiture of a cell phone, gun, and scale; and (8) Count Eight – aggravated trafficking in drugs, a second-degree felony, with specifications for the forfeiture of a cell phone, gun, and scale.

{¶3} In December 2025, Day pleaded guilty to Counts Two, Four, Six, and Eight, i.e., the aggravated trafficking in drug counts, with the forfeiture specifications. The State agreed to “cap [its] sentence argument at 8 years” and to dismiss the remaining counts. The trial court accepted the guilty plea, dismissed the remaining counts, and ordered a presentence investigation.

{¶4} The presentence investigation report (“PSI”) indicates law enforcement conducted three controlled buys of methamphetamine from Day using a confidential informant (“CI”). Law enforcement also executed a search warrant and found methamphetamine and other items in Day’s vehicle. Day claimed that the day before the first buy, her boyfriend, who supported her, died, and his son told her to get her stuff out of the camper she had lived in with the boyfriend. She took the drugs with her because she did not want her boyfriend’s wife or kids to find them. She was contacted by someone who asked if she “could help him out” and agreed because she was broke and living in

her car. She “ended up getting more dope the day they raided.” Day reported using marijuana daily, using amphetamines and alcohol occasionally, and being under the influence of marijuana and methamphetamine “at the time of the offense.”

{¶5} At the sentencing hearing, the assistant prosecutor asserted eight years would be a reasonable sentence. Among other things, the assistant prosecutor argued the case involved “three buys and then a search warrant,” so it was not “a one-off situation.” Day “was peddling lots of drugs in the community.” Her ORAS score was “pretty high” for someone “who’s never been in trouble before legally,” and it should have been higher. Day tried to downplay her conduct by claiming that she only started selling drugs the day after her boyfriend, who supported her, died, in order to survive and ensure his family did not see that he had drugs, but this claim was not believable for various reasons, including that Day had gone to Columbus to “re-up.”

{¶6} Defense counsel asserted the minimum sentence was appropriate. Among other things, counsel argued that “a lot of this is we’ll say guilty by association.” Day “had no prior record prior to this other than disorderly conduct, which no one really cares about or acknowledges.” The people she hung out with, including her boyfriend, were “not the best crowd,” drugs were “all around,” and Day “didn’t make good decisions.” Day had a tumultuous relationship with her boyfriend, who was married. The day before the first buy, they had a massive fight, and the boyfriend died later that night. Day “was in a downhill spiral from there.” She was told to immediately get her stuff from a camper, where she found drugs. She did not want the boyfriend’s wife or anyone else to see them, so she took them. When the CI reached out to her, she made a “stupid decision.” She was

sleeping in her car, had no job, and “sought easy money.” But these events were “over a year ago,” and since then, she got a job and not been in any trouble.

{¶7} The court stated:

[W]ith respect to the seriousness factors there is one, this was committed for hire part of an organized criminal activity. It wasn't one sale to one CI. It was multiple sales. It appears to be similar CI are the same [sic]. There's a number. But then the final, at least in the last date and time in this indictment, she had apparently gone to, as I believe you called it, re-upped to buy more drugs. So certainly that is a seriousness factor.

With respect to seriousness, this case being less serious, there are no factors that make this less serious than any other similar crimes with respect to recidivism being more likely. Certainly there is a pattern of drug or alcohol abuse. And I haven't seen anything where there is treatment, but she certainly hasn't received any. So at least there is that pattern of abuse at this time.

With respect to recidivism being less likely, she had not been convicted of or pled guilty to a criminal offense, at least a felony offense, other than the disorderly conduct for some minor misdemeanor. So I do find that that factor is present for recidivism being less likely.

The court stated that it had considered “the written reports, the PSI, all oral statements made, and the Ohio laws that relates [sic] to sentencing for a felony.” The court had also “weighed the seriousness and recidivism factors.”

{¶8} The court stated it was sentencing Day to the following prison terms: (1) Count Two – 12 months; (2) Count Four – 18 months; (3) Count Six – 18 months; and (4) Count Eight – mandatory term of 5 years up to a maximum possible term of 7.5 years. The court indicated the terms would run concurrently and that postrelease control was mandatory for up to three years. The court stated that it was entering judgment for the costs of prosecution and a \$25 assessment fee. The court stated no restitution was requested, and “none will be ordered.” The court found Day indigent, so “there will be no fine.” The court also ordered forfeiture of the cell phone, gun, and scale.

{¶9} Subsequently the court issued a sentencing entry, which states:

THE COURT FINDS THAT THE FOLLOWING RECIDIVISM AND
SERIOUSNESS FACTORS ARE PRESENT:

SERIOUSNESS – MORE

(7) The offender committed the offense for hire or as part of an organized criminal activity.

SERIOUSNESS – LESS

There are no factors that make this offense less serious than contemplated by the statute

RECIDIVISM - MORE

There are no factors that make this Defendant more likely to recidivate

RECIDIVISM – LESS

(2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense.¹

The entry further states that the court “considered the reports,” including the PSI, “all oral statements made, and the Ohio Law as it relates to sentencing for a felony,” and among other things, weighed the seriousness and recidivism factors.

{¶10} The entry imposed the following prison terms: (1) Count Two – 12 months; (2) Count Four – 18 months; (3) Count Six – 18 months; and (4) Count Eight – a mandatory term of 5 years with a maximum possible term of 7.5 years. The entry states that the sentences run concurrently, that post-release control is mandatory for up to three years, that the court did not order the mandatory drug fine due to Day’s indigency, that the court did not order suspension of her driver’s license, and that no restitution is ordered.

¹ In quoting this portion of the entry, we omitted bold type and extraneous blank lines.

The court ordered Day to pay the costs of prosecution and a \$25 assessment fee. The court also ordered forfeiture of the cell phone, gun, and scale listed in the specifications.

II. ASSIGNMENT OF ERROR

{¶11} Day presents one assignment of error: “Appellant’s sentence was contrary to law where the sentencing entry contradicts the trial court’s statements at sentencing and where the sentence was not supported by the record.”

III. SENTENCING

A. Day’s Position

{¶12} In her sole assignment of error, Day contends her sentence was contrary to law because the sentencing entry contradicts the trial court’s statements at sentencing and her sentence is not supported by the record. Day maintains that we must review her sentence under the standard in R.C. 2953.08(G)(2). Day claims a sentence “is contrary to law when it imposes a sentence in the sentencing entry different from the sentence announced at the sentencing hearing.” Therefore, her sentence is contrary to law because “the trial court’s oral pronouncement of its analysis of R.C. 2929.12 and written entry contain contradictory findings regarding recidivism factors.” She asserts at the sentencing hearing, the court “made an explicit finding regarding recidivism factors, stating that there is a pattern of drug or alcohol abuse,” “which is a statutory recidivism factor making recidivism more likely.” But the sentencing entry states the exact opposite—that there were no factors that made Day more likely to recidivate. Therefore, the court “modified its findings without notice to [her].” Day claims the contradiction “makes it impossible” for this court “to determine what the trial court actually found regarding recidivism factors” and “conduct meaningful review.” She asserts that the

contradiction “involves a material finding that directly affects the sentencing analysis required by R.C. 2929.12” and that “[a] finding that no recidivism factors exist, as stated in the Judgement Entry, would support a less severe sentence than the one [she] received.” And based on the contradiction, she asks us to vacate her sentence and remand for clarification of the trial court’s findings or resentencing.

{¶13} Day also claims a sentence is contrary to law “if the trial court failed to properly consider the seriousness and recidivism factors set forth in R.C. 2929.12, or if the record does not support the sentencing court’s findings.” She relies on caselaw from this court to support the proposition that in *State v. Marcum*, 2016-Ohio-1002, ¶ 23, the Supreme Court held that an appellate court can review a trial court’s R.C. 2919.12 findings under R.C. 2953.08(G)(2). Day maintains that the sentencing entry states there are no factors that make her offenses less serious, but “the record contains evidence supporting mitigating factors under R.C. 2929.12(C).” She suggests R.C. 2929.12(C)(1) applies, i.e., the victim induced or facilitated the offense, because the drug transactions were initiated by law enforcement, through the use of a CI, who reached out to Day asking for drugs when she was “under duress from the loss of a loved one and facing newly realized homelessness.” She suggests R.C. 2929.12(C)(4) applies, i.e., there are substantial grounds to mitigate her conduct though they are not enough to constitute a defense, because defense counsel presented “detailed information” about the “extraordinary circumstances surrounding [her] offenses.” She claims “[t]he sudden death of her boyfriend, combined with homelessness and financial desperation, created extraordinary pressure that, while not excusing her conduct, make it less serious than drug trafficking committed by individuals engaged in ongoing criminal enterprises for

profit.” Day also asserts that her “lack of significant criminal history is entitled to significant weight in mitigation.” She maintains that we should vacate the sentence and remand for resentencing with “proper consideration of all applicable seriousness factors under R.C. 2929.12.”

B. R.C. 2953.08

{¶14} R.C. 2953.08 addresses appeals based on felony sentencing guidelines.

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

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.

“‘[O]therwise contrary to law’ means ‘in violation of statute or legal regulations at a given time.’” *State v. Bryant*, 2022-Ohio-1878, ¶ 22, quoting *State v. Jones*, 2020-Ohio-6729, ¶ 34, quoting *Black’s Law Dictionary* (6th Ed.1990).

{¶15} “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.” *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

C. R.C. 2929.12

{¶16} R.C. 2929.12(A) states:

Unless otherwise required by section 2929.13 or 2929.14 of the Revised Code, a court that imposes a sentence under this chapter upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code. In exercising that discretion, 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.

D. Analysis

{¶17} We do not clearly and convincingly find that Day's sentence is contrary to law. A criminal defendant has a "right to be physically present at all critical stages of the proceeding, including when a trial court imposes a sentence." *State v. Spencer*, 2024-Ohio-59, ¶ 20 (4th Dist.), citing Crim.R. 43(A)(1) ("the defendant must be physically present at every stage of the criminal proceeding and trial, including . . . the imposition of sentence"). Therefore, ""the trial court errs when its judgment entry of sentence differs from the sentence that it announced at the sentencing hearing in the defendant's presence."" *Id.*, quoting *State v. Patrick*, 2013-Ohio-3821, ¶ 10 (4th Dist.), quoting *State v. Kovach*, 2009-Ohio-2892, ¶ 28 (7th Dist.). "Courts thus have concluded that a trial court's sentence is contrary to law when a sentence is imposed in a sentencing entry that the court did not impose in open court and in the defendant's presence." *Id.* at ¶ 21, and cases cited therein. "Accordingly, 'if there exists a variance between the sentence pronounced in open court and the sentence imposed by a court's judgment

entry, a remand for resentencing is required.” *Id.* at ¶ 22, quoting *State v. Quinones*, 2007-Ohio-6077, ¶ 5 (8th Dist.).

{¶18} However, Day confuses R.C. 2929.12 sentencing factors with the sentence. “[A] sentence is a penalty or combination of penalties imposed on a defendant as punishment for the offense he or she is found guilty of committing.” *State v. Anderson*, 2015-Ohio-2089, ¶ 10, quoting *State v. Harris*, 2012-Ohio-1908, ¶ 28, *overruled in part on other grounds by State v. Henderson*, 2020-Ohio-4784. In this case, there is no variance between the penalties imposed on Day as punishment for her offenses as pronounced in open court and imposed by the sentencing entry.

{¶19} The purported variance Day identifies involves the R.C. 2929.12 sentencing factors, not her sentence. Because R.C. 2929.12 requires the trial court to consider the factors outlined in that statutory provision, a trial court’s failure to do so renders the sentence contrary to law. *State v. Nolan*, 2024-Ohio-1245, ¶ 43 (4th Dist.), quoting *State v. Poole*, 2022-Ohio-2391, ¶ 17 (4th Dist.). However, R.C. 2929.12 does not require that the trial court “make any specific factual findings on the record.” *Id.*, quoting *Jones*, 2020-Ohio-6729, at ¶ 20. “Although a trial court has a mandatory duty to consider the relevant statutory factors under . . . [R.C.] 2929.12, the trial court is not required to specifically analyze each factor on the record or to explain its reasoning before imposing a sentence.” *State v. Poole*, 2022-Ohio-2391, ¶ 17 (4th Dist.), quoting *State v. Neal*, 2015-Ohio-5452, ¶ 58 (4th Dist.). In addition, “[i]t is axiomatic that a court speaks only through its journal entries.” *State ex rel. Collier v. Farley*, 2005-Ohio-4204, ¶ 18 (4th Dist.), citing *In re Adoption of Gibson*, 23 Ohio St.3d 170, 173, fn. 3 (1986). “““[I]f the journal entry and the judge’s comments conflict, the journal entry controls.””” *State v. Clay*, 2025-

Ohio-4905, ¶ 24 (3d Dist.), quoting *State v. Eitzman*, 2022-Ohio-574, ¶ 31 (3d Dist.), quoting *State v. Potter*, 2021-Ohio-3502, ¶ 13 (6th Dist.), quoting *State v. Hankins*, 89 Ohio App.3d 567, 569 (3d Dist. 1993). Thus, we conclude that the purported variance between the court's oral statements regarding the R.C. 2929.12 factors at the sentencing hearing and written findings regarding those factors in the sentencing entry do not render Day's sentence contrary to law, and the written findings prevail over any conflicting oral statements.²

{¶20} In addition, we conclude that R.C. 2953.08(G)(2) does not permit us to review Day's contention that the trial court improperly considered the R.C. 2929.12 seriousness and recidivism factors, resulting in a sentence that was not supported by the record. We acknowledge that in *Marcum*, 2016-Ohio-1002, at ¶ 23, the Supreme Court of Ohio stated that

some sentences do not require the findings that R.C. 2953.08(G) specifically addresses. Nevertheless, it is fully consistent for appellate courts to review those sentences that are imposed solely after consideration of the factors in R.C. 2929.11 and 2929.12 under a standard that is equally deferential to the sentencing court. That is, an appellate court may vacate or modify any sentence that is not clearly and convincingly contrary to law only if the appellate court finds by clear and convincing evidence that the record does not support the sentence.

And as Day points out, in *State v. Shankland*, 2019-Ohio-404, ¶ 19 (4th Dist.), this court, citing *Marcum* at ¶ 23, stated: "Although R.C. 2953.08(G)(2)(a) does not mention R.C. 2929.11 and 2929.12, the Supreme Court of Ohio has determined that the same standard

² We observe that in *State v. Stutes*, 2023-Ohio-4582 (4th Dist.), we stated that in criminal cases there is an exception to the general rule that a court speaks through journal entries and not by oral pronouncement "because the defendant has a constitutional right to be present at every stage of the proceedings and to know his sentence at the sentencing hearing." *Stutes* at ¶ 38, quoting *State v. Rhodes*, 2011-Ohio-5153, ¶ 11 (8th Dist.), citing Crim.R. 43. However, *Stutes* involved a substantive discrepancy between the sentence as pronounced in open court and the sentence imposed in the sentencing entry, *id.*, not a discrepancy between R.C. 2929.12 findings, which the court is not required to make on the record.

of review applies to those statutes.” But after *Shankland* was decided, the Supreme Court clarified in *Jones* that “[t]he statements in *Marcum* at ¶ 23 suggesting that it would be ‘fully consistent’ with R.C. 2953.08(G) for an appellate court to modify or vacate a sentence when the record does not support the sentence under R.C. 2929.11 or 2929.12” were dicta. *Jones* at ¶ 27

{¶21} *Jones* explained that “R.C. 2953.08(G)(2)(a) clearly does not provide a basis for an appellate court to modify or vacate a sentence if it concludes that the record does not support the sentence under R.C. 2929.11 and 2929.12 because . . . R.C. 2929.11 and 2929.12 are not among the statutes listed in the provision.” *Id.* at ¶ 31. Thus, it is error to conclude “that R.C. 2953.08(G)(2)(a) provides 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. *Jones* also explained that “an appellate court’s conclusion that the record does not support a sentence under R.C. 2929.11 or 2929.12 is not the equivalent of a conclusion that the sentence is ‘otherwise contrary to law’ as that term is used in R.C. 2953.08(G)(2)(b).” *Id.* at ¶ 34. The Supreme Court stated: “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.” *Id.* at ¶ 42. Thus, R.C. 2953.08(G)(2) “does not permit us to modify or vacate a sentence on the basis that a trial court’s R.C. 2929.12 findings are unsupported by the record or that the record does not support the sentence as a whole under R.C. 2929.11 and R.C. 2929.12.” *State v. Loy*, 2021-Ohio-403, ¶ 30 (4th Dist.).

{¶22} For the foregoing reasons, we do not clearly and convincingly find that Day's sentence is contrary to law, overrule the sole assignment of error, and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant 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 Washington 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 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 set forth in 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 the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, 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.