

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

DALBERT W. SANDERS

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 2023 AP 01 0003

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Tuscarawas County Court
of Common Pleas, Case No. 2022 CR 06
0186

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 16, 2023

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Dalbert Sanders appeals the judgment entered by the Tuscarawas County Common Pleas Court convicting him following his pleas of guilty to involuntary manslaughter with a firearm specification (R.C. 2903.04(C), R.C. 2941.145), using weapons while intoxicated (R.C. 2923.15(A)), reckless homicide with a firearm specification (R.C. 2903.041(A), R.C. 2941.145), three counts of tampering with evidence (R.C. 2912.12(A)(1)), and gross abuse of a corpse (R.C. 2927.01(B)), and sentencing him to an aggregate term of eight years incarceration. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On May 14, 2022, Appellant attended a birthday party for the wife of one of his friends. After the party, Appellant and some of his friends continued to hang out together. The men engaged in target shooting. They also consumed rum, beer, and marijuana. At around 2:00 a.m., John Bashline arrived at the party.

{¶3} After Bashline arrived at the party, the men got their guns back out. Appellant demonstrated to the others how fast he could draw a pistol. Appellant had a holster with a twenty-two revolver. In his back pocket or waistband, Appellant had a semi-automatic handgun. Both guns were loaded. Appellant demonstrated numerous times how fast he could draw both weapons, sometimes pointing a gun at someone while saying “bang.” When Appellant pointed the gun at Bashline, Bashline said, “Hey, don’t aim that at me.” Tr. Sent. 9. Appellant again drew the guns and pointed the twenty-two at Bashline, but this time the gun discharged, striking Bashline in the chest. Bashline said, “You shot me,” then dropped to one knee and said, “You got to get me to a hospital.” Tr. Sent. 9. Bashline slumped over and remained unresponsive.

{¶4} Because Bashline's car was blocking the driveway, one of the men went to move it while another man planned to take Bashline to the hospital in his truck. However, Appellant said they were going to take Bashline in Bashline's own car. Appellant also said they could not go to the hospital because there were too many cameras there, and suggested they leave Bashline "short of the hospital." Tr. Sent. 10. The men loaded Bashline's body into the backseat of the car and drove away.

{¶5} Appellant removed Bashline's wallet and phone so Bashline could not be identified. Appellant disposed of these items on the way to the hospital. Pursuant to Appellant's plan, the men left Bashline in his car one block from the Twin City Hospital in Dennison, Ohio. At 4:30 a.m., a man reported finding the car running with the lights on, and Bashline was found deceased in the backseat.

{¶6} Appellant was indicted by the Tuscarawas County Grand Jury with involuntary manslaughter, using weapons while intoxicated, reckless homicide, three counts tampering with evidence, and one count gross abuse of a corpse. The charges of involuntary manslaughter and reckless homicide included firearm specifications. Appellant entered a plea of guilty to all charges. The trial court found the convictions of involuntary manslaughter, using weapons while intoxicated, and reckless homicide merged as allied offenses of similar import, and the State elected to have Appellant sentenced for involuntary manslaughter. The trial court found the convictions of tampering with evidence and gross abuse of a corpse all merged as allied offenses of similar import, and the State elected to have Appellant sentenced for tampering with evidence. The trial court sentenced Appellant to thirty-six months incarceration for involuntary manslaughter, three years incarceration for the accompanying firearm

specification, and twenty-four months incarceration for tampering with evidence, to be served consecutively for an aggregate term of incarceration of eight years. In weighing the seriousness and recidivism factors set forth in R.C. 2929.12, the trial court specifically found Appellant's relationship with the victim facilitated the offense, and Appellant is more likely to commit future crimes because he has a history of criminal convictions or juvenile delinquency adjudications.

{¶7} It is from the December 15, 2022 judgment of the trial court Appellant prosecutes his appeal, assigning as error:

THE TRIAL COURT ERRED WHEN IT SENTENCED APPELLANT
TO A MAXIMUM SENTENCE.

{¶8} Appellant specifically argues the trial court erred in finding his relationship with the victim facilitated the offense, as this is not a relationship where Appellant had the ability to take advantage of the relationship to facilitate the crime. He argues none of the other factors under R.C. 2929.12(B) existed and this was the only factor discussed by the trial court; therefore, the trial court erred in sentencing him to a maximum sentence.

{¶9} We review felony sentences using the standard of review set forth in R.C. 2953.08. *State v. Roberts*, 5th Dist. Licking No. 2020 CA 0030, 2020-Ohio-6722, ¶13, citing *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231. R.C. 2953.08(G)(2) provides we may either increase, reduce, modify, or vacate a sentence and remand for sentencing where we clearly and convincingly find either the record does not support the sentencing court's findings under R.C. 2929.13(B) or (D),

2929.14(B)(2)(e) or (C)(4), or 2929.20(I), or the sentence is otherwise contrary to law. *Id.*, citing *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659.

{¶10} When sentencing a defendant, the trial court must consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. *State v. Hodges*, 8th Dist. Cuyahoga No. 99511, 2013-Ohio-5025, ¶ 7.

{¶11} “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.” R.C. 2929.11(A). To achieve these 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. *Id.* Further, the sentence imposed shall be “commensurate with and not demeaning to the seriousness of the offender's conduct and its impact on the victim, and consistent with sentences imposed for similar crimes by similar offenders.” R.C. 2929.11(B).

{¶12} R.C. 2929.12 lists general factors which must be considered by the trial court in determining the sentence to be imposed for a felony, and gives detailed criteria which do not control the court's discretion, but which must be considered for or against severity or leniency in a particular case. The trial court retains discretion to determine the most effective way to comply with the purpose and principles of sentencing as set forth in R.C. 2929.11. R.C. 2929.12.

{¶13} Nothing in R.C. 2953.08(G)(2) permits this Court to independently weigh the evidence in the record and substitute our own judgment for that of the trial court to determine a sentence which best reflects compliance with R.C. 2929.11 and R.C. 2929.12. *State v. Jones*, 1163 Ohio St.3d 242, 69 N.E.3d 649, 2020-Ohio-6729, ¶ 42. Instead, we may only determine if the sentence is contrary to law.

{¶14} A sentence is not clearly and convincingly contrary to law where the trial court “considers the principles and purposes of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, properly imposes post release control, and sentences the defendant within the permissible statutory range.” *State v. Pettorini*, 5th Dist. Licking No. 2020 CA 00057, 2021-Ohio-1512, 2021 WL 1714216, ¶¶ 14-16 quoting *State v. Dinka*, 12th Dist. Warren Nos. CA2019-03-022 & CA2019-03-026, 2019-Ohio-4209, ¶ 36.

{¶15} The trial court stated on the record at the sentencing hearing:

I don't know that I can necessarily, when death is involved, consider serious physical harm because it's already part of the charge to begin with but I agree with the State of Ohio in that there are or is at least one factor that I think makes this more serious and that is the relationship that you had in this case with Mr. Bashline. This is something that was in many ways carried out because of the relationship that you had had. This is something that involved this friendship that ultimately resulted in him being on the receiving end of a bullet coming from you so I think you did owe him even that higher standard to be mindful and to not be so reckless in what you were doing. I also would acknowledge that there are factors under the

recidivism sections as well that would reflect you have had a history of weapons charges. It would appear based upon continuing to utilize weapons when you have had these prior problems in the past that you had not been rehabilitated to a satisfactory degree for these charges as well. Clearly, there has been an [sic] history of substance abuse and it's certainly played a role on this night as well.

{¶16} Tr. Sent. 23.

{¶17} The trial court is not required to make a finding one of the factors in R.C. 2929.12 exists before imposing a maximum sentence. Although a trial court must consider the factors in R.C. 2929.11 and 2929.12, there is no requirement the court state its reasons for imposing a maximum sentence, or for imposing a particular sentence within the statutory range. *State v. Webb*, 5th Dist. Muskingum No. CT2018-0069, 2019-Ohio-4195, ¶ 17. In the instant case, the trial court stated it had considered the principles and purposes of sentencing pursuant to R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12, and sentenced Appellant within the statutory range. We find the sentence is not contrary to law.

{¶18} The assignment of error is overruled. The judgment of the Tuscarawas County Common Pleas Court is affirmed.

By: Hoffman, P.J.
Wise, J. and
Delaney, J. concur

