

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

BRIAN MASON WEBBER

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 2022 CA 0076

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 2022 CR 0600 R

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 17, 2023

APPEARANCES:

For Plaintiff-Appellee

JODIE SCHUMACHER
PROSECUTING ATTORNEY
ASHLEY HAWKINS
ASSISTANT PROSECUTOR
38 South Park Street, Second Floor
Mansfield, Ohio 44902

For Defendant-Appellant

RANDALL E. FRY
900 Darby Drive
Lexington, Ohio 44904

Wise, J.

{¶1} Appellant Brian Mason Webber appeals his sentence entered in the Richland County Court of Common Pleas. Appellee is state of Ohio. The relevant facts leading to this appeal are as follows.

STATEMENT OF THE FACTS AND CASE

{¶2} On September 21, 2022, Appellant entered a plea of not guilty to the charge of Escape, in violation of R.C. §2921.34(A)(1).

{¶3} On October 12, 2022, at a change of plea hearing, Appellant entered a plea of guilty to Failure to Appear Pursuant to Recognizance Bond, in violation of R.C. §2937.99(A), a fourth-degree felony. Appellant was sentenced to twelve months in prison. Appellant was also sentenced that day to community control to start after his prison sentence on a different case.

ASSIGNMENTS OF ERROR

{¶4} Appellant filed a timely notice of appeal. He herein raises the following Assignment of Error:

{¶5} “I. THE TRIAL COURT SENTENCE OF MAXIMUM CONSECUTIVE SENTENCES WAS NOT SUPPORTED BY THE RECORD.”

I.

{¶6} In Appellant’s sole Assignment of Error, Appellant argues Appellant’s sentence was not supported by the record. We disagree.

{¶7} This Court reviews felony sentences using the standard of review set forth in R.C. §2953.08. *State v. Marcum*, 146 Ohio St.3d 516. 2016-Ohio-1002, 59 N.E.3d

1231, ¶22; *State v. Howell*, 5th Dist. Stark No. 2015CA00004, 2015-Ohio-4049, ¶31.

Subsection (G)(2) sets forth this Court's standard of review as follows:

(2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

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 of 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 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 of the Revised Code, whichever, if any, is relevant;

(b) That sentence is contrary to law.

{¶8} R.C. §2929.13(B)(1)(b) states, in pertinent part:

The court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence or that is a qualifying assault offense if any of the following apply:

* * *

(iii) The offender violated a term of the conditions of bond as set by the court.

{¶9} “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 reasonable doubt’ in criminal cases, and which will produce in the mind of the trier of facts a firm belief of conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶10} Contrary to Appellant’s argument, Appellant did not receive a maximum sentence. Pursuant to R.C. §2929.13(B)(1)(b)(x), the maximum sentence for a fourth-degree felony is eighteen months.

{¶11} Appellant does not dispute that Appellant’s sentence is within the statutory range for a felony sentence, and Appellant makes no argument the sentence is contrary to law. Appellant makes the general argument that the record is insufficient to sentence Appellant. However, the trial court said Appellant was being sentenced for failure to appear on a personal recognizance bond. Appellant agreed that he had made a mistake and needed to face consequences. As such Appellant has not shown by clear and convincing evidence Appellant’s sentence is not supported by the record or contrary to law.

{¶12} Appellant's sole Assignment of Error is overruled.

{¶13} For the foregoing reasons, the judgment of the Court of Common Pleas of Richland County, Ohio, is hereby affirmed.

By: Wise, J.

Hoffman, P. J., and

Delaney, J., concur.

JWW/br 0814