

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
GUERNSEY COUNTY, OHIO

STATE OF OHIO

Plaintiff - Appellee

-vs-

ROBERT D. WALKER

Defendant - Appellant

Case No. 26CA000016

Opinion and Judgment Entry

Appeal from the Guernsey County Court of
Common Pleas, Case No. 25 CR 65

Judgment: Affirmed

Date of Judgment Entry: October 13, 2026

BEFORE: William B. Hoffman; Craig R. Baldwin; Robert G. Montgomery, Judges

APPEARANCES: Mark A. Perlaky, Assistant Guernsey County Prosecuting Attorney, for Plaintiff-Appellee; Todd W. Barstow, for Defendant-Appellant.

Hoffman, P.J.

{¶1} Defendant-Appellant Robert D. Walker appeals the March 18, 2026 judgment entered by the Guernsey County Common Pleas Court convicting him of one count of aggravated possession of drugs following his plea of guilty. Plaintiff-Appellee is the State of Ohio.

STATEMENT OF THE CASE AND FACTS

{¶2} On August 15, 2025, the Guernsey County Grand Jury indicted Appellant Robert D. Walker on one count of Aggravated Possession of Drugs, a fifth-degree felony.

{¶3} Information gleaned from the record shows Appellant was stopped for a traffic violation in Guernsey County on April 18, 2025. Subsequent investigation discovered the presence of .1 gram of methamphetamine in his vehicle.

{¶4} On December 3, 2025, Appellant applied for Intervention in Lieu of Conviction (ILC).

{¶5} On December 15, 2025, Appellant appeared with counsel and entered a plea of guilty to the sole charge of aggravated possession of drugs. The trial court ordered a presentence investigation and an evaluation for the ILC motion.

{¶6} On January 29, 2026, Appellant appeared with counsel for a hearing on the ILC motion. After reviewing the presentence investigation and the ILC evaluation, and hearing from all parties, the trial court denied the motion. The trial court permitted Appellant to withdraw his guilty plea, and the matter was set for jury trial.

{¶7} On March 17, 2026, all parties appeared for trial. At that time Appellant, through counsel, communicated he wished to plead guilty as charged. The trial court accepted his plea and proceeded to sentencing. The trial court imposed a sentence of eleven months in the Guernsey County Jail with stipulated confinement credit. (See March 18, 2026 Judgment Entry).

{¶8} Defendant-Appellant now appeals the March 18, 2026 sentencing entry, raising the following error for review:

ASSIGNMENT OF ERROR

I. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY SENTENCING HIM IN CONTRAVENTION OF OHIO'S SENTENCING STATUTES.

I.

{¶9} Revised Code §2953.08 (G)(2) sets forth this court's standard of review of felony sentences:

(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 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.

{¶10} “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. “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. Padilla*, 2023-Ohio-1995 ¶ 13 (5th Dist.), *quoting State v. Dinka*, 2019-Ohio-4209, ¶ 36 (12th Dist.).

{¶11} As stated by the Supreme Court of Ohio, R.C. §2953.08(G)(2)(b) “does not provide a basis for an appellate court to modify or vacate a sentence based on its view that the sentence is not supported by the record under R.C. 2929.11 and 2929.12.” *State v. Jones*, 2020-Ohio-6729, ¶ 39. “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.

{¶12} The Supreme Court of Ohio later clarified the *Jones* opinion as follows:

The narrow holding in *Jones* is that R.C. 2953.08(G)(2) does not allow an appellate court to modify or vacate a sentence based on its view that the sentence is not supported by the record under R.C. 2929.11 and 2929.12. *See Jones* at ¶¶ 31, 39. Nothing about that holding should be construed as prohibiting appellate review of a sentence when the claim is that the sentence

was imposed based on impermissible considerations - i.e., considerations that fall outside those that are contained in R.C. 2929.11 and 2929.12. Indeed, in *Jones*, this court made clear that R.C. 2953.08(G)(2)(b) permits appellate courts to reverse or modify sentencing decisions that are " 'otherwise contrary to law.' " *Jones* at ¶ 32, quoting R.C. 2953.08(G)(2)(b). This court also recognized that "otherwise contrary to law" means " 'in violation of statute or legal regulations at a given time.' " *Id.* at ¶ 34, quoting *Black's Law Dictionary* 328 (6th Ed. 1990). Accordingly, when a trial court imposes a sentence based on factors or considerations that are extraneous to those that are permitted by R.C. 2929.11 and 2929.12, that sentence is contrary to law. Claims that raise these types of issues are therefore reviewable.

{¶13} *State v. Bryant*, 168 Ohio St.3d 250, 2022-Ohio-1878, 198 N.E.3d 68, ¶ 22.

{¶14} Appellant does not argue the trial court considered factors or considerations extraneous to those permitted by R.C. §2929.11 and R.C. §2929.12 but rather argues the trial court erred in its balancing of the sentencing factors. Appellant concedes this type of review is impermissible under *Jones* but asks this Court to instead follow the dissenting opinion in *Jones*. This Court has previously rejected Appellant's legal argument:

Bonnette acknowledges that *Jones* is controlling and asks that we disregard it and instead follow the dissent authored by Justice Donnelly, but we "are bound to follow the law and decisions of the Ohio Supreme Court, unless or until they are reversed or overruled. *State v. Lenior*, 5th Dist. Delaware

No. 10CAA010011, 2010-Ohio-4910, 2010 WL 3921188; *Phillips v. Phillips*, 5th Dist., 2014-Ohio-5439, 25 N.E.3d 371." *Wendt v. Dickerson*, 5th Dist. No. 2017 AP 08 0024, 2018-Ohio-1034, 108 N.E.3d 1174, ¶ 30. We are therefore obligated to adhere to the decision in *Jones* and to reject Bonnette's request.

{¶15} *State v. Bonnette*, 2023-Ohio-4430, ¶ 14 (5th Dist.).

{¶16} We decline to follow the dissent in *Jones* and find we do not have the authority to re-weigh the sentencing factors set forth in R.C. §2929.11 and §2929.12. See *State v. Mantell*, 2024-Ohio-1093, ¶ 5 (5th Dist.).

{¶17} Here, the sentencing transcript and judgment entry reflect that the trial court expressly considered R.C. §2929.11 and R.C. §2929.12. The court specifically noted it considered R.C. §2929.12(B), (C), (D) and (E), finding Appellant: (1) has a history of criminal convictions; (2) failed to respond favorably to sanctions previously imposed; (3) demonstrated a pattern of drug or alcohol abuse related to the offense; (4) shows no remorse for the offense; and (5) was not adjudicated delinquent prior to offense.

{¶18} The eleven-month sentence imposed by the trial court was within the statutory range of six to twelve months for a fifth-degree felony.

{¶19} Upon review, we find the trial court's sentence follows applicable rules and sentencing statutes. While Appellant may disagree with the weight given to the sentencing factors by the trial judge, his sentence was within the applicable statutory range and not based on impermissible considerations. Therefore, we have no basis for concluding the sentence is contrary to law.

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

{¶21} Costs to Appellant.

By: Hoffman, P.J.

Baldwin, J. and

Montgomery, J. concur.