

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-05-024

Appellee

Trial Court No. 04-CR-285

v.

Anthony Hughes

**DECISION AND JUDGMENT ENTRY**

Appellant

Decided: December 2, 2005

\* \* \* \* \*

Raymond Fischer, Wood County Prosecuting Attorney, Aram Ohanian and  
Jacqueline M. Kirian, Assistant Prosecuting Attorneys, for appellee.

Sarah A. Nation, for appellant.

\* \* \* \* \*

HANDWORK, J.

{¶ 1} This appeal is from the March 29, 2005 judgment of the Wood County Court of Common Pleas, which sentenced appellant, Anthony Hughes, following his conviction and sentence for receiving stolen property, a fourth degree felony. Upon consideration of the assignments of error, we affirm the decision of the lower court.

Appellant asserts the following assignments of error on appeal:

{¶ 2} "1. Appellant's sentence is contrary to law and the trial court committed prejudicial error in sentencing appellant to a term of imprisonment without considering

the R.C. 2929.12(C) and (E) factors and by improperly finding that appellant caused serious economic harm.

{¶ 3} "2. Appellant's sentence is contrary to law and the trial court committed prejudicial error in sentencing appellant to a term of imprisonment without making [sic] the R.C. 2929.12(B)(2)(a) factors."

{¶ 4} A sentence may not be overturned on appeal unless the appellate court finds either by clear and convincing evidence that the sentence is not supported by the record or that it is contrary to law. R.C. 2953.08(G)(2).

{¶ 5} The trial court has the discretion to impose any sanction allowed by law. R.C. 2929.13(A). If the court finds that one of the factors of R.C. 2929.13(B)(1) is applicable (which the legislature has determined would justify a prison term for a fourth or fifth degree felony); that a prison term would be consistent with the purposes of sentencing under R.C. 2929.11 after considering the seriousness and recidivism factors of R.C. 2929.12(B),(C), (D) and (E); and, finally, that a community control sanction would not be appropriate, the court shall impose a prison term. R.C. 2929.13(B)(2)(a).

{¶ 6} While exercising its discretion in determining whether a prison term would be appropriate, the court must consider the factors of R.C. 2929.12(B) and (C) regarding the seriousness of the conduct and the factors of R.C. 2929.12(D) and (E) regarding the likelihood of the offender's recidivism. R.C. 2929.12(A). In addition, the court may consider any other factors that are relevant to achieving the purposes and principles of sentencing. R.C. 2929.12(A).

{¶ 7} Prior to 1995 Senate Bill 2, the courts held that a silent record gives rise to a presumption that the trial court considered the R.C. 2929.12 factors. *State v. Adams* (1988), 37 Ohio St.3d 295, paragraph three of the syllabus; *State v. Cyrus* (1992), 63 Ohio St.3d 164, 166. After Senate Bill 2, the courts continue to hold that R.C. 2929.12 does not require that the sentencing court make specific findings on the record or use specific language regarding its consideration of the seriousness and recidivism factors. *State v. Arnett*, (2000), 88 Ohio St.3d 208, 215, and *State v. McAdams*, 162 Ohio App.3d 318, 321, 2005-Ohio-3895; and *State v. Patterson*, 8th Dist. No. 84803, 2005-Ohio-2003, at ¶ 10. However, the courts now require that there at least be an indication in the record that the trial court considered these factors in sentencing. *State v. Arnett*, supra at 215; *State v. Heyman*, 6th Dist. App. No. S-04-016, 2005-Ohio-5565; *State v. Kerns*, 4th Dist. App. No. 04CA2936, 2005-Ohio-2578, at ¶23; *State v. Wright*, 4th Dist. App. No. 04CA2958, 2005-Ohio-5539, at ¶8.

{¶ 8} In his first assignment of error, appellant argues that the trial court failed to consider the R.C. 2929.12(C) and (E) mitigating factors that weigh toward a finding that appellant's conduct was less serious than normally associated with this crime and that appellant was less likely to commit future crimes. He contends that there was evidence that the victim facilitated the crime in this case and that appellant was not likely to commit future crimes. Furthermore, appellant argues that the trial court improperly found that the R.C. 2929.12(B)(2) factor was present in this case (appellant caused serious economic harm).

{¶ 9} At the sentencing hearing, the trial court reiterated the purposes and principles of felony sentencing listed in R.C. 2929.11(A). The court then found that appellant had served a prior prison term (R.C. 2929.13(B)(1)(g)). In its consideration of the issue of recidivism, the court noted that appellant had a history of convictions (R.C. 2929.12(C)(2)). Furthermore, as an additional factor, the court noted that the victim suffered economic harm in this case. Weighing these factors, the court determined that a prison term was consistent with the overriding purposes of felony sentencing and that appellant was not amenable to community control sanctions.

{¶ 10} Upon a review of the entire sentencing hearing transcript in this case, we find that it is clear that the court considered the R.C. 2929.12 factors when making its sentencing decision. The court was not required to address each factor individually and make a finding as to whether it was applicable in this case. The court did not state that its finding of economic harm was the equivalent of "serious economic harm." Rather, the court was considering an additional factor. We find that the record indicates that the trial court considered the seriousness of this crime and the likelihood that appellant would commit future crime as required by the statute. Appellant's first assignment of error is not well-taken.

{¶ 11} In his second assignment of error, appellant argues that the trial court erred as a matter of law by not stating its reasons for imposing a prison term as required by R.C. 2929.19(B)(2)(a). Appellant argues that the court merely "noted" its analysis.

{¶ 12} Under R.C. 2929.19(B)(2)(a), "the court shall impose a sentence and shall make a finding that gives its reasons for selecting the sentence imposed in any of the following circumstances:

{¶ 13} "(a) Unless the offense is a violent sex offense or designated homicide, assault, or kidnapping offense for which the court is required to impose sentence pursuant to division (G) of section 2929.14 of the Revised Code, if it imposes a prison term for a felony of the fourth or fifth degree or for a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to division (B) of section 2929.13 of the Revised Code for purposes of sentencing, its reasons for imposing the prison term, based upon the overriding purposes and principles of felony sentencing set forth in section 2929.11 of the Revised Code, and any factors listed in divisions (B)(1)(a) to (i) of section 2929.13 of the Revised Code that it found to apply relative to the offender."

{¶ 14} Clearly, the statute requires that the court state its findings made pursuant to the statute and the reasons for the prison sentence if the court imposes a prison term for a fourth or fifth degree felony. *State v. Jones*, 6th Dist. App. No. L-03-1321, 2005-Ohio-5736, at ¶ 10.

{¶ 15} In this case, the court specifically found that appellant had previously served a prison term (R.C. 2929.13(B)(1)(g)). Furthermore, the court discussed that appellant had a history of prior convictions and that the victim suffered economic harm. These were the court's reasons for the prison sentence. Therefore, we find that the trial

complied with the requirements of R.C. 2929.19(B)(2)(a). Appellant's second assignment of error is not well-taken.

{¶ 16} Having found that the trial court did not commit error prejudicial to appellant and that substantial justice has been done, the judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Wood County.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

William J. Skow, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.