

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

State of Ohio

Court of Appeals No. OT-05-028

Appellee

Trial Court No. 04-CR-031

v.

William Lamont Gilmer

DECISION AND JUDGMENT ENTRY

Appellant

Decided: December 2, 2005

* * * * *

Mark Mulligan, Ottawa County Prosecuting Attorney, and
Lorain R. Croy, Assistant Prosecuting Attorney, for appellee.

William F. Pietrykowski, for appellant.

* * * * *

PARISH, J.

{¶ 1} This is an accelerated appeal from a judgment of the Ottawa County Court of Common Pleas that sentenced appellant to the maximum term of incarceration of five years following his conviction on one count of attempted trafficking in drugs. For the following reasons, this court affirms the judgment of the trial court.

{¶ 2} Appellant sets forth one assignment of error:

{¶ 3} "Trial Court's sentence of William Lamont Gilmer to maximum sentence of five (5) years incarceration and five (5) years drivers license suspension constitutes an abuse of discretion and is contrary to law."

{¶ 4} On November 6, 2003, appellant was indicted on three counts of possession of drugs, one count of trafficking in drugs and one count of resisting arrest. The indictment was dismissed in exchange for a plea of guilty to one count of attempted trafficking in crack cocaine in violation of R.C. 2923.02 and 2925.03(A)(2). The trial court accepted appellant's guilty plea and on April 12, 2004, sentenced him to five years incarceration.¹ Appellant's sentence was the maximum term allowed for a third-degree felony.

{¶ 5} In his sole assignment of error, appellant asserts the trial court failed to achieve the purposes of sentencing as set forth in R.C. 2929.11(A) by not considering the need for rehabilitation. Appellant argues that the court's "refusal to require rehabilitation as part of his sentence" is contrary to R.C. 2929.11(A).

{¶ 6} Appellant does not contest the length of the sentence imposed. His argument on appeal is based on the claim that the trial court failed to consider the overriding purposes of felony sentencing as set forth in R.C. 2929.11, in particular the issue of rehabilitation. Appellant claims the trial court ignored his pleas at sentencing to "fashion a sentence which required rehabilitation." The record reflects that at his sentencing hearing, appellant acknowledged his past failures and asked the court to give

¹On April 20, 2005, the trial court filed a nunc pro tunc sentencing entry to include the mandatory five-year suspension of appellant's driver's license.

him some help and "put him on paper." However, appellant did not suggest what he thought he might do to work toward rehabilitation. The trial court commented on appellant's previous four-year incarceration for a similar offense and noted that appellant re-offended shortly after he was released. The court further acknowledged that judicial release would not be ruled out.

{¶ 7} As appellant notes, R.C. 2929.11(A) states that a sentencing court "shall consider the need for * * * rehabilitating the offender * * *." Appellant does not explain, however, how that translates into a requirement that the court "fashion a sentence" that would "require rehabilitation." A court cannot "require" rehabilitation; it is up to the defendant to acknowledge that he needs to rehabilitate himself and take advantage of opportunities that might steer him in that direction. Appellant insists the trial court should have required rehabilitation "as part of his sentence." While appellant does not expressly say so, it appears from his argument that his definition of "rehabilitation" might be "community control," as opposed to a term of incarceration. Appellant's acknowledgement of his need to rehabilitate himself is admirable; however, rehabilitation is a goal toward which he can work while serving his sentence.

{¶ 8} This court has thoroughly reviewed the record of proceedings in this case, in particular the transcript of appellant's sentencing hearing. We find that the trial court complied with all of the requirements for imposing a felony sentence. See R.C. 2929.11; R.C. 2929.12; R.C. 2929.14; *State v. Weidinger* (June 30, 1999), 6th Dist. No. H-98-035; *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 9} On consideration whereof, we find appellant was not prejudiced and the judgment of the Ottawa 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 Ottawa 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.

JUDGE

Arlene Singer, P.J.

JUDGE

Dennis M. Parish, J.
CONCUR.

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>.