

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

State of Ohio

Court of Appeals No. L-10-1322

Appellee

Trial Court No. CR0201001397

v.

William DeFalco

DECISION AND JUDGMENT

Appellant

Decided: February 17, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Michael J. Loisel, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common pleas which found appellant guilty of involuntary manslaughter, in violation of R.C. 2903.04(A), and felonious assault, in violation of R.C. 2903.11(A)(1).

{¶ 2} Appellant was sentenced to a prison term of ten years for involuntary manslaughter, and three years for felonious assault, the sentences to be served consecutively. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 3} On appeal, appellant sets forth the following sole assignment of error:

The trial court abused its discretion in sentencing Appellant to a maximum and a consecutive prison term.

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. On February 21, 2010, a heated verbal incident occurred between appellant's girlfriend and decedent upon her attempting to eject decedent from a party at her apartment. Appellant injected himself into the dispute and the matter fatally escalated. Appellant stabbed decedent multiple times with a knife severing decedent's carotid artery cause him to bleed to death. Appellant also struck his girlfriend with the knife.

{¶ 5} On September 16, 2010, appellant entered a plea of no contest on the charges of involuntary manslaughter and felonious assault. Appellant was found guilty of both charges. On September 30, 2010, appellant received a sentence of ten years for involuntary manslaughter, and three years for felonious assault, to be served consecutively.

{¶ 6} In his sole assignment of error, appellant asserts that the "trial court abused its discretion in sentencing Appellant to a maximum and a consecutive prison term." In

support, appellant sets forth a unilateral conclusion, unsupported by the record, that the facts in this case do not match or support the sentence imposed.

{¶ 7} As previously noted by this court, in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 26, the Ohio Supreme Court set forth the standard of review on appeal regarding disputed felony sentencing. Appellate courts “must examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court's decision in imposing the term of imprisonment is reviewed under the abuse-of-discretion standard.” *State v. Kaigler*, 6th Dist. No. L-10-1230, 2011-Ohio-5304, ¶ 15. Under Ohio law, it is well established that an abuse of discretion “connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St. 3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 8} In conjunction with the above, courts must take into consideration the statutes that apply to every felony case. R.C. 2929.11 specifies the purposes of sentencing and R.C. 2929.12 provides guidance in considering factors relating to the seriousness of the offense and recidivism of the offender. In addition, the sentencing court must be guided by statutes that are specific to the case itself. *State v. Mathis*, 109 Ohio St. 3d 54, 2006-Ohio-855, 846 N.E.2d 1, ¶ 38.

{¶ 9} Our review of the record of evidence clearly reflects that the trial court conformed to all governing statutes. Pursuant to R.C. 2929.14(A)(3), the statutory range

for a first-degree felony is three to 11 years and the statutory range for second-degree felony is two to eight years. Appellant was sentenced to ten years on the charge of involuntary manslaughter and three years on the charge of felonious assault. Contrary to appellant's suggestion, in sentencing appellant to ten years on involuntary manslaughter and three years on felonious assault, the trial court did not exceed the scope of its authority or breach applicable Ohio sentencing statutes. The record establishes that the trial court's sentencing determination was not contrary to the law. The first prong has not been met.

{¶ 10} Under the second prong of the "felony sentencing" test an appellate court applies an abuse of discretion standard. This court has consistently adhered to the principle that trial courts are vested with the authority and discretion to determine an appropriate sentence and impose same so long as there is no abuse of discretion. Thus, an appellate court cannot find an abuse of discretion at sentencing simply from the fact that the court imposed a severe sentence upon a defendant so long as the sentence does not exceed the statutory maximum for the offense. *State v. Collins*, 6th Dist. No. OT-07-001, 2008-Ohio-372, ¶ 13, citing *State v. Harmon*, 6th Dist. No. L-05-1078, 2006-Ohio-4642. Moreover, given the magnitude of appellant's action in stabbing someone to death by severing the victim's carotid artery, it is highly relevant that R.C. 2929.11(A) states the overriding purposes of felony sentencing are to protect the public from future crime by the offender and to punish the offender. Additionally, R.C. 2929.11(B) provides that a sentence imposed for a felony shall be reasonably calculated to achieve the two

overriding purposes set forth above commensurate with the seriousness of the crime and its impact upon the victim.

{¶ 11} The record reflects that the trial court took into account the deadly nature of the weapon used. The trial court also noted appellant's past criminal history. Based upon these facts and circumstances, regardless of appellant's failure to satisfy the first prong of *Kalish*, we nevertheless find the record devoid of any evidence that the trial court abused its discretion in imposing a maximum, consecutive sentence. The record shows that it was within statutory parameters and warranted by the facts of the case.

{¶ 12} Wherefore, we find substantial justice has been done. Appellant's sole assignment of error is not well-taken. The judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App. R. 24, costs are assessed to appellant.

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.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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