

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

State of Ohio

Court of Appeals No. F-22-010

Appellee

Trial Court No. 21CR129

v.

Ari Z. Sobel

DECISION AND JUDGMENT

Appellant

Decided: June 30, 2023

* * * * *

Larry W. Zukerman and S. Michael Iear, for appellant.

* * * * *

SULEK, J.

{¶ 1} Appellant, Ari Z. Sobel, appeals from the November 21, 2022 nunc pro tunc judgment of the Fulton County Court of Common Pleas, sentencing him to two years of community control, with a reserved term of 6 to 12 months, for the offense of aggravated possession of drugs. For the reasons that follow, the trial court’s judgment is affirmed.

1. Facts and Procedural History

{¶ 2} On October 19, 2021, a grand jury indicted Sobel on one count of Aggravated Possession of Drugs in violation of R.C. 2925.11(A), a felony of the fifth degree, for possession of psilocybin mushrooms.

{¶ 3} At a hearing held on December 14, 2021, Sobel pleaded not guilty to the offense. During the hearing, the trial court asked Sobel for his address. Sobel's response suggested that he has no permanent address because he is always traveling to acquire land for his business, Freewater Incorporated, which he described as a non-profit organization based out of Atlanta, Georgia. Sobel explained that Freewater Incorporated provides people "free wealth, art, thought, education resources." He stated that, in connection with his work for the organization, he travels around the country helping provide homeless people with food, water, shelter, and a safe place to talk about the issues that are going on in their lives.

{¶ 4} On February 14, 2022, Sobel filed a Motion for Intervention in Lieu of Conviction with an Exception for Medical Marijuana pursuant to R.C. 2941.041. In the motion, Sobel explained that he takes medical marijuana for chronic pain and anxiety resulting from bowel surgery that he underwent as an infant.

{¶ 5} At a hearing on the motion, Sobel's counsel argued that, although Sobel was found in possession of a hallucinogen type mushroom that was in his vehicle, "that is not the type of drug that he usually engages in." When the trial court expressed concern that nothing in the treatment plan addressed either Sobel's mushroom usage or his recently-

diagnosed mild cannabis use disorder, Sobel's counsel responded that "there are individuals who are into the mushroom and cannabis usage * * * that believe that mushrooms provide you with the same type of relief as does the THC in cannabis." Sobel's counsel further stated that the recommended treatment in this case was outpatient counseling for Sobel's chronic pain and PTSD. When the court questioned the use of mushrooms to treat PTSD, Sobel's counsel maintained that mushrooms are used for medicinal purposes to treat pain and symptoms of PTSD. Sobel's counsel further asserted that Sobel would comply with all treatment recommendations.

{¶ 6} After the trial court granted the motion in lieu of conviction, Sobel withdrew his plea of not guilty and entered a plea of guilty to the offense charged. The trial court placed Sobel under a three-year period of community control, with the condition that he could continue to use products containing THC. The trial court further ordered that Sobel continue drug treatment and comply with any and all aftercare that might follow. In addition, the trial court notified Sobel that he would have to comply with all of the conditions imposed by the probation department.

{¶ 7} On May 4, 2022, the state of Ohio filed a Motion to Revoke Intervention in Lieu of Conviction, based on allegations that Sobel had left the state and had been associated with a known drug user and with persons having pending criminal charges. Days later, the state of Ohio filed a Supplemental Motion to Revoke Intervention in Lieu of Conviction, with additional allegations of Sobel having contacted both a known drug user and persons having pending criminal charges. Together, the violations alleged that

Sobel had traveled to Atlanta, Georgia without prior approval from his probation officer, that he lied when asked whether he had left the state of Ohio, that on two occasions he associated with or contacted Emily Anne Martin, aka Luna Freewater, who was a person with pending drug charges, and that on two occasions he associated with or contacted Kerel Ajani Geary, aka Quartz Freewater, aka The God, a known drug user and a person with pending drug charges. In addition, the violations alleged that Sobel had failed to provide proof of employment.

{¶ 8} At a hearing held on May 18, 2022, Sobel entered a plea of true to the original and supplemental motions to revoke his intervention in lieu of conviction.

{¶ 9} As mitigation, Sobel's counsel offered that Sobel "lives a little bit outside" of the norm, and that he and his foundation help people who are drug and alcohol addicted. He claimed that Sobel established the foundation with Martin and Geary, and that Sobel had gone to Atlanta for the purpose of raising funds and "to get a direction on the business." Sobel's counsel stated that although the probation department wanted Sobel to show employment, "that is not what [Sobel] has ever desired to do." Instead, he works for two separate Freewater organizations, raising money for others who are in need, and he relies on his family for his own financial assistance.

{¶ 10} Sobel, speaking on his own behalf, stated to the court that he left a job on Wall Street to start "coaching" people who have problems, in the manner of Tony Robbins. He said that it was the intention of his organization to provide safe spaces for people, so they can "be themselves, through mind, body, and spirit." He explained that in

this venture, he is the “business guy,” and Geary is the “spiritual teacher.” Sobel stated that he only talks to Martin and Geary for business purposes.

{¶ 11} As to the current offense, Sobel alternately stated that he “got stuck in a situation with a mushroom” that he did not realize he even had, and that he “took a mushroom * * * so that [he] could heal PTSD.” He further asserted that the mushrooms did not help with his PTSD.

{¶ 12} At the conclusion of the hearing, the trial court found Sobel in violation of his intervention in lieu of conviction, found him guilty on the original charge of aggravated possession of drugs, and referred the matter for a presentence investigation and report.

{¶ 13} The presentence report related details about Sobel’s arrest, employment, and substance abuse. The report stated that Sobel had told police upon his arrest that he used psilocybin mushrooms for “religious and spiritual purposes.” In describing his employment, Sobel reported that he was a member of the Church of Freewater (Free Wealth, Art, Thought, and Education). Sobel described the church as consisting of three members: himself, Luna Freewater (Martin), and Quartz Freewater (Geary). Sobel reported that the Church used the motto “live and let live,” meaning “to live your life peacefully and not hurt anyone.” He stated that the non-profit branch of the organization was geared toward coaching and helping others heal their lives. According to Sobel, the organization was funded mostly by his mother, who contributes between \$5,000 and

\$7,000 per month. He stated that the organization “lived the van life and had a minimalist lifestyle to achieve peace and freedom.”

{¶ 14} As for the for-profit side of the organization, Sobel advised that the goal was to have an agency to teach others the “7 Wonders of the Soul” Program, which was created to help others heal and reach peace in their lives. Sobel reported that this idea was born of the same concept as the Tony Robbins program, and that it consisted of music, art, meditation, gardening, reading, exercise, and stretching.

{¶ 15} In the “Substance Abuse” portion of the presentence report, Sobel reported that the first and last time he used psilocybin mushrooms was on the night of the underlying offense.

{¶ 16} On October 24, 2022, Sobel appeared for sentencing before the trial court. Defense counsel reiterated Sobel’s claim that he had been unaware that there were mushrooms in his vehicle at the time of his arrest. He additionally stated that Sobel completed treatment at Highland Springs and, further, participated in and completed the Holistic Treatment Program with one Dr. Terrell.

{¶ 17} Next, Sobel himself addressed the court, stating:

So first I would like to hold sacred space and wanted to express fully as this will be my official statement. And Your Honorable Judge Robinson, I have been advised to say a bunch of different things but again, this is my official statement. I come to you today as myself, Chief Adonis Amarius Freewater and ask you as well the Court to see my beliefs as in equal but different representation of your own. The First amendment of the United States Constitution protects the freedom of religion. My religious belief for over the past two years has been and will be until my world is over. [Sic.] That we all have the right to freedom of mind, body and spirit without

compromising on others [sic] freedoms of mind, body and spirit. This is the major guiding belief for the Freewater organization. I was – I was advised not to talk about my esoteric beliefs and advised to take a guilty plea. Yes I am guilty. Guilty of a lot of things. Losing my voice. Being confused. Giving my power away. Being hurt. But Your Honor, I am not guilty of aggravated possession of drugs. And due to my religious beliefs, holding it, and working with the medicine, I have recognized my true self. I remember when Jesus was attempting to heal the world of love and how people treated him. Since I do not understand this process and due to my naïve take during this situation, my PTSD and fear. I did not stick up for my beliefs, thinking that this would be a thing of the past. I have completed the treatment in lieu program during this process at Highland Springs. The HTTP Program with Dr. Jeffrey Terrell. I spent several nights in jail. I have complied with the Court. Because I decided to not fight this from the beginning and to admit to a crime I did not commit. Which is why we are here today. This is not a case of aggravated possession of drugs, but of me exercising a religious freedom from which I have been standing for since the beginning of this trial [unintelligible] but being advised against to speak in this case. My sincerely held religious belief is allowed in this country and I am asking the Court to respect my beliefs. I do not belong in this courtroom if this is a criminal trial, as mushrooms are a holy sacrament and [unintelligible] medicine for myself and for the Freewater organization that helps me with past traumas both immediate and ancestral and tap into the divine knowledge that is only accessible with the aid of these divine teachers. I am asking The Honorable Court to see my religious difference. The Freewater organization as [sic] an opportunity to teach others that there is not a one size fits all approach and that each religion has their right to exist. Every being deserves to be free and make the best decision for their mind, body and spirit without compromising on others [sic] freedom of mind, body and spirit. Every being deserves clean food, water and shelter, and most importantly love. All of which I have done for the past two years and I have spent a lot of time, energy and love to help people in need. Improve their lives by helping take the burden of survival off of them and I would like the Court to take this statement into their final verdict and help take the burden of survival off of me by seeing me as a caring, loving, and thoughtful being.

{¶ 18} Responding to Sobel’s statement, the trial court concluded that Sobel’s statement made clear that he is not amenable to community control. The court explained:

You have made it clear that your religious faith allows you to do things which are illegal. You've denied that you committed this offense but yet you admitted that you committed this offense. You are trying to blend the secular and spiritual aspects of the law which is always difficult for the court's [sic] to deal with but the fact that you hold certain beliefs about the use of natural substances doesn't mean that you aren't in violation of the law, nor does it give you the right to violate the law. What you told me today was "I am going to do what I want to do as long as it's my faith" – that's what I heard."

{¶ 19} The trial court proceeded to sentencing and placed Sobel on community control for a period of two years, with a reserved term of six to twelve months in prison. Special conditions of the community control included mandatory residential treatment and a prohibition against using and possessing psilocybin mushrooms. The court ordered Sobel to be incarcerated until a bed was made available at the residential treatment facility.

II. Assignment of Error

{¶ 20} Appellant raises the following assignment of error on appeal:

I. The Trial Court's sentence violated Appellant's state and federal constitutional rights to religious freedom because the sentence was based "upon the race, ethnic background, gender, or religion" of the Appellant.

III. Law and Analysis

{¶ 21} This court reviews felony sentences pursuant to R.C. 2953.08(G)(2), which provides, in pertinent part:

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.

{¶ 22} Sobel's argument falls under R.C. 2953.08(G)(2)(b)'s provision that the sentence is otherwise contrary to law in that Sobel contends that the trial court, in sentencing him to community control, which prohibits him from having or using psilocybin mushrooms, and in ordering him to complete inpatient, residential treatment, based "in whole or in part, upon [Sobel's] statements concerning the use of "mushrooms" as part of his religion," discriminated against him due to his religious beliefs regarding the possession and use of those mushrooms.

{¶ 23} R.C. 2929.11(C) provides that "[a] court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender."

{¶ 24} The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the

free exercise thereof * * *.” Under Article 1, Section 7 of the Ohio Constitution, “all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience.”

{¶ 25} “The Supreme Court of Ohio has determined that the Ohio Constitution’s Free Exercise Clause ‘goes beyond that provided by the federal Constitution’s Free Exercise Clause.’” *State v. Cook*, 3d Dist. Hancock No. 5-19-26, 2020-Ohio-432, ¶ 27, quoting *State v. Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, ¶ 84; *see also Humphrey v. Lane*, 89 Ohio St.3d 62, 67, 728 N.E.2d 1039 (2000).

{¶ 26} When analyzing a free exercise claim under the Ohio Constitution, courts apply strict scrutiny. *State v. Wisener*, 2022-Ohio-4557, 204 N.E.3d 124, ¶ 34 (7th Dist.), citing *Humphrey* at ¶ 67; *see also State v. Whitaker*, 6th Dist. Fulton No. F-06-011, 2007-Ohio-881, ¶ 14, citing *Humphrey* at the syllabus. That is, “the standard for reviewing a generally applicable, religion-neutral state regulation that allegedly violates a person’s right to free exercise of religion is whether the regulation serves a compelling state interest and is the least restrictive means of furthering that interest.” *Humphrey* at paragraph one of the syllabus; *see also State v. Whitaker*, Fulton No. F-06-011, 2007-Ohio-881, ¶ 14.

{¶ 27} “To state a prima facie free exercise claim [under the Ohio Constitution], the plaintiff must show that his religious beliefs are truly held and that the governmental enactment has a coercive affect [sic] against him in the practice of his religion.” *Humphrey* at 68. “Without some sort of required showing of sincerity on the part of the

individual * * * seeking judicial protection of its beliefs, the first amendment would become “a limitless excuse for avoiding all unwanted legal obligations.”” *Whitaker* at ¶ 20, citing *Meggett v. Pennsylvania Dept. of Corrections*, 892 A.2d 872, 881 (Pa. 2006). (Additional citation omitted.)

{¶ 28} “To determine the ‘sincerity’ of a defendant’s religious beliefs, the test is ‘whether a given belief * * * occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God[.]’” *Cook* at ¶ 41, quoting *United States v. Seeger*, 380 U.S. 163, 166, 85 S.Ct. 850, 13 L.Ed.2d 733 (1965). “Even though an inquiry on the truth of the specified religious tenet is to be avoided, the objector must show the belief is sincerely held and the challenged regulation coerces him in his religious practice.” *Id.* “The belief infringed must be ‘more than a personal or philosophical belief.’” *Wisener* at ¶ 45, quoting *Seeger* at 166.

{¶ 29} If the plaintiff establishes a prima facie free exercise claim under the Ohio Constitution, “then the burden shifts to the state to prove the regulation furthers a compelling state interest and is the least restrictive means available of furthering that state interest.” *Wisener* at ¶ 46, citing *Humphrey* at ¶ 69.

{¶ 30} In this case, Sobel failed to establish that he uses psilocybin mushrooms in connection with a sincerely held religious belief. He described the “Church of Freewater” as consisting of three people providing life coaching to drug and alcohol addicted persons in the manner of Tony Robbins (a noted inspirational, self-help, motivational personality). Sobel does not describe any particular religious beliefs or

tenets of the organization, other than to help people “be themselves, through mind, body, and spirit.” Freewater’s core belief appears to be allowing people to believe whatever he or she wants to believe.

{¶ 31} Throughout most of the proceedings, when Sobel admitted to using mushrooms, he said it was for the purpose of treating his physical pain and PTSD. In addition, Sobel variously described the Freewater organization as a kind of “coaching” or charitable organization to provide homeless people with food, water, shelter, and a safe place to talk about the issues that are going on in their lives.

{¶ 32} Sobel also does not describe how the mushrooms are utilized in furtherance of the religion as part of a rite or ceremony. He only states opaquely, “mushrooms are a holy sacrament and [unintelligible] medicine for myself and for the Freewater organization that helps me with past traumas both immediate and ancestral and tap into the divine knowledge that is only accessible with the aid of these divine teachers.” Moreover, despite claiming at sentencing that mushrooms are an integral part of his religion, Sobel represented in the presentence investigation report that the first and only time he took a mushroom was on the night in question. Indeed, throughout the proceedings, rather than claiming a religious use, Sobel represented that mushrooms were used to treat chronic pain and PTSD.

{¶ 33} Under the circumstances of this case, the alleged belief that was infringed would be most accurately characterized as a personal preference, rather than as a deeply held religious conviction. By Sobel’s own account, he uses mushrooms as “medicine” to

treat chronic physical pain and symptoms of PTSD. Beyond Sobel's statement at sentencing, there is little in the record to suggest that mushroom use occupies a place in Sobel's life parallel to that filled by the orthodox belief in God. Accordingly, Sobel failed to make a prima facie case that a sincerely held religious belief was connected to his mushroom use so as to show that any prohibition against their use had a coercive affect against him in the practice of his religion.

{¶ 34} To the extent that Sobel argues that his drug possession should be religiously protected under the First Amendment, this court's analysis focuses on the more stringent state standard. Therefore, Sobel's First Amendment claim is likewise without merit.

{¶ 35} The trial court's imposition of a sentence that prohibited Sobel from the use and/or of possession of psilocybin mushrooms, was merely in contravention of Sobel's personal preference and, thus, did not discriminate against Sobel on the basis of Sobel's religion. Therefore, we conclude that the trial court did not violate R.C. 2929.11(C).

IV. Conclusion

{¶ 36} Because Sobel failed to establish a free exercise claim under the Ohio Constitution, his sentence, which includes a prohibition against mushroom use, is not in violation of R.C. 2929.11(C). Sobel's sole assignment of error is found not well-taken, and the judgment of the Fulton County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

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.

Gene A. Zmuda, J.

JUDGE

Myron C. Duhart, P.J.

JUDGE

Charles E. Sulek, 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.supremecourt.ohio.gov/ROD/docs/>.