

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

State of Ohio

Court of Appeals No. S-22-022
S-22-023

Appellee

Trial Court No. 22 CR 51
22 CR 84

v.

Brandon Reynolds

DECISION AND JUDGMENT

Appellant

Decided: July 28, 2023

* * * * *

Beth A. Tischler, Sandusky County Prosecuting Attorney, and
Alexis M. Otero, Assistant Prosecuting Attorney, for appellee.

Loretta Riddle, for appellant.

* * * * *

SULEK, J.

{¶ 1} This is a consolidated appeal from the September 2, 2022 judgment of the Sandusky County Court of Common Pleas which, following appellant Brandon Reynolds’s guilty pleas, sentenced him to a four to six-year prison term on one count of felonious assault and a 12-month prison term on one count of aggravated assault. For the

reasons that follow, the trial court's judgment is affirmed.

I. Background

{¶ 2} On November 13, 2021, Reynolds drove to the residence of E.S., the mother of his child, and struck her once in the face. E.S. retreated to the bedroom and Reynolds followed. Reynolds then struck E.S. with an electric heater which caused severe facial injuries and required five staples to the head. The Sandusky County Grand Jury indicted Reynolds in case No. 22CR51 on one count of felonious assault in violation of R.C. 2903.11(A)(1) and (D)(1)(a), with a repeat violent offender specification pursuant to R.C. 2941.149, and one count of domestic violence in violation of R.C. 2919.25(A) and (D)(4).

{¶ 3} On January 14, 2022, while incarcerated and awaiting trial for the attack on E.S., Reynolds repeatedly punched another inmate, J.S., which resulted in the inmate needing three stitches on his chin. The Sandusky County Grand Jury then indicted Reynolds on one count of felonious assault in violation of R.C. 2903.11(A)(1) and (D)(1)(a) in case No. 22CR84.

{¶ 4} On June 21, 2022, Reynolds pleaded guilty to one count of felonious assault in case No. 22CR51 and to one amended count of aggravated assault in violation of R.C. 2903.12(A)(1) in case No. 22CR84. In exchange, the state dismissed the domestic violence charge and the repeat violent offender specification on the felonious assault.

{¶ 5} At sentencing, the trial court heard statements from the victim, E.S., as well as statements from Reynolds. The court stated that it had considered the principles and purposes of felony sentencing under R.C. 2929.11. Additionally, the court weighed the factors under R.C. 2929.12 and stated:

The court—looking at the 2929.12(B) factors as far as more serious. . .

there is serious physical harm. Relationship with the victim facilitated the offense under Subsection B.

Under C, the less serious, I cannot find any of those factors.

Under D, Defendant has a history of criminal convictions * * *.

{¶ 6} The trial court then read through Reynolds’s criminal history and determined that he “has not been rehabilitated to a satisfactory degree.” *See* R.C. 2929.12(D)(3) (“[T]he offender has not responded favorably to sanctions previously imposed for criminal convictions.”). The court also stated, “I don’t find any factors under Subsection E as far as not likely to commit future crime.” Reynolds was then sentenced to serve 4 to 6 years in prison for felonious assault and 12 months in prison on the count of aggravated assault. The trial court ordered the sentences to run consecutively for a total prison term of 60 to 84 months. Reynolds now appeals this sentence.

II. Assignments of Error

{¶ 7} Reynolds asserts the following assignments of error on appeal:

I. The trial court’s sentence is contrary to law.

II. The trial court’s refusal to give appellant credit for confined electronic monitor is contrary to law.

III. Analysis

A. Sentence is not Contrary to Law

{¶ 8} Reynolds argues that the trial court’s sentence is contrary to law because the court failed to impose a sentence that promotes rehabilitation and did not use minimum sanctions pursuant to R.C. 2929.11 and R.C. 2929.12.

{¶ 9} Under R.C. 2953.08(G)(2)(b), an appellate court may “increase, reduce, or otherwise modify a sentence,” or “vacate the sentence and remand the matter to the sentencing court for resentencing” if the court clearly and convincingly finds that the sentence is “contrary to law.”

{¶ 10} “Contrary to law” means ““in violation of statute or legal regulations at a given time.”” *State v. Goode*, 6th Dist. Sandusky No. S-22-012, 2023-Ohio-863, ¶ 6, citing *State v. Bryant*, 168 Ohio St.3d 250, 2022-Ohio-1878, 198 N.E.3d 68, ¶ 22, quoting *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649, ¶ 34. The Ohio Supreme Court clarified that this “does not permit an appellate court to conduct an independent review of a trial court’s sentencing findings under R.C. 2929.12 or its adherence to the purposes of felony sentencing under R.C. 2929.11.” *Bryant* at ¶ 21, citing *Jones* at ¶ 41-42.

{¶ 11} Further, nothing in R.C. 2953.08(G)(2) allows 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.” *Jones* at ¶ 42. However, “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.” *Bryant* at ¶ 22.

{¶ 12} Here, Reynolds asks this court to review the trial court’s findings and independently weigh the evidence and substitute our judgment for that of the trial court. He argues that the trial court erred when it did not find him remorseful pursuant to 2929.12(E)(5) and did not consider his rehabilitation in that he has maintained employment and his sobriety. The trial court explicitly stated, however, that it considered the overriding principles and purposes of felony sentencing pursuant to R.C. 2929.11. Furthermore, the trial court considered the R.C. 2929.12 factors, and only those factors, when determining Reynolds’s sentence. Under *Jones*, this court cannot review the trial court’s finding and weighing of those factors, and his assignment of error on this issue may be summarily denied. *State v. Bowles*, 2021-Ohio-4401, 181 N.E.3d 1226, ¶ 8, 10 (6th Dist.), citing *State v. Toles*, 166 Ohio St.3d 397, 2021-Ohio-3531, 186 N.E.3d 784, ¶

1.

{¶ 13} Accordingly, Reynolds’s first assignment of error is not well-taken.

5.

B. No Credit for Electronic Monitoring

{¶ 14} In his second assignment of error, Reynolds argues that he should have been given jail-time credit for the time he was on electronic monitoring and confined to his home following his arraignment and prior to sentencing.

{¶ 15} For jail-time credit while awaiting trial and commitment, R.C. 2967.191(A) states: “[t]he department of rehabilitation and correction shall reduce the prison term of a prisoner * * * by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced * * *.”

{¶ 16} This court has held that “electronic monitoring that is imposed as a pre-trial condition of bond is generally not ‘detention’ and, therefore, not ‘confinement’ for purposes of R.C. 2967.191(A).” *State v. Jeko*, 6th Dist. Lucas No. L-18-1093, 2019-Ohio-2044, ¶ 10, citing *State v. Sutton*, 6th Dist. Lucas No. L-03-1104, 2004-Ohio-2679, ¶ 12; *see also State v. Hanlan*, 8th Dist. Cuyahoga No. 111385, 2022-Ohio-4206, ¶ 13-14 (no jail-time credit for time spent under home detention with GPS monitoring prior to sentencing); *State v. Nichols*, 2d Dist. Champaign No. 2020-CA-2, 2020-Ohio-4596, ¶ 15-16 (no jail-time credit for time spent on “electronically-monitored house arrest” prior to sentencing).

{¶ 17} Accordingly, Reynolds is not entitled to any credit for pre-trial or pre-sentence/post-conviction electronic monitoring. The second assignment of error is not well-taken.

IV. Conclusion

{¶ 18} For the foregoing reasons, the judgment of the Sandusky County Court of Common Pleas is affirmed. Reynolds is ordered to pay the cost 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.

Christine E. Mayle, J.

JUDGE

Myron C. Duhart, P.J.

JUDGE

Charles E. Sulek, J.
CONCUR.

JUDGE

<p>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/.</p>
