

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

State of Ohio

Court of Appeals No. L-25-00234

Appellee

Trial Court No. CR02024-02777

v.

Stuart Sims

DECISION AND JUDGMENT

Appellant

Decided: October 6, 2026

* * * * *

Julia R. Bates, Prosecuting Attorney, and
Lorrie J. Rendle, Assistant Prosecuting Attorney, for appellee.

Samuel E. Gold, for appellant.

* * * * *

OSOWIK, J.

Procedural History

{¶ 1} On May 8, 2025, in the Lucas County Court of Common Pleas, appellant Stuart Sims pled guilty to the offense of Trafficking in Cocaine, in violation of R.C. 2925.03(A)(2) and 2925.03(C)(4)(c), a felony of the fourth degree and to Unlawful Possession of Dangerous Ordnance in violation of R.C. 2923.17(A) and (D), a felony of

the fifth degree. He was then referred to the probation department for a presentence report.

{¶ 2} On July 14, 2025, Sims was sentenced to serve 18 months in prison on the Trafficking in Cocaine charge and 12 months in prison as to the Unlawful Possession of Dangerous Ordnance charge, concurrent to one another.

{¶ 3} Sims appeals to this court for a review of that sentence.

Assignments of Error

{¶ 4} Sims sets forth a single assignment of error for our review:

I. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT BY OVERCOMING THE PRESUMPTION OF COMMUNITY CONTROL AND IMPOSING A PRISON TERM.

{¶ 5} Although captioned as an abuse of discretion, Sims correctly acknowledges this court's proper standard of review of felony sentences under R.C. 2953.08(G)(2)(a)-(b).

{¶ 6} Our review of a felony sentence is governed by R.C. 2953.08(G)(2), which provides that to "increase, reduce, or otherwise modify a sentence," an appellate court must "clearly and convincingly find either ...that the record does not support the sentencing court's findings" or "the sentence is otherwise contrary to law." *See State v. Jones*, 2020-Ohio-6729, ¶ 31-32. "Otherwise contrary to law" means "in violation of statute or legal regulations at a given time." *State v. Bryant*, 2022-Ohio-1878, ¶ 22, quoting *Jones* at ¶ 34, quoting Black's Law Dictionary 328 (6th Ed.1990). It is appellant's burden to identify clear and convincing evidence in the record to show that the trial court

erred in imposing their sentence. *State v. Anderson*, 2025-Ohio-5732, ¶ 8 (6th Dist.), citing *State v. Walker*, 2021-Ohio-3860 (6th Dist.). *State v. Salmon*, 2026-Ohio-1896, ¶ 22 (6th Dist.).

The Presumption of Community Control

{¶ 7} Sims argues, without citation to legal authority, that the offenses to which he pled guilty carry with them the presumption of community control over imprisonment and hence, the imposition of a prison sentence would be contrary to law. However, we have consistently held that the presumption of community control set forth in R.C.2929.13(B)(1)(a) applies only when a defendant pleads guilty to a singular nonviolent felony of the fourth or fifth degree. See *State v. McQuin*, 2026-Ohio-894, ¶ 27 (6th Dist.), citing to *State v. Boswell*, 2019-Ohio-2949, ¶ 20 (6th Dist.). Sims pled guilty to multiple offenses. Therefore, in his case, the presumption in favor of community control does not apply.

Mitigating factors under R.C. 2929.11

{¶ 8} Sims further argues that the trial court did not take into consideration his lack of prior criminal history and the likelihood of reoffending and therefore failed to consider appropriate mitigating factors pursuant to R.C. 2929.11.

{¶ 9} However, since the Ohio Supreme Court decided *State v. Jones*, 2020-Ohio-6729, ¶ 42, the law governing appellate review of a trial court's consideration of R.C. 2929.11 and 2929.12 in imposing a sentence is clear: R.C. 2953.08(G)(2) does not permit 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

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with R.C. 2929.11 and 2929.12. *State v. Bowles*, 2021-Ohio-4401, ¶ 7 (6th Dist.), quoting Jones at ¶ 42. *State v. Kynard*, 2026-Ohio-758, ¶ 11-12 (6th Dist.).

{¶ 10} This does not mean that a sentence cannot be “otherwise contrary to law” for other reasons. For example, the Supreme Court determined that a sentence was “contrary to law” because it was “improperly imposed based on impermissible considerations—i.e., considerations that fall outside those that are contained in R.C. 2929.11 and 2929.12.” *State v. Fowler*, 2022-Ohio-3499, ¶ 15 (6th Dist.).

The Introduction by the State of Outside Information at the Sentencing Hearing

{¶ 11} Sims claims that he was prejudiced at sentencing when the State made allegations that he was still in possession of a firearm during the pendency of the case. The State made these allegations based upon social media posts. Defense counsel interposed objections, pointing out the issues with the veracity and timeliness of the social media posts. Sims further argues and speculates that the introduction of social media posts “creates a clear possibility of bias at the time of sentencing.”

{¶ 12} Indeed, this court has found that the trial court must only consider what is properly on the record at sentencing and cannot rely on information outside of the record. *Id.* at ¶ 15. However, in this instance, it is important to note that the trial court specifically indicated that it would not consider the information revealed by the State to be a factor when it formulated its sentence to be imposed on Sims. The court stated at sentencing:

THE COURT: Well, Mr. Westmeyer, my sentence doesn't reflect anything related to the information that the State has provided in reviewing the defendant's record, although the juvenile adjudications or

juvenile contacts with the Court did show dismissals without prejudice or Juvenile Rule 29 dismissals where the first time offenders, they're given an opportunity to go through programming in lieu of an adjudication.

Based on the nature of these charges and convictions that were pled to, and the Court is also permitted to consider charges that were dismissed as part of the plea agreement, and the weapon involved being a Glock that was modified with a Glock switch being installed to render it fully automatic, and the trafficking charge that was convicted of as well as the possession.

The Court went on:

THE COURT: The court has considered the record, the oral statement the pre-sentence investigation report that was prepared as well as the principles and purposes of sentencing under 2929.11. The Court has balanced the seriousness and recidivism factors under 2929.12.

The Court then concluded:

THE COURT: The court finds that defendant is not amenable to community control, that prison is consistent with the purposes of 2929.11.

{¶ 13} Thus, on this record, appellant has not sustained his burden to point to clear and convincing evidence that the trial court relied on information outside the record. *See Salmon*, 2026-Ohio-1896, at ¶ 31 (6th Dist.).

{¶ 14} Contrary to Sims' claims, the record unmistakably establishes that the trial court did not consider the social media posts offered by the State at sentencing. The trial court went on to articulate other sentencing considerations. Thus, the court fashioned its sentence for reasons independent from the social media posts.

{¶ 15} Further, the trial court stated that it had considered the purposes and principles of sentencing under R.C. 2929.11 and the seriousness and recidivism factors

under R.C. 2929.12. Thus, the record establishes that the trial court did not sentence Sims based on impermissible considerations—i.e., considerations that fall outside those that are contained in R.C. 2929.11 and 2929.12.

Conclusion

{¶ 16} Upon consideration of Sims’ arguments and our review under R.C. 2953.08, we cannot conclude that the record clearly and convincingly find either that the record does not support the sentencing court's findings or the sentence is otherwise contrary to law.

{¶ 17} Based on the foregoing, the judgment of the Lucas County Common Pleas Court is affirmed. Appellant is ordered to pay the costs of this appeal under App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.

Thomas J. Osowik, P.J.

JUDGE

Gene A. Zmuda, J

JUDGE

Charles 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/.
