[Cite as *State v. Miller*, 2025-Ohio-991.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JONAS W. MILLER,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 24 BE 0031

Criminal Appeal from the
Court of Common Pleas of Belmont County, Ohio
Case No. 23 CR 155

BEFORE:
Cheryl L. Waite, Carol Ann Robb, Katelyn Dickey, Judges.

JUDGMENT:
Affirmed.

Atty. J. Kevin Flanagan, Belmont County Prosecutor and *Atty. Jacob A. Manning*, Assistant Prosecutor, for Plaintiff-Appellee

Atty. Robert T. McDowall, Jr., for Defendant-Appellant

Dated: February 20, 2025

WAITE, J.

{¶1} Appellant Jonas W. Miller pleaded guilty to an amended charge of attempted illegal conveyance of weapons, drugs, or other prohibited items, into a detention facility. He was sentenced to twelve months in prison. On appeal, Appellant argues that the crime was rebuttably presumed to carry a community control sentence, and that the court did not sufficiently take into account his twenty year record for leading a law-abiding life since he finished serving earlier prison terms. Appellant's argument is not supported by the record. The trial court fulfilled the requirements of R.C. 2929.13(B)(1)(b), which gave the court discretion to impose a prison term for a fourth degree felony. The court also followed the dictates of R.C. 2929.11 and 2929.12 in imposing the prison sentence. The trial court was fully aware of Appellant's past criminal record and mentioned it at sentencing. It is apparent the trial court knew how long ago these crimes were committed. There is no clear and convincing evidence that the sentence is contrary to law, and therefore, the conviction and sentence are affirmed.

Facts and Procedural History

{¶2} On November 1, 2022, a Belmont County Sheriff's K-9 officer signaled on a package received at the Belmont Correctional Institution (BECI). The package contained a religious book. The book was cut open, and authorities discovered Suboxone strips were concealed within its spine. The package was addressed to Jason Gruber, an inmate at BECI. The return address was listed as a bookstore in Youngstown, but an investigation revealed that the book did not ship from that address. Investigators also determined that Appellant had called his brother, Wesley Miller (also an inmate at BECI), and discussed delivery of religious materials to Jason Gruber at BECI. Further,

Appellant's fingerprints were found on the book. Following the investigation, Appellant's brother Wesley Miller was charged with attempted complicity to convey, and he pleaded guilty to the charge.

{¶3} On June 8, 2023, Appellant was charged with illegal conveyance onto the grounds of a detention facility in violation of R.C. 2921.36(C), a third degree felony. Appellant was arraigned on August 7, 2023. After several continuances, trial was eventually set for June 3, 2024. On that date Appellant agreed to plead guilty to the lesser charge of attempted illegal conveyance, a fourth degree felony. The parties jointly recommended a community control sanction. While the court accepted the plea, the court specifically noted that it was not bound by the recommended sentence. At sentencing, on July 1, 2024, the court rejected the recommended sentence. The court discussed Appellant's many prior convictions and sentences, including: two juvenile felony convictions; many misdemeanor convictions as an adult; and adult felony convictions for burglary, breaking and entering, receiving stolen property, and conspiracy to engage in a pattern of corrupt activity. (7/1/24 Tr., p. 10.)

{¶4} The court also noted that Appellant's description of his part in the crime did not match the actual facts of the case. (7/1/24 Tr., p. 8.) Appellant agreed that he put the drugs in the book, and expressed remorse. However, he contended his involvement ended at this point, and claimed that he did not mail the book. Recorded conversations between Appellant and his brother told a different story. The recordings reflected that the two laughed about putting drugs in a bible. The recordings show that Appellant mailed the package, told his brother when he mailed it, and that after the package was intercepted by authorities (unknown to the two), they argued back and forth about why

the package had not arrived. Appellant knew he sent it to inmate Wesley Miller rather than to his brother. Appellant found out that Miller never received the book and that it allegedly was returned. Appellant and his brother joked about its return to a fake return address, which was a book store.

{¶5} The court determined that R.C. 2929.11-13 applied in this matter, and made findings regarding the factors applicable to these statutes. The court detailed Appellant's many prior convictions, and noted that Appellant did not show genuine remorse in this case. Ultimately, the court sentenced Appellant to twelve months in prison. The final judgment was filed on July 3, 2024, and this timely appeal was filed on July 26, 2024.

{¶6} Appellant raises one assignment of error on appeal.

ASSIGNMENT OF ERROR

> THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN IMPOSING A PRISON TERM FOR A CONVICTION OF R.C. 2921.36 AND THE SAME WAS CONTRARY TO LAW AS APPELLANT WAS NOT A CORRECTIONS OFFICER AND THE TRIAL COURT FAILED TO CONSIDER HIS MANY YEARS OF LEADING A LAW-ABIDING LIFE.

{¶7} Appellant is challenging his prison sentence for illegal conveyance into a detention center on the grounds that the trial court should have imposed community control for a fourth degree felony violation of R.C. 2921.36(C) rather than a prison term. Appellant begins his argument with the assertion that he could not have been given a mandatory prison term under R.C. 2921.36(C), because he was not a corrections officer. R.C. 2921.36(G)(1) states: "If the offender is an officer or employee of the department of

rehabilitation and correction, the court shall impose a mandatory prison term . . ." While we agree, it appears Appellant is confused in this regard. The provision he cites has no relevance to Appellant because he was not given a mandatory prison term. The prison term ordered by the trial court was the result of a discretionary act by the judge, as stated in the final judgment entry: "This Court, in its discretion, has determined the most effective way to comply with the purposes and principles of sentencing . . ." (7/3/24 J.E., p. 1.)

{¶8} Appellant further argues that because his sentence was for a fourth degree felony, R.C. 2929.13(B)(1) created a rebuttable presumption of community control rather than prison. R.C. 2929.13(B)(1) does create a preference for community control for fourth and fifth degree felonies. Although this has been called a "rebuttable presumption," it is more accurately described as a preference for community control. *State v. Hitchcock*, 2019-Ohio-3246, ¶ 16; *State v. Saunders*, 2024-Ohio-4580, ¶ 86 (8th Dist.). Prior to 2013, R.C. 2929.13(B) was written with a clear presumption in favor of community control, but the statute has changed many times since then and the presumption has been removed. The statute as now written provides that if the prison and community control provisions of R.C. 2929.13(B)(1) do not apply, a court will exercise its discretion under R.C. 2929.11 and 2929.12 to fashion a punishment. R.C. 2929.13(B)(2).

{¶9} R.C. 2929.13(B)(1) contains two parts. First, R.C. 2929.13(B)(1)(a) requires a determination of whether community control is mandatory. Community control must be imposed for a qualifying fourth or fifth degree felony if three conditions are met, one of which is that the offender was not previously convicted of, or pleaded guilty to, a felony. R.C. 2929.13(B)(1)(a)(1). Appellant concedes that he has previously been convicted of multiple felonies, including burglary, receiving stolen property, and

conspiracy to engage in a pattern of corrupt activity, and served prison terms for those convictions. Therefore, community control was not mandatory in this case.

{¶10} Second, R.C. 2929.13(B)(1)(b) sets forth certain specific circumstances allowing a court, in its discretion, to impose a prison term for fourth and fifth degree felonies that are not offenses of violence or other qualifying assaults (defined in R.C. 2929.13(K)(4)). The trial court has discretion to impose a prison term if one of the ten factors in R.C. 2929.13(B)(1)(b) applies.

{¶11} The record reflects that the factor found in R.C. 2929.13(B)(1)(b)(ix) applies, here: the offender was serving a prison term when the crime occurred, or had previously served a prison term. Appellant has previously served prison time. Therefore, the court had the discretion to impose a prison term on Appellant.

{¶12} Appellant contends the trial court must make a finding that at least one of the factors listed in R.C. 2929.13(B)(1)(b) applies, and the record must support the findings. Appellant cites to *State v. Kelley*, 2014-Ohio-464 (5th Dist.) in support. Although this case does mention R.C. 2929.13(B), there is no analysis of the requirements of the statute, and the appellate court simply held that Kelley's prison sentence was not clearly and convincingly contrary to law and did not amount to an abuse of discretion.

{¶13} R.C. 2929.13(B)(1)(b) provides that prison may be imposed "if any of the [following] factors apply." Prior versions of the statute did require a court to make findings to show that the conditions of R.C. 2929.13(B)(1)(b) were met, but the current version does not. *State v. Williams*, 2022-Ohio-4727, ¶ 13 (5th Dist.). "[A] trial court is not required to make specific findings when imposing a prison sentence pursuant to R.C. 2929.13(B)(1)(b)." *State v. Benson*, 2019-Ohio-4635, ¶ 13 (7th Dist.). Appellant appears

to concede, however, that the court did make the finding that Appellant previously served a prison term. In fact, the court made many findings supporting the prison term imposed in this matter, and included them in the final judgment entry.

{¶14} Normally, Appellant would not be permitted to appeal his fourth degree felony sentence on the basis of non-compliance with R.C. 2929.13(B)(1)(b). *See State v. Vega*, 2023-Ohio-1133, ¶ 8 (8th Dist.) (holding that R.C. 2953.08(A)(2) bars appellate review of a prison term imposed upon a fourth or fifth degree felony if: (1) the trial court has found one of the factors in R.C. 2929.13(B)(1)(b); and (2) the defendant has failed to request leave to appeal the sentence.) Appellant did not request leave to appeal his fourth degree prison sentence, and for this reason alone his arguments regarding R.C. 2929.13(B) may be overruled.

{¶15} Assuming arguendo that Appellant could surmount this obstacle, he argues that the trial court, after making the R.C. 2929.13(B)(1)(b) finding, was required to consider the factors contained in R.C. 2929.11 and 2929.12 in determining whether a prison term was appropriate. This extra analysis is not required by R.C. 2929.13(B)(1)(b), but is required generally by R.C. 2929.11(A) and 2929.12(B).

{¶16} R.C. 2953.08 sets forth two standards of review for Appellant's sentence in this case. The first, as mentioned earlier, is found in R.C. 2953.08(A)(2), which states: "If the court specifies that it found one or more of the factors in division (B)(1)(b) of section 2929.13 of the Revised Code to apply relative to the defendant, the defendant is not entitled under this division to appeal as a matter of right the sentence imposed upon the offender." Appellant has no right of appeal based on this statute.

{¶17} The second is in R.C. 2953.08(G)(2):

> 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.

{¶18} Some courts have held that "challenges based solely on a trial court's consideration of R.C. 2929.11 and 2929.12 factors may be summarily denied." *State v. Barrett*, 2022-Ohio-4017 (6th Dist.). In *Barrett* the appellant conceded the court had discretion to impose a prison term under R.C. 2929.13(B)(1)(b), but he claimed the decision to impose a prison term on him was an abuse of discretion because the factors in R.C. 2929.12 were not fully considered. This is the argument used by Appellant in the instant appeal. The reason for summarily denying argument is that "[n]othing in R.C. 2953.08(G)(2) permits 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." *State v. Jones*, 2020-Ohio-6729, ¶ 42.

{¶19} Appellant urges that in mitigation of his sentence the court did not expressly recognize his 20 years of living an allegedly law-abiding existence after serving the last

of his prison terms. The court's judgment entry states: "In accord with 2929.12(C) and (E), the court finds that no additional mitigating factors exist which suggest that recidivism is less likely." (7/3/24 J.E., p. 2.) The court was clearly aware of Appellant's criminal history in this matter. The record reflects the time period of Appellant's prison sentences. Hence, the court would have been aware that 20 years had elapsed since Appellant's last prison term ended.

{¶20} Although the trial court did not specifically consider Appellant's alleged law-abiding history as a mitigating factor, it appears that the trial court likely did not believe Appellant was entirely law abiding during this time. The judge made it clear he did not believe aspects of Appellant's allocution, and clearly believed Appellant's testimony about his role in the illegal conveyance crime was not truthful. The judge stated: "And I don't know why you would try to discount that or even mislead me." (7/1/24 Tr., p. 8.) As the court did not believe Appellant was truthful about his role in the crime for which he was being sentenced, it appears reasonable that the judge may not have believed Appellant when he said he spent the previous 20 years as a law-abiding citizen.

{¶21} Regardless, there was no abuse of discretion in imposing a prison term, here. The trial court followed the dictates of R.C. 2929.13(B)(1)(b) and included a specific finding in the record giving it discretion to impose a prison term for a fourth degree felony. There was also no legal error in imposing a 12-month prison term, as it falls within the statutory range for fourth degree felonies, which is 6 to 18 months in prison. R.C. 2929.14(A)(4). The court's judgment entry cites R.C. 2929.11 and 2929.12, and the court is presumed to know the contents of those statutes. *State v. Bickley*, 2019-Ohio-16, ¶ 18

(3d Dist.) (Judges are presumed to know the law and expected to consider only relevant material and competent evidence.)

{¶22} Although the court was not required to make any particular findings regarding R.C. 2929.11 or 2929.12, it did find that Appellant had a history of criminal convictions, both as a juvenile and as an adult, and that eleven felonies were committed, resulting in three felony sentences. The court found that Appellant had not responded favorably to prior sanctions and showed no remorse for his crime. Our review of the record reveals no clear and convincing evidence that the twelve-month prison sentence, here, is contrary to law.

{¶23} Appellant's arguments are not persuasive. His sole assignment of error is overruled, and the judgment of the trial court is affirmed.

Conclusion

{¶24} Appellant challenges his twelve-month prison sentence on the grounds that he should have received a sentence of community control pursuant to R.C. 2929.13(B)(1), and that his sentence was overly harsh in light of the fact that he had been a law-abiding citizen for the past twenty years. Appellant's arguments are not well taken. The trial court fulfilled the requirements of R.C. 2929.13(B)(1)(b) which gave the court discretion to impose a prison term for a fourth degree felony. Additionally, there is no indication that the court failed to consider Appellant's claim to have been a law-abiding citizen, and some indication the court may not have believed this assertion. The court found that there were multiple factors supporting the imposition of a prison sentence, and no mitigating factors. This indicates the court may simply not have believed Appellant's claim of living a law-abiding life, particularly when Appellant lied to the judge about his involvement in this

crime and showed no remorse for his actions. Appellant's assignment of error is overruled, and the conviction and sentence are affirmed.

Robb, P.J. concurs.

Dickey, J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Belmont County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.