[Cite as *State v. Liason*, 2026-Ohio-243.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellant,

v.

JARRETT KHRISTOPHER LIASON,

Defendant-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 25 MA 0083

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2024 CR 00396

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

JUDGMENT:
Sentence Modified.

Atty. Lynn A. Maro, Mahoning County Prosecutor, *Atty. Kristie M. Weibling,* Assistant Prosecuting Attorney, for Plaintiff-Appellant and

Atty. Edward A. Czopur, for Defendant-Appellee.

Dated: January 23, 2026

Robb, J.

{¶1} The state appeals the judgment of the Mahoning County Common Pleas Court imposing a six-month prison term on Defendant-Appellee Jarrett Khristopher Liason ("the defendant"). As the minimum prison term for the third-degree felony was nine months, the state points out the sentence is clearly and convincingly contrary to law.

{¶2} In response, the defendant believes the trial court would be prohibited from imposing a greater sentence upon this court's remand and also claims the issue may be moot by then because he will have completed his sentence on February 23, 2026. In addition, the defendant asks this court to refrain from addressing the legal issue, arguing the state waived the error by not expressly objecting below and did not specifically raise the plain error doctrine on appeal.

{¶3} For the following reasons, the state's argument on appeal is sustained, and the trial court's judgment imposing six months in prison is modified to nine months in prison (with credit for time served).

STATEMENT OF THE CASE

{¶4} On June 15, 2024, the defendant was arrested after leading the Youngstown police on a car chase and then attempting to avoid capture by fleeing on foot. He was indicted for failure to comply with an order of a police officer in violation of R.C. 2921.331(B) ("operating a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop"). (7/19/24 Ind.). The offense was charged as a third-degree felony because "[t]he operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property." R.C. 2921.331(C)(5)(a)(ii).

{¶5} A year after his arrest, the defendant pled guilty as charged after signing a written plea agreement explaining the maximum sentence was 36 months in prison and the maximum operator's license suspension was lifetime. As part of the plea bargain, the state agreed to recommend the minimum prison term of nine months and the minimum mandatory license suspension of three years. The defense was free to seek community control. At the June 12, 2025 plea hearing, the defense requested a presentence investigation (PSI), and the court set the case for sentencing.

{¶6} At the August 27, 2025 sentencing hearing, the state asked the court to impose the minimum prison sentence of nine months as agreed. In requesting prison, the state explained the police attempted to stop the defendant after he failed to make a complete stop in a vehicle with no license plate light. He led the police on a chase into residential neighborhoods for eight minutes while traveling at a speed of 70 miles per hour. Eventually the defendant "bailed out" of the car and fled on foot, requiring an officer to jump into the defendant's vehicle to put it in park. (Sent.Tr. 2-3). The police recovered from the vehicle an extended magazine loaded with ammunition (but did not recover a firearm). *Id.* at 36-37. The state also asked the court to consider the defendant's criminal record starting with a juvenile record and continuing into adulthood, including various community control violations. *Id.* at 3.

{¶7} The defendant's mother and her boyfriend spoke at sentencing about the help he provides around their house. *Id.* at 4-6, 10-12. His mother also said he has been doing well and taking his medication. *Id.* at 11. The defendant's fiancée said they have been together for 22 years and have 10 children. She described the defendant as an excellent father who pays a large amount of the household bills and who gets the children ready for school in the morning while she is still at work. *Id.* at 7-9.

{¶8} In exercising his allocution rights, the defendant said he was employed full time, provided for his family, and was responsible for waking the children. *Id.* at 18-19. The defendant spoke of past incarcerations but said he "straightened up a few years ago" after his toddler said he wanted to be like him. *Id.* at 21. He apologized to the court, asked for mercy, and noted he already apologized to the officer. *Id.* at 12, 22.

{¶9} The defendant referred to receiving help from a psychiatrist since his arrest on this case. *Id.* at 12. He claimed he was not in his "right state of mind" at the time because his brother and cousin were shot and killed by an unknown assailant the prior week. The court asked the defendant why he continued fleeing once the lights and sirens were activated. *Id.* at 15-17. The defendant said he could not explain why he fled from the police but suggested the "PSD triggered at the wrong time" due to the car they drove. *Id.* at 13-17 (the defendant called the condition "PSD" five times).

{¶10} Defense counsel interjected to say the defendant told him the police were in an undercover vehicle, which contributed to his panic when they pulled up behind him

and activated his PTSD response. *Id.* at 16. He said counseling allowed the defendant to realize he had PTSD and noted the defendant's receipt of medication arising from the counseling. *Id.* at 16, 27.

{¶11} In seeking community control, defense counsel argued the felony conviction was punishment enough, incarceration would impose a hardship on the family, and the defendant showed he would be able to abide by community control terms because he caused no pretrial release issues in the year the case was pending. *Id.* at 24-25. Defense counsel claimed the moderate risk level assigned in the PSI did not take into account the defendant's changed lifestyle, noting most of the offenses or arrests in his criminal record occurred in the mid-2000's (when the 42-year-old defendant was in his twenties). *Id.* at 24.

{¶12} The court, however, pointed to the record of continued criminal behavior in the middle of the cited period (2014) as well. At the same time, the court recognized the defendant "probably" changed "because you have had ten years where you basically have been relatively law abiding." *Id.* at 31 (with "relatively" apparently referring to a 2022 negative termination from probation). The court credited the defendant for taking responsibility but expressed concern over his bad decision-making and impulses. *Id.* at 31-32. Pointing to a review of the police report and relying on the defendant's comments at sentencing, the court concluded the defendant knew it was the police behind him. *Id.* at 15, 17. The court emphasized the danger the defendant imposed on the neighborhoods through which he drove and suggested he may do so again (if he could not stop himself once he panics). *Id.* at 15-16.

{¶13} When subsequently applying the principles and purposes of sentencing, the court pointed out the public would be safer with the defendant behind bars, noting he unnecessarily endangered people and could have caused a tragedy if children were walking at the time. *Id.* at 30. Before concluding the defendant was not amenable to community control, the court observed, "I don't know what judge would look at his record and say well, I'm going to take a chance on this one." *Id.* at 31-33. Recognizing the minimum prison term available for the offense was nine months, the court nevertheless declared:

> Not placing him in prison would demean the impact of his actions; however, I am not going to give you nine months, I am going to give you six months, get you back a little bit - - you're telling me that I can't do that because it impacts, I'm gonna do it anyway. I have gotten more letters from the Bureau telling me I can't do things and I just keep on doing them anyway, because I think it's the right thing to do. So it's six months in the Department of Rehabilitation and Corrections [DRC].

Id. at 33. The court also said it was not in favor of imposing a community corrections placement. After sentencing the defendant to six months in prison, the court imposed the recommended minimum license suspension of three years and post-release control of up to two years. Appellant was given two days of jail time credit. The court ordered the ammunition magazine forfeited to the police department.

{¶14} The court's September 2, 2025 sentencing entry reiterated the six-month prison sentence (despite the citation to R.C. 2929.14, which provides available prison terms starting at nine months). The court also cited R.C. 2929.11 while referring to the purposes and principles of sentencing and R.C. 2929.12 while referring to the seriousness and recidivism factors. The entry also stated, "Defendant is not amenable to a Community Control sanction and prison is the only sanction consistent with the purposes and principles of sentencing that does not place an unreasonable burden on the State and Local resource." The state filed a timely notice of appeal

ASSIGNMENT OF ERROR

{¶15} The state's assignment of error provides:

"THE TRIAL COURT ERRED IN SENTENCING APPELLEE TO A PRISON TERM THAT IS OUTSIDE THE STATUTORY RANGE."

{¶16} "In addition to any other right to appeal under this section or any other provision of law, a prosecuting attorney . . . may appeal, in accordance with section 2953.08 of the Revised Code, a sentence imposed upon a person who is convicted of or pleads guilty to a felony." R.C. 2945.67(A) (also providing the general right of the prosecutor to seek leave to appeal any decision except the final verdict). In pertinent part, the cited statute on sentencing appeals provides: "a prosecuting attorney . . . may appeal as a matter of right a sentence imposed upon a defendant who is convicted of or

pleads guilty to a felony . . . on any of the following grounds . . . The sentence is contrary to law." R.C. 2953.08(B)(2). This statute subsequently instructs:

> The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.
>
> *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* . . .
>
> (b) That *the sentence is* otherwise *contrary to law*.

(Emphasis added.) R.C. 2953.08(G)(2) (the inapplicable omitted subdivision applies where the record does not support certain statutory findings). *Compare* R.C. 2953.08(G)(1) (allowing only a remand remedy where required statutory findings were not made on the record).

{¶17} As the Supreme Court observed, the statutory phrase "contrary to law" means "in violation of statute or legal regulations at a given time." *State v. Bryant*, 2022-Ohio-1878, ¶ 22 citing *State v. Jones*, 2020-Ohio-6729, ¶ 34, quoting *Black's Law Dictionary* (6th Ed.1990). Contrary to law is not equivalent to saying the record does not support the sentence. *Jones* at ¶ 32 (where the Supreme Court considered the dictionary definition of the phrase at the time of enactment, statutory amendments, and the ordinary usage of the phrase in context).

{¶18} The statute governing felony sentencing specifies: "For a felony of the third degree that is not an offense for which division (A)(3)(a) of this section applies, the prison term shall be a definite term of nine, twelve, eighteen, twenty-four, thirty, or thirty-six months." R.C. 2929.14(A)(3)(b); *see also* Former R.C. 2929.14(A)(3)(a) (previously not including the offense at issue for a higher sentencing range[1]).

[1] The current version of the statute contains increased prison sentences for the offense at issue here. R.C. 2929.14(A)(3)(a) (eff. 10/24/24, after the defendant's offense, setting forth terms between 12 to 60 months), citing R.C. 2921.331(B),(C)(5).

{¶19} A prison sentence falling outside the statutory range has long been used as the prime example of a sentence that is contrary to law. *See, e.g., State v. Marcum*, 2016-Ohio-1002, ¶ 14, citing *State v. Kalish*, 2008-Ohio-4912, ¶ 15 (where the plurality observed: "If on appeal the trial court's sentence is, for example, outside the permissible statutory range, the sentence is clearly and convincingly contrary to law, and the appellate court's review is at an end. The sentence cannot stand."); *Kalish* at ¶ 59 (Lanzinger, J., dissenting) (agreeing a sentence outside the statutory range is an example of a sentence that is contrary to law); *State v. Hornbuckle*, 2022-Ohio-2025, ¶ 26 (7th Dist.).

{¶20} As the state points out, the prison term of six months was outside of the statutory range for a third-degree felony and thus the imposed sentence violated the felony sentencing statute, R.C. 2929.14(A)(3)(b). Due to this statutory violation, the state argues the sentence was clearly and convincingly contrary to law under R.C. 2953.08(G)(2)(b).

{¶21} The defense does not dispute this legal conclusion. However, the defense sets forth three arguments in opposition to the state's appeal.

{¶22} First, the defendant points out his sentence expires on February 23, 2026, and he predicts he will have served the six-month sentence by the time we release an opinion in this case. From this, he concludes the state's appeal should be (pre-emptively) dismissed as moot. In support of this contention, he cites law stating a defendant's appeal of a sentence becomes moot after he finishes the sentence if he will not suffer collateral consequences from the sentencing issue. *See, e.g., State v. Rutter*, 2025-Ohio-2899, ¶ 9 (2d Dist.) ("an appeal related to a completed felony sentence is moot when there is no indication that the sentence, as opposed to the conviction, will cause the defendant to suffer some collateral disability or loss of civil rights [as] there is no remedy that we can offer"), citing *State v. Oglesby*, 2020-Ohio-394 (2d Dist.) (appeal moot where the trial court imposed a jail sentence as a sanction for violating community control, the jail sentence had been served, and the defendant's community control had been terminated).

{¶23} These particular principles cited by the defendant do not translate to an argument that a state's appeal would become moot due to a defendant's predicted release from a prison sentence that was unlawfully too low. In any event, there is no indication our opinion will be released after his sentence expires. To the extent he may

be suggesting any remand in our opinion is unlikely to prompt resentencing in the trial court prior to his release, we point out the practical ability of the trial court to schedule a hearing prior to his release would be an issue for the trial court, not a matter requiring a prediction by this court. Likewise, any post-opinion delay giving rise to other legalities surrounding post-release sentencing would also be issues for the trial court. In any case, the appellate sentencing statute specifically allows this court to modify and increase a sentence instead of vacating and remanding for resentencing. R.C. 2953.08(G)(2).

{¶24} Second, the defendant claims the state cannot be afforded relief (on remand) based on his assertion that the trial court would be prohibited from increasing the term of incarceration. He relies on case law stating the same judge cannot impose a higher sentence after a remand without giving rise to a presumption of vindictiveness. *See State v. Jackson*, 2025-Ohio-2634, ¶ 13 (11th Dist.). However, a remand with instructions due to statutory law prohibiting the low prison term chosen by the trial court at the first sentencing does not present a similar scenario to the cited case law. Here, the reason for any potential remand would be based on the trial court's attempt to benefit the defendant the first time. That is, a state's appeal to enforce a sentencing statute that was ignored in favor of the defendant, which results in remand for resentencing, would not necessarily trigger the same principles as a defendant's appeal resulting in a remand for resentencing due to a trial court error prejudicing the defendant.

{¶25} Regardless, the cited law says the presumption can be rebutted by affirmative findings on the record regarding information discovered or arising after the first sentencing. An appellate court remand ordering imposition of a higher sentence based on the application of the proper statutory range of prison terms fits within this legal framework. In addition, the cited law does not affect an appellate court review of the initial sentencing. It only applies to the sentencing court's process and findings upon remand, after which a defendant is free to appeal the second sentence based on a vindictiveness argument, if applicable.

{¶26} Third, the defendant argues the state waived the trial court's legal error by failing to object at sentencing. From this district, he cites a case noting the defense waived all but plain error by failing to object to the prosecutor's recitation of evidence at sentencing. *State v. Martin*, 2018-Ohio-862, ¶ 8 (7th Dist.). We note the court's

announcement of the sentence itself and the failure to object after its imposition is somewhat distinct from a failure to object to the evidence presented or the conduct engaged in by an opposing party at sentencing. Moreover, this court still addressed the merits at issue to determine whether the sentence was clearly and convincingly contrary to law, even though the appellant failed to object below. *Id.* (and even though he failed to specify the plain error doctrine on appeal).

{¶27} "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Crim.R. 52(B). As explained by the Ohio Supreme Court, plain error is a discretionary doctrine the appellate court may employ in exceptional circumstances when required to avoid a manifest miscarriage of justice. *State v. Noling*, 2002-Ohio-7044, ¶ 62. To establish plain error, a party must demonstrate the court committed an obvious error that affected the outcome of the proceeding. *State v. Graham*, 2020-Ohio-6700, ¶ 93, citing *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002).

{¶28} The defense recognizes the defect in the case before this court would qualify as plain error. However, the defense then complains the state failed to specifically raise the plain error doctrine on appeal when the state argued the sentence was clearly and convincingly contrary to law due to the imposition of a prison term less than the statutory minimum available for the offense. The defendant thus concludes the state's compounding of its waiver supports the appellate court's exercise of discretion to refrain from recognizing the plain error.

{¶29} In support, he cites Ninth District cases exercising discretion to refuse to consider arguments under a plain error analysis where the doctrine was not specifically mentioned on appeal, including a case where a defendant failed to object to a court imposing a maximum sentence without making the findings that were required at the time. *See, e.g., State v. Woods*, 2005-Ohio-2409, ¶ 7 (9th Dist.) ("We find that Defendant waived any sentencing error and thus, cannot pursue it for the first time on appeal . . . Furthermore, Defendant has not argued plain error in this case. Consequently, we will not consider whether plain error exists.").

{¶30} On the other side of the discretion coin, in a more pertinent case, the Eighth District reviewed a state's appeal of a trial court's failure to utilize the new indefinite

sentencing scheme after sua sponte declaring it was unconstitutional. *State v. Whittenburg*, 2022-Ohio-803, ¶ 1, 5 (8th Dist.). When the defendant argued the state waived the sentencing challenge by not expressly lodging an objection below, the Eighth District concluded, "a sentence imposed contrary to law constitutes a plain error and we may review it for plain error." *Id.* at ¶ 6 (reversing the sentence as contrary to law as argued by the state). This is consistent with our analysis of plain error in the *Martin* case cited above. *See Martin*, 2018-Ohio-862, at ¶ 8 (7th Dist.).

{¶31} The doctrine of plain error itself allows an appellate court to address an obvious deviation from a legal rule that is outcome-determinative, regardless of whether the brief raises an error without acknowledging a prior lack of objection or citing the plain error doctrine. In fact, the plain error doctrine within Crim.R. 52(B) allows a reviewing court to sua sponte raise an error. *State v. Slagle*, 65 Ohio St.3d 597, 604 (1992) ("This rule allows the appellate court, at the request of appellate counsel or sua sponte, to consider a trial error that was not objected to when that error was a 'plain error.'"); *State v. Prieto*, 2016-Ohio-8480, ¶ 20-21 (7th Dist.); *State v. Young*, 2011-Ohio-2646, ¶ 71 (7th Dist.) ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court or this court.").

{¶32} Here, the defense asked for community control and did not endeavor to seek a prison term that did not exist under the governing felony sentencing statute. The six-month prison term imposed by the court was not jointly recommended or even acquiesced to by the state. Notably, *the state asked the trial court to impose a sentence of nine months*, as it promised to do under the plea agreement, which was an argument-preserving step. *See State v. McClendon*, 2012-Ohio-1410, ¶ 22 (7th Dist.) ("defense counsel clearly advocated for an aggregate term of three years, which would require the sentences to run concurrently. There was not much more that defense counsel could have done to oppose or object to consecutive sentences during sentencing."). The conduct at the sentencing hearing did not involve standing silent as a tactic or a failure to ensure the trial court considered an issue first. *See Slagle*, 65 Ohio St.3d at 604 (noting these are concerns where an objection is not raised below). The trial court indicated it knew nine months was the minimum prison term for the third-degree felony but explicitly

rejected the legislative boundaries. (Sent.Tr. 33, 36). Essentially, the trial court sua sponte recognized on the record that it was acting contrary to law.

{¶33} As quoted to a fuller extent in our Statement of the Case, the trial court imposed a prison term of six months while declaring, "I am going to give you six months, get you back a little bit - - you're telling me that I can't do that because it impacts, I'm gonna do it anyway." (Sent.Tr. 33). This suggests the court was interrupted, was signaled in some manner, or was otherwise advised that it was not permitted to sentence Appellant to a mere six months in prison for the offense. The court's comments about its decision to ignore the statutory range indicate any attempt to formally vocalize an objection on the record would be overruled without additional argument; i.e., the court was preemptively instructing the state any vocal objection would not be entertained. For the collective reasons expressed above, there was not a clear waiver or forfeiture by the state here.

{¶34} In any event, although the best practice is to clearly voice an objection to an illegal sentence when it is pronounced, this district regularly addresses appellate arguments about an imposed sentence without requiring an objection during the announcement of the sentence or requiring an appellant to specifically cite to the doctrine of plain error in the brief on appeal if there was no objection after the sentence was announced. *See, e.g., State v. Sargent*, 2025-Ohio-2579, ¶ 23, 28, 37-43 (7th Dist.) (reframing the question as plain error while reviewing an unobjected to argument about the facts relevant to sentencing and also reviewing consecutive sentences without regard for whether objections were made at sentencing); *State v. Smith*, 2023-Ohio-4504, ¶ 72-73 (7th Dist.) (sua sponte raising plain error on an issue not raised below or on appeal).

{¶35} Addressing a claim of legal error would be especially warranted by the appellate court where the trial court imposed a sentence outside of the statutory range. When the state requests a specific (minimum) prison term, sentencing a defendant to a lower prison term that is not permitted by statute is an obvious error that affected the outcome, as acknowledged by the defense on appeal. This is especially apparent where the trial court is announcing it knows the chosen sentence is not permitted by the statute. Further supporting a decision to recognize plain error here, we point to inferences arising from the trial court's comments alluding to the trial court regularly engaging in this type of disregard of the sentencing statutes. (Sent. Tr. 33) ("you're telling me that I can't do that

because it impacts, I'm gonna do it anyway. I have gotten more letters from the Bureau telling me I can't do things and I just keep on doing them anyway"[2]).

{¶36} As the Supreme Court of Ohio has pronounced, "judges are not imperial [and their] authority to sentence in criminal cases is limited by the people through the Ohio Constitution and by our legislators through the Revised Code." *State v. Fischer*, 2010-Ohio-6238, ¶ 21. "Judges have no inherent power to create sentences . . . Rather, judges are duty-bound to apply sentencing laws as they are written." *Id.* at ¶ 22. The only sentence the trial court may impose is the one set forth in the statute with no power to substitute a greater *or lesser sentence* than the one provided for by the statute. *Id.* Otherwise, the sentence imposed is contrary to law. *Id.* at ¶ 23.

{¶37} The felony sentencing statute unambiguously states: "For a felony of the third degree that is not an offense for which division (A)(3)(a) of this section applies, the prison term shall be a definite term of nine, twelve, eighteen, twenty-four, thirty, or thirty-six months." R.C. 2929.14(A)(3)(b). The imposed sentence of six months in prison was clearly and convincingly contrary to law where the minimum prison term available for the offense was nine months. This constituted an error. Even assuming an objection was not made or should have been more clearly vocalized by the state during the announcement of sentence, the error would be considered an obvious legal defect that prejudiced the state and the public and otherwise affected the outcome of the sentencing. It constitutes an issue worthy of our recognition as plain error.

{¶38} Lastly, we must choose the remedy on appeal. "The appellate court may take any action authorized by this division if it clearly and convincingly finds . . . the sentence is otherwise contrary to law." R.C. 2953.08(G)(2)(b). "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 . . ." R.C. 2953.08(G)(2).

{¶39} As required by the statute, we reviewed the entire record. R.C. 2953.08(G)(2) ("review the record, including the findings underlying the sentence . . .

[2] In the context of a discussion on sentencing to a prison term in Ohio's DRC outside of the statutory range, the mention of complaint letters to the court from the "Bureau" on this topic is a reference to the "bureau of sentence computation" within the DRC. *See, e.g.*, Adm.Code 5120-2-04(I).

given by the sentencing court"). We took into account the trial court's observations about the defendant's prior criminal history, including probation issues, disclosed in the PSI, which the statute requires us to review. R.C. 2953.08(F)(1) ("On the appeal of a sentence under this section, the record to be reviewed shall include . . . Any presentence, psychiatric, or other investigative report that was submitted to the court in writing before the sentence was imposed.").

{¶40} We also considered the trial court's discussion about the information in the police report. *Id.* For instance, after fleeing the attempted traffic stop of his vehicle as it rolled through a stop sign with a license plate that could not be read due to the missing plate light: the defendant passed vehicles and disregarded traffic control devices on the 70 mph chase through the city risking the safety of those on the streets; he left the vehicle in gear upon bailing out of it; one officer risked his safety by jumping into the driverless vehicle just before it hit a residence; and another officer risking his safety had to tackle the defendant after he fled on foot through the woods and jumped fences. The recovery of an extended magazine from the car (but no gun) is also pertinent to the circumstances of this car-chase-turned-foot-chase case.

{¶41} The defendant's brief notes the trial court could have imposed less than nine months in prison by imposing community control. He says the court could have ordered six months of local incarceration (jail) as part of community control. However, his attorney asked the trial court whether the incarceration would be served locally, and the court responded in the negative. The court had previously mentioned its consideration of the burden on government resources. In weighing the various relevant factors, the trial court acknowledged the defendant's remorse and acceptance of responsibility, his family situation, and his attempts to stay "on the right track" over the years. The court heard his claim about PTSD contributing to his conduct and his statements that he takes medication and goes to counseling.

{¶42} Nevertheless, the trial court emphasized the danger the defendant posed to the public due to his conduct in this case and the concerns about the future danger he poses. Most notably, the trial court expressly found the defendant was not amenable to community control and concluded prison was the only sanction to fulfill the purposes and principles of sentencing. *See* R.C. 2929.11 (purposes and principles of sentencing); R.C.

2929.12 (seriousness and recidivism factors). Consequently, the minimum sentence of nine months was warranted under the totality of the trial court's considerations.

{¶43} In accordance, as the trial court's sentence is clearly and convincingly contrary to law this court imposes as a remedy an increase in the defendant's sentence to nine months in prison with credit for time served. Again, this is the minimum available prison term in the sentencing statute as it existed at the time of the defendant's offense. Former R.C. 2929.14(A)(3)(b) (setting forth the available terms for a non-itemized third-degree felony ranging from 9 to 36 months; eff. 10/24/24, the range increased to 12 to 60 months for the offense at issue); *see also* fn. 1.

{¶44} Modification of the sentence through an increase is clearly permitted by the governing statute. R.C. 2953.08(G)(2)(b) ("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 may take any action authorized by this division if it clearly and convincingly finds . . . the sentence is otherwise contrary to law."). This sentence is supported by the record and by the trial court's own findings. Our modification will eliminate potential issues with delay should we remand to the trial court for resentencing for a new sentence and eliminate any possibilities of the defendant's release from prison due to such delay.

{¶45} For the foregoing reasons, the state's sole assignment of error is sustained. The trial court's judgment imposing six months in prison is modified to a sentence of nine months in prison (with credit for time served).

Waite, P.J., concurs.

Dickey, J., concurs.

For the reasons stated in the Opinion rendered herein, the state's sole assignment of error is sustained and it is the final judgment and order of this Court that the sentencing judgment of the Court of Common Pleas of Mahoning County, Ohio, is modified to nine months in prison (with credit for time served). 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 of court to the trial court to carry this judgment into execution. Also, the Mahoning County Clerk shall send copies to Counsel for both parties, Judge Anthony D'Apolito, the Adult Probation Department and the Department of Rehabilitation and Corrections.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.