

[Cite as *Cleveland v. Peoples*, 2015-Ohio-674.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 100955

CITY OF CLEVELAND

PLAINTIFF-APPELLEE

vs.

MAURICE PEOPLES

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cleveland Municipal Court
Case No. 2013-CRB-033843

BEFORE: Keough, J., S. Gallagher, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: February 26, 2015

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KATHLEEN ANN KEOUGH, J.:

{¶1} Defendant-appellant, Maurice Peoples, appeals his sentence. For the reasons that follow, we reverse and remand.

{¶2} In October 2013, Peoples was charged with one count of petty theft, a first degree misdemeanor, in violation of Cleveland Codified Ordinances (“CCO”) 625.05. The charges stemmed from Peoples taking \$38.98 worth of merchandise from Wal-Mart. In December of that same year, Peoples appeared with counsel and pleaded no contest to the charge. The trial court entered a finding of guilt, and ordered that a presentence investigative report be prepared for sentencing.

{¶3} At the January 6, 2014 sentencing, the trial court ordered Peoples to pay a \$1,000 fine plus court costs and serve 180 days in jail. The court suspended \$800 of the fine and all the days in jail. The court placed Peoples on one year of active probation with conditions, including completing the petty theft class and having no contact with Wal-Mart. Because Peoples was unemployed, his counsel requested community work service in lieu of paying the \$200 fine. The trial court granted the request and ordered that Peoples perform 300 hours of community work service by March 31, 2014; the court found Peoples indigent and suspended the court costs.

{¶4} Peoples now appeals his sentencing, raising two assignments of error.

{¶5} Peoples’s first assignment of error states:

The trial court abused its discretion when it sentenced [him] for lack of proportionality in violation of Article I, Section 9 of the Ohio Constitution’s guarantee against cruel and unusual punishment as well as the Eighth Amendment of the United States Constitution.

Succinctly, Peoples is making a disproportionality challenge to his sentence, arguing that CCO 601.99, as applied, violates his constitutional rights.

{¶6} Peoples did not object to the sentence imposed or raise any constitutional challenge with the trial court. Failure to raise at the trial court level the issue of the constitutionality of a statute or its application, when the issue is apparent, constitutes a waiver of such issue and therefore, it need not be heard for the first time on appeal. *Cleveland v. Meehan*, 8th Dist. Cuyahoga No. 100202, 2014-Ohio-2265, ¶ 20, citing *Cleveland v. Taylor*, 8th Dist. Cuyahoga No. 99594, 2013-Ohio-4708, ¶ 7-8; *see also State v. Awan*, 22 Ohio St.3d 120, 489 N.E.2d 277 (1986), syllabus. Moreover, the issue of disproportionality must also “be raised in the trial court and some evidence, however minimal, must be presented to the trial court to provide a starting point for analysis and to preserve the issue for appeal.” *State v. Roberts*, 8th Dist. Cuyahoga No. 84070, 2005-Ohio-28, ¶ 60.

{¶7} Accordingly, because no objection or challenge was made below, Peoples’s first assignment of error is overruled.

{¶8} In his second assignment of error, Peoples contends that the trial court abused its discretion when it did not follow statutory procedures pursuant to R.C. 2929.22 when it sentenced him.

{¶9} The guidelines for misdemeanor sentencing are substantially similar to those applied in felony sentencing. *Strongsville v. Jaeger*, 8th Dist. Cuyahoga No. 99579, 2013-Ohio-4476, ¶ 4. The court must be guided by the purposes of misdemeanor sentencing, which are “to protect the public from future crime by the offender and others and to punish the offender.” *See* R.C. 2929.21(A). When determining the appropriate sentence, the court must consider the factors listed in R.C. 2929.22(B), including the nature and circumstances of the offense or offenses and whether the circumstances indicate that the offender has a history of persistent criminal activity and poses a substantial risk of reoffending. *See* R.C. 2929.22(B)(1). However, there is no

requirement that a trial court in sentencing on misdemeanor offenses specifically state its reasons on the record. *Jaeger* at ¶ 5, citing *State v. Harpster*, 5th Dist. Ashland No. 04COA061, 2005-Ohio-1046, ¶ 20. ““When the court’s sentence is within the statutory limit, a reviewing court will presume that the trial judge followed the standards in R.C. 2929.22, absent a showing to the contrary.”” *Cleveland v. Go Invest Wisely*, 8th Dist. Cuyahoga Nos. 95172, 95173, 95174, 95175, 95176, and 95177, 2011-Ohio-3047, ¶ 10, quoting *State v. Downie*, 183 Ohio App.3d 665, 2009-Ohio-4643, 918 N.E.2d 218, ¶ 48 (7th Dist.).

{¶10} Peoples was convicted of petty theft, a misdemeanor of the first degree, which carries a maximum jail sentence of 180 days and a maximum fine of \$1000. *See* CCO 601.99; R.C. 2929.24 and 2929.28. The trial court imposed 180 days in jail, with 180 days suspended, and a \$1,000 fine with \$800 suspended. Peoples was also placed on active probation, ordered to attend a petty theft class, and have no contact with Wal-Mart.

{¶11} Because Peoples was unemployed, he requested community work service in lieu of paying a fine. R.C. 2929.28(B) allows courts to impose community work service for the collection of fines. *See also State v. Clevenger*, 114 Ohio St.3d 258, 871 N.E.2d 589 (2007). R.C. 2929.27(A)(3) specifies that a term of community work service may be imposed “up to five hundred hours for a misdemeanor of the first degree or two hundred hours for a misdemeanor of the second, third, or fourth degree.”

{¶12} In this case, the trial court granted Peoples’s request for community work service in lieu of paying his \$200 fine. The court ordered that Peoples perform 300 hours of community work service by March 31, 2014. The court further found Peoples indigent and suspended the assessed court costs. The 300 hundred hours of community works service is within the statutory range provided by R.C. 2929.27(A)(3).

{¶13} However, while the sentence is not contrary to law, we still review a misdemeanor sentence for an abuse of discretion. *Youngstown v. McElroy*, 7th Dist. Mahoning. No. 05 MA 13, 2005-Ohio-6595, ¶ 26, citing *Youngstown v. Glass*, 7th Dist. Mahoning No. 04MA155, 2005-Ohio-2785, citing R.C. 2929.22. A trial court abuses its discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary. *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

{¶14} In this case, the trial court ordered Peoples to perform 300 hours of community work service in lieu of a \$200 fine.¹ The court ordered that the 300 hours be performed in 11 weeks. The trial court has broad discretion in ordering an appropriate sentence for a misdemeanor offense; however, that discretion is not unfettered.

{¶15} When community work service is ordered in lieu of the fine imposed, as opposed to a separate sanction or condition, the hours ordered should be commensurate with the fine. While the number of hours ordered in this case is within the statutory range, the amount of hours the trial court ordered is arbitrary and unreasonable considering the fine imposed. If the trial court in exercising its discretion believes a greater amount of community work service is required, a reviewing court should be able to discern from the record the trial court's reasoning or justification. Here, the record is silent.

{¶16} Based on the foregoing, Peoples overall sentence is not contrary to law because its terms are within the statutory range for a first-degree misdemeanor. However, the trial court

¹We note that the trial court misspoke when it pronounced its sentence, which possibly could explain the amount of community work service hours it ordered. After imposing the \$200 fine but before community work service was requested, the court stated, "Sir, you owe eight hundred dollars and court costs. How much do you want to put towards your fine and cost?" (Sentencing Tr. 2.)

abused its discretion when it ordered Peoples to perform 300 hours of community work service for a \$200 fine.

{¶17} Accordingly, Peoples's second assignment of error is sustained.

{¶18} Sentence reversed; case remanded to the trial court for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cleveland Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, JUDGE

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TIM McCORMACK, J., CONCURS;
SEAN C. GALLAGHER, P.J., CONCURS
IN JUDGMENT ONLY