

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 111960
 v. :
 :
 JOHN B. COPLEY, :
 :
 Defendant-Appellant. :
 :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: August 3, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-22-666654-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Alicia Paolucci, Assistant Prosecuting Attorney, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Jonathan Sidney, Assistant Public Defender, *for appellant*.

EMANUELLA D. GROVES, J.:

{¶ 1} Defendant-appellant John Copley (“Copley”) appeals his sentence after pleading guilty to two counts of felonious assault. For the following reasons, we affirm.

Facts and Procedural History

{¶ 2} On January 12, 2022, Copley was indicted for three counts of felonious assault, second-degree felonies (Counts 1 through 3); two counts of domestic violence, first-degree misdemeanors (Counts 4 and 5); and one count of aggravated menacing, also a first-degree misdemeanor (Count 6). Notice of prior conviction and repeat violent offender specifications were attached to the first three counts. The victims were Mason and Delsie Proctor, Copley's stepfather and mother. They were approximately 81 and 86 years old, respectively.

{¶ 3} On July 27, 2022, Copley entered into a plea agreement with the state. In exchange for a plea of guilty to Count 1 for Mrs. Proctor and Count 2 for Mr. Proctor, the state agreed to dismiss the remaining charges and the associated specifications on Counts 1 and 2.

{¶ 4} The case proceeded to sentencing on August 23, 2022. The state addressed the court first. The state alleged that Copley was living in the Proctors' home. After a verbal altercation, Copley left the home and began drinking heavily. He was on medication at the time as well. On returning home, Copley viciously attacked Mr. Proctor with a knife, leaving Mr. Proctor bloodied, on the ground, and unable to move. When Mrs. Proctor tried to intervene, Copley knocked her to the ground causing her to break her leg. The state played Mr. Proctor's 911 call. In the call, he told the police that he was on the floor and could not get up because Copley had stabbed him in the arm and kicked him too many times.

{¶ 5} Mr. Proctor was treated and released to hospice care where he later died. After review of the coroner's report, the state found it did not have probable cause to charge Copley with murder. Mrs. Proctor had been released from the hospital and was in the care of her granddaughter; however, her health continued to deteriorate.

{¶ 6} The state presented Copley's criminal history that included a string of convictions for violent offenses. Copley spent a significant amount of time in prison as a result.

{¶ 7} Mr. Proctor's son, Mason Proctor Jr. ("Mason"), also spoke at sentencing. He described Copley as his big brother and expressed love for him. Nevertheless, he understood the person Copley was. Mason agreed that Copley had a history of violence. He noted that Copley was physically abusive to every woman he had dated. Mason told the court that Mr. and Mrs. Proctor went out of their way, often, to "clean up" Copley's messes. Mason acknowledged that they had enabled him. Mason described Copley as "about himself, nobody else. Everybody has been a means to an end, to the next party, the next high, to solve a situation." Mason opined that when Copley did not get his way, he acted out.

{¶ 8} Mason considered Mrs. Proctor to be his mother because she and his father were together for over 40 years. Since the incident, she would wake up in the middle of the night screaming and yelling, sometimes multiple times during the night. She had fallen out of bed trying to run away from Copley in her dreams. She

relived the nightmare of what happened every night. She also had panic attacks when faced with a male orderly or nurse.

{¶ 9} Prior to his father's death, Mason saw the effects of the attack on him, as well. He saw the physical wounds, but also the fear. Mr. Proctor would cry out often: "Stop, stop!" remembering what happened. Mason asked the court to sentence Copley to the maximum term.

{¶ 10} Copley's daughter, Danielle, was also present. She was unwilling to speak at the hearing but provided a letter that the prosecutor read into the record. In the letter, she noted that she was at the hearing because her grandmother, Copley's mother, begged her to come to court. The day of the attack was the worst day of her life because she learned what her father had done to her grandparents. When she went to see her grandfather, after he had extensive surgery for multiple stab wounds, she sat and spoke to him. He told her that he was sitting in the recliner when Copley stabbed him all over and threw him out of the chair. Danielle begged him to stop talking about it and when he did, he asked her about Mrs. Proctor. She told him the truth, that Mrs. Proctor was in surgery.

{¶ 11} Danielle had to be cleared by security to see her grandmother, because Copley was still at large. The first words Mrs. Proctor said to her were, "Danielle, he kicked me down, like a dog, and I begged him to help me up." Mrs. Proctor said Copley told her to shut up and lay there, or she would be next.

{¶ 12} When Danielle asked Mrs. Proctor what happened, Mrs. Proctor said Copley came home around 7:00 p.m. She made him dinner. After he ate, Copley

stood up and said, "I'm here to finish things off." Copley then got his knife and went into the living room and attacked Mr. Proctor. Mrs. Proctor tried to stop him and he kicked her down. Danielle described the image of her 6'2", 250-pound father going after her grandmother, who was 5'3" and 130 pounds. Danielle went on to describe how both Mr. and Mrs. Proctor suffered in the hospital from fear and PTSD.

{¶ 13} Copley's attorney spoke next. He pointed out that Copley took responsibility for his actions and pleaded guilty. Furthermore, Copley turned himself in and expressed remorse. Counsel noted that Copley had written to his daughter asking about his mother's health. Counsel also attempted to reach out to Danielle but she did not return his calls. Counsel alleged that Copley was not in his right mind because he was drunk, depressed, and had taken a prescribed muscle relaxer. While in custody, Copley waived his right to an attorney and spoke to a detective.

{¶ 14} Copley's attorney played a portion of the videotaped interview at sentencing. In it, Copley was visibly upset. He expressed multiple times that he did not intend for his mother to get hurt. Copley stated that Mr. Proctor was ill and that as a result, he was hard on Mrs. Proctor. He also claimed that Mr. Proctor was hard of hearing and Mrs. Proctor often had to yell in order for Mr. Proctor to hear her. Copley felt that Mr. Proctor did not treat Mrs. Proctor right. Copley, whose bedroom was in the basement, often concluded the couple was arguing when he overheard Mrs. Proctor yelling.

{¶ 15} In the interview, Copley did not remember much from that evening. He remembered Mr. Proctor refused to allow him to buy groceries for his mother earlier in the day. He left home with a friend and went to a bar to drink. He eventually returned home. He suspected that he and Mr. Proctor began to argue again because the earlier incident was still on his mind and then a fight ensued. He admitted that in the past, his mother would intervene whenever he and Mr. Proctor would argue and suspected that was how his mother was harmed. Copley acknowledged that he had a bad history, but that he had never done anything like this before. He expressed remorse for what he had done to his family.

{¶ 16} Copley also spoke at the hearing. He elected to tell the court what happened and told a completely different story than the one in his interview with police. He told the court that he heard the TV playing loudly and then the sound went down. When he went to investigate, Mr. Proctor told him that Mrs. Proctor “jumped all over” him about the TV. Copley went to talk to his mother, and she told Copley that Mr. Proctor “jumped all over me, scared me.” Per Copley, that was the first time his mother indicated that Mr. Proctor scared her. The trial court asked Copley if he was suggesting he was protecting his mother that day. Copley agreed that was his intent. The court pointed out that that was inconsistent with his statement to the police. After further clarifying questions from the court, Copley explained that the incident he described happened on a different day, and he wanted to explain what led up to the assault.

{¶ 17} The court then asked Copley to explain what happened the day of the incident and stated there was nothing going on between Mr. and Mrs. Proctor. Copley stated that on the morning of the incident, Mrs. Proctor told him she needed some things from the store. Mr. Proctor then walked into the kitchen, forcefully opened the refrigerator, and said there was already “stuff in there.” Copley could tell that his mother’s feelings were hurt, because there was no reason for Mr. Proctor to act like that. Copley then went to leave. The court interjected that the presentence-investigation report (“PSI”) and mitigation report established that Copley was taking medication that should not have been combined with alcohol. Copley acknowledged that he was aware that he should not have been drinking while on his medication and that doing so made the situation worse. The court noted that it had heard his video statement and reviewed Copley’s version of events in the PSI and psychological evaluation. The court asked Copley if there was anything else he wished to say. At that point, Copley noted that he was responsible for what happened and that he loved his stepfather and mother more than anything.

{¶ 18} The trial court proceeded to sentence Copley. The court noted that Copley repeatedly mentioned that he did not mean to hurt his mother, but that he did not say anything about the harm he caused to his stepfather. The court also found that Copley’s assault of Mr. Proctor was the most serious form of the offense. The court issued a sentence of four years on Count 1 and eight years on Count 2 to run consecutively.

{¶ 19} Copley appeals and raises following assignments of error for our review.

Assignment of Error No. 1

As amended by the Reagan Tokes Act, the Revised Code's sentences for first- and second-degree qualifying felonies violate the constitutions of the United States and the state of Ohio; accordingly, the trial court plainly erred in imposing a Reagan Tokes indefinite sentence.

Assignment of Error No. 2

Mr. Copley received ineffective assistance of counsel when counsel failed to fully object to the Reagan Tokes sentencing, to the extent this court considers the error unpreserved.

Assignment of Error No. 3

The sentence imposed was contrary to law because it was based on a clearly erroneous finding that Mr. Copley never expressed remorse regarding the assault of his stepfather.

Law and Analysis

{¶ 20} The first and second assignments of error center on S.B. 201, the Reagan Tokes Law. In the first assignment of error, Copley asks this court to apply the law as decided in our holdings in *State v. Delvallie*, 2021-Ohio-1809, 173 N.E.3d 544 (8th Dist.), *State v. Sealey*, 2021-Ohio-1949, 173 N.E.3d 894 (8th Dist.), and *State v. Daniel*, 2021-Ohio-1963, 173 N.E.3d 184 (8th Dist.). Those decisions addressed three specific challenges to the constitutionality of S.B. 201 and found that they held merit. However, those cases were overruled by our en banc decision in *State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.). The en banc decision in *Delvallie* addressed a conflict within this jurisdiction between the decision in the three aforementioned cases and cases, including *State v. Simmons*,

2021-Ohio-939, 169 N.E.3d 728 (8th Dist.), which found that S.B. 201 did not violate the constitution in the ways alleged. The Supreme Court recently upheld this court's decision in *Simmons. State v. Hacker*, Slip Opinion No. 2023-Ohio-2535. Copley's first assignment of error is without merit. Accordingly, it is overruled.

{¶ 21} In the second assignment of error, Copley argues that he received ineffective assistance of counsel. Copley seeks to preserve a challenge to S.B. 201 if this court or another determines that his trial counsel did not fully object to Copley's sentence. After Copley was sentenced, the trial court asked Copley's trial counsel if he was objecting to the S.B. 201 sentence. At that time, counsel agreed that he was objecting to the sentence as unconstitutional. Copley believes this objection was sufficient to preserve the issue, but, in an abundance of caution, raises ineffective assistance of counsel should this court or the state argue that the issue was not preserved for review.

{¶ 22} Ineffective assistance of counsel is established when an appellant demonstrates "(1) deficient performance by counsel, namely that counsel's performance fell below an objective standard of reasonable representation, and (2) that counsel's errors prejudiced the party, or a reasonable probability that but for counsel's errors, the outcome would have been different." *State v. Moore*, 2022-Ohio-522, 185 N.E.3d 216, ¶ 29 (8th Dist.), citing *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "A 'reasonable probability' is one 'sufficient to undermine confidence in the outcome.'" *Id.*, citing *State v.*

Mohammad Khoshknabi, 2018-Ohio-1752, 111 N.E.3d 813, ¶ 29 (8th Dist.), quoting *Strickland* at 694.

{¶ 23} Both prongs of the test need to be proven in order for ineffective assistance of counsel to be found. *State v. Miller*, 8th Dist. Cuyahoga No. 102848, 2015-Ohio-4688, ¶ 21. As the Supreme Court has determined in *Hacker* that Copley's constitutional challenges to S.B. 201 fail, the trial court appropriately applied the correct sentencing standard to Copley's case. Accordingly, Copley cannot establish that he was prejudiced by the alleged error.

{¶ 24} Accordingly, the second assignment of error is overruled.

{¶ 25} Finally, in the third assignment of error, Copley argues that his sentence was based on an erroneous conclusion that he did not show remorse for the crime against his stepfather. Copley argues that he had a due process right to be sentenced based on accurate information. Therefore, he alleges that the trial court erred when it imposed a maximum sentence on Count 2 based on inaccurate information.

{¶ 26} Our review of felony sentences is governed by R.C. 2953.08(G)(2). *State v. Watkins*, 8th Dist. Cuyahoga No. 110355, 2022-Ohio-1231, ¶ 21, citing *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231 ¶ 16. Pursuant to R.C. 2953.08(G)(2), we may increase, reduce, modify, or vacate and remand a felony sentence if this court clearly and convincingly finds either that the record does not support the sentencing court's findings as prescribed

under specific statutes or the sentence is “otherwise contrary to law.” *State v. Artis*, 8th Dist. Cuyahoga No. 111298, 2022-Ohio-3819, ¶ 11.

{¶ 27} Copley does not challenge the trial court’s imposition of consecutive sentences that would require the court to make findings on the record. R.C. 2929.14(C)(4); 2953.08(G)(2). He challenges the imposition of a maximum sentence as contrary to law based on what he believes is an erroneous finding of fact. A maximum sentence for a felony conviction is not contrary to law if it is within the statutory range of the offense and the court considers the purposes and principles of felony sentencing as set forth in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. *State v. Seith*, 8th Dist. Cuyahoga No. 104510, 2016-Ohio-8302, ¶ 12. Copley does not allege that his sentence was outside the statutory range. Therefore, we will confine our review to whether the sentence was contrary to law.

{¶ 28} Neither R.C. 2929.11 nor 2929.12 requires the trial court to make findings of fact on the record. *State v. Phillips*, 8th Dist. Cuyahoga No. 110148, 2021-Ohio-2772, ¶ 8. This is true even if the court imposes the maximum sentence possible for the charge. *Id.* A statement in the trial court’s journal entry that it considered the required statutory findings is sufficient to fulfill the trial court’s obligations under the sentencing statutes. *State v. Riemer*, 8th Dist. Cuyahoga No. 110314, 2021-Ohio-4122, ¶ 18. “The trial court is presumed to have considered the factors unless the defendant affirmatively demonstrates otherwise.” *Id.*, citing *State v. Wright*, 2018-Ohio-965, 108 N.E.3d 1109, ¶ 16 (8th Dist.).

{¶ 29} The trial court’s journal entry notes that “the court considered all required factors of the law. The court finds that prison is consistent with the purpose of R.C. 2929.11.” Although the trial court was not required to place its findings with respect to R.C. 2929.11 and 2929.12 on the record, it did in this case. The court noted that there was a presumption for prison in this case and that the record did not overcome that presumption. The court noted that Copley’s crime was more serious than conduct that normally constituted the offense because of the serious injuries suffered by the victims, both physical and psychological, and their age and frailty. Copley’s relationship with his mother and stepfather facilitated the offense, i.e., made committing the offense easier. R.C. 2929.12(C) addresses factors that indicate an offender’s conduct is less serious than conduct normally constituting the offense. The court noted that Copley was under the influence; however, that was not enough to mitigate Copley’s conduct. Based on his criminal history the court did not find any factors to make Copley’s conduct less serious than normally applied to the offense.

{¶ 30} R.C. 2929.12(D) addresses recidivism factors. Prior to addressing Copley’s level of remorse, the court found that recidivism was more likely. The court noted that Copley had a history of criminal convictions and had not responded favorably to any interventions and that he had a history of drug and alcohol use that were never addressed. The court also considered Copley’s remorse that is a factor under R.C. 2929.12(D)(5). The trial court found that Copley showed a great deal of

remorse for harming his mother but did not show much remorse for harming his stepfather. (Tr. 53).

{¶ 31} Pursuant to R.C. 2953.08(G)(2) an appellate court does not conduct an independent review of the trial court’s sentencing findings under R.C. 2929.12 or 2929.11. *State v. Bryant*, 168 Ohio St.3d 250, 2022-Ohio-1878, 198 N.E.3d 68, ¶ 21. However, R.C. 2953.08(G)(2)(b) allows an appellate court to reverse or modify a sentencing decision that is otherwise contrary to law. “Otherwise contrary to law” means the sentence was “in violation of statute or legal regulations at a given time.” *Bryant*, quoting *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649, ¶ 34; quoting *Black’s Law Dictionary* 328 (6th Ed.1990). The *Bryant* Court found: “[W]hen 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.” *Id.*

{¶ 32} Given *Bryant*, Copley’s argument fails. The trial court did not find that Copley showed no remorse for his stepfather, rather the court found that Copley did not show “much” remorse. The trial court’s analysis of Copley’s remorse is within its purview under R.C. 2929.12(D). Copley has not established that the trial court’s finding was extraneous to the requirements of the law as it existed at the time of his sentencing. Because Copley has not established that the trial court considered factors outside of the law, the sentence was not contrary to law.

{¶ 33} Accordingly, the third assignment of error is overruled.

{¶ 34} Judgment affirmed.

It is ordered that appellee recover from appellant 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 common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending is terminated. Case remanded to the trial court for execution of sentence.

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

EMANUELLA D. GROVES, JUDGE

EILEEN A. GALLAGHER, P. J., and
SEAN C. GALLAGHER, J., CONCUR