

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 112293
 v. :
 :
 FARHAD NOORI, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 24, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-20-654504-A

Appearances:

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

Erin E. Hanson, *for appellant*.

MARY EILEEN KILBANE, J.:

{¶ 1} Defendant-appellant Farhad Noori (“Noori”) appeals from his sentence for aggravated assault. For the reasons that follow, we affirm.

Factual and Procedural History

{¶ 2} This matter stems from an incident on October 14, 2020, when Noori was allegedly involved in an altercation with co-worker Yuri Dragovich (“Dragovich”), causing injuries to Dragovich’s face.

{¶ 3} On November 7, 2020, Noori was arrested and charged with felonious assault, a felony of the second degree, in Lakewood Municipal Court. On November 13, 2020, the case was bound over to the Cuyahoga County Common Pleas Court.

{¶ 4} On December 2, 2020, in Cuyahoga C.P. No. CR-20-654504, a Cuyahoga County Grand Jury indicted Noori on Count 1, felonious assault, in violation of R.C. 2903.11(A)(1), and Count 2, felonious assault, in violation of R.C. 2903.11(A)(2). On February 23, 2021, Noori pleaded not guilty to the indictment.

{¶ 5} The trial court conducted pretrial hearings on December 6, 2021, and June 21, 2022, at which the parties discussed plea offers. The trial court also advised Noori — a citizen of Iraq — that a plea to any felony may result in deportation.

{¶ 6} On August 29, 2022, Noori withdrew his former plea of not guilty and pleaded guilty to amended Count 1, aggravated assault in violation of R.C. 2903.12(A)(1), a felony of the fourth degree. The court nolleed Count 2, and Noori agreed to no contact with Dragovich and payment of restitution. The parties also agreed to amend the indictment date to March 1, 2021, for unspecified reasons related to Noori’s immigration status. The state indicated the amended indictment represented a legal fiction to resolve the case. The trial court advised Noori that a

felony of the fourth degree was punishable by a potential prison term of six to 18 months with up to a \$5,000 fine or a sentence of community control sanctions for up to five years. The trial court referred Noori for a presentence investigation.

{¶ 7} On November 15, 2022, the trial court conducted a sentencing hearing. Counsel for both parties addressed the court and stated their recommended sentence. Counsel for the state indicated that while the incident occurred when Noori and Dragovich worked together, “[r]egardless of whether Mr. Dragovich made a joke or teased [Noori] about his whistling, no one deserves the injury that Mr. Dragovich received.” Tr. 64. The state sought imposition of a no-contact order, restitution, and “an appropriate sanction.” Tr. 65. The state did not request jail time. Defense counsel stated Dragovich, a kickboxer, teased and made fun of Noori and constantly told Noori at work that he was going to “kick [Noori’s] a*s”. Tr. 66. Defense counsel argued that the incident at issue resulted from Dragovich’s cumulative comments. Defense counsel also stated:

[Noori] came to the United States under a special immigration Visa, of which his family qualified for because of his status [as] security for the U.S. Forces. If he were to return, he would to (sic) be hunted, regardless. The place he came from was not a friendly place. It was a hostile place. Things happen there. They are not acceptable here, and he knows that now.

Tr. 65. Defense counsel asked the court to place Noori on “probation or inactive probation, if at all possible, with the suspended commitment, to make it easier for [Noori].” Tr. 55.

{¶ 8} Dragovich spoke at the sentencing hearing and stated that the incident and related injuries “emotionally affected” him. Tr. 58. Prior to the alleged assault, Dragovich attended Cleveland State University. Dragovich stated that his grades were adversely impacted by the incident, requiring his temporary withdrawal from his courses. The trial judge noted on the record that he did not observe any visible scars.

{¶ 9} Noori made the following statements with the assistance of a Kurdish-speaking interpreter:

[NOORI]: Well, you know, the act that took place on that day, he tried to attack me with a screwdriver. I have two witnesses for that. Like I said, I have my two witnesses ready if they want to go to trial.

[DEFENSE COUNSEL]: Your Honor, if I may have a second with my client.

THE COURT: Sure. Anything else?

[NOORI]: I apologize for what happened. I did not want it to go the way it went. And I want to proceed and be a good citizen.

THE COURT: Anything else that you would like for me to know?

[NOORI]: This is my first time getting in such a (sic) trouble, and hopefully it will be my last time.

Tr. 66-67.

{¶ 10} On January 6, 2023, Noori filed a motion for delayed appeal, presenting this assignment of error¹:

¹On January 23, 2023, this court granted Noori’s motion for leave of court to file a delayed appeal pursuant to App.R. 5.

The trial court erred in imposing a sentence which was contrary to the purposes and principles of felony sentencing by imposing a prison term for a felony of the fourth degree when the offender had no prior criminal record.

Legal Analysis

{¶ 11} Noori argues that the trial court’s imposition of a prison sentence was contrary to law. Specifically, Noori argues that the trial court did not consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12. Noori contends a minimum sanction of community control would have adequately protected the public from future crimes of Noori and would have sufficiently punished Noori. Noori further contends that the trial court did not consider the recidivism factors detailed in R.C. 2929.12(E).

{¶ 12} For felony sentences, an “appellate court’s standard for review is not whether the sentencing court abused its discretion.” R.C. 2953.08(G)(2). Instead, R.C. 2953.08(G)(2) provides that appellate courts “may increase, reduce, or otherwise modify a sentence * * * or may vacate the sentence and remand the matter to the sentencing court for resentencing” if the reviewing court “clearly and convincingly” finds that “the sentence is otherwise contrary to law.” *See State v. Reed*, 8th Dist. Cuyahoga No. 107979, 2019-Ohio-3518, ¶ 6, quoting *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1.

{¶ 13} A sentence is contrary to law where the sentence falls outside the statutory range for the particular degree of offense. *State v Carrington*, 8th Dist.

Cuyahoga No. 100918, 2014-Ohio-4575, ¶ 22. Noori concedes that the trial court imposed a sentence within the statutory range permitted for aggravated assault.

{¶ 14} Additionally, a sentence is contrary to law “when 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.” *State v. Bryant*, 168 Ohio St.3d 250, 2022-Ohio-1878, 198 N.E.3d 68, ¶ 22. Pursuant to R.C. 2929.11(A), the overriding purposes of felony sentencing are (1) to protect the public from future crime by the offender and others, and (2) to punish the offender using the minimum sanctions that the court determines will accomplish those purposes without imposing an unnecessary burden on state or local government resources. While trial courts have discretion to determine how best to comply with these purposes, R.C. 2929.12 provides factors that the court shall consider in felony sentencing.

{¶ 15} The seriousness factors enumerated in R.C. 2929.12(B) and (C) include, but are not limited to, the physical or mental injury suffered by the victim of the offense; whether the victim induced or facilitated the offense; or whether the offender acted under strong provocation. The recidivism factors enumerated in R.C. 2929.12(D) and (E) include the offender’s criminal history or lack of remorse. Additionally, R.C. 2929.12(F) requires the trial court to consider an emotional, mental, or physical condition traceable to offender’s service in the U.S. armed forces that was a contributing factor to the offender’s commission of the offenses.

{¶ 16} Noori argues that the trial court failed to consider certain factors and considerations addressed in R.C. 2929.11 and 2929.12. However, the trial court was

informed that Noori had no prior criminal record; the incident stemmed from an antagonistic work relationship; and Noori and his family aided the U.S. military in Iraq and due to those efforts, the family obtained a special visa to leave Iraq. The trial court heard at the sentencing hearing Noori's apology for his actions. On November 15, 2022, the trial court issued a sentencing journal entry stating: "The court considered all required factors of the law. The court finds that prison is consistent with the purpose of R.C. 2929.11." Pursuant to the information presented to the trial court as well as the court's sentencing journal, the record demonstrates that the trial court considered the required statutory factors. *See State v. Kronenberg*, 8th Dist. Cuyahoga No. 101403, 2015-Ohio-1020, ¶ 27 (a trial court's sentencing journal entry that states the court considered the statutory factors is sufficient to fulfill its obligations under the sentencing statutes).

{¶ 17} Noori's argument essentially asks this court to review whether the record supports the trial court's decision to impose a prison term rather than community control sanctions. However, in *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649, the Supreme Court of Ohio held that R.C. 2953.08(G)(2)(a) "does not provide a basis for an appellate court to modify or vacate a sentence if it concludes that the record does not support the sentence under R.C. 2929.11 and 2929.12." *Jones* at ¶ 31. The Supreme Court also found that R.C. 2953.08(G)(2)(b), which is the "otherwise contrary to law" provision, "does not provide a basis for an appellate court to modify or vacate a sentence based on its

view that the sentence is not supported by the record under R.C. 2929.11 and 2929.12.” *Jones* at ¶ 39.

{¶ 18} Nevertheless, the Supreme Court has held that appellate courts may review a sentence “when the claim is that the sentence was imposed based on impermissible considerations — i.e., considerations that fall outside those that are contained in R.C. 2929.11 and 2929.12.” *Bryant*, 168 Ohio St.3d 250, 2022-Ohio-1878, 198 N.E.3d 68, at ¶ 22. “Nothing 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.” *Jones* at ¶ 42. In other words, R.C. 2953.08 “precludes second-guessing a sentence imposed by a trial court based on its weighing of the considerations in R.C. 2929.11 and 2929.12.” *State v. Toles*, 166 Ohio St.3d 397, 2021-Ohio-3531, 186 N.E.3d 784, ¶ 10, citing *Jones*.

{¶ 19} Under our limited review as described above, this court has no authority to reverse or modify Noori’s sentence and, thus, Noori’s assignment of error is overruled. While it is not the province of this court to substitute its judgment for that of the trial judge, we note that this court might not have sentenced Noori to 11 months in prison. The state did not concede that Dragovich provoked the incident nor that the incident was Dragovich’s fault, yet the record indicates Noori was subjected to continuous bullying by Dragovich and the incident that led to Noori’s criminal charges began when Dragovich, while approaching Noori, picked up a screwdriver. The assistant prosecuting attorney did not ask for prison time, but

requested an appropriate sanction. And Noori may not have served with the U.S. military, but he and his family aided our troops in Iraq.

{¶ 20} 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.

MARY EILEEN KILBANE, JUDGE

ANITA LASTER MAYS, A.J., and
SEAN C. GALLAGHER, J., CONCUR