

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 112201
 v. :
 :
 JANIRY RIVERA, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 31, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-22-667595-A

Appearances:

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

Allison S. Breneman, *for appellant*.

MICHELLE J. SHEEHAN, P.J.:

{¶ 1} Defendant-appellant Janiry Rivera, having pleaded guilty to one count of felonious assault, appeals the prison sentence imposed by the trial court. Because the trial court considered the applicable sentencing statutes and the sentence is not contrary to law, we affirm the judgment.

RELEVANT FACTS AND PROCEDURAL HISTORY

{¶ 2} On February 16, 2022, Rivera was indicted along with her codefendant, Christopher Burley, for two counts of felonious assault in violation of R.C. 2903.11(A)(2), with one- and three-year firearm specifications, and one count of improper handling of a firearm in a motor vehicle in violation of R.C. 2923.16(B), a felony of the fourth degree. The charges were the result of a shooting occurring on February 4, 2022, in North Olmsted, Ohio. Rivera's codefendant Burley was additionally charged with one count of failure to comply with the order or signal of a peace officer in violation of R.C. 2921.331(B), also with a firearm specification.

{¶ 3} On October 24, 2022, Rivera entered into a plea bargain in which she pleaded guilty to one count of felonious assault in violation of R.C. 2911.12(A)(2) with the firearm specifications deleted. On a separate date, Burley also entered into a plea agreement with the state, entering guilty pleas to one count of improperly handling firearms and one count of failure to comply.

{¶ 4} On November 29, 2022, the trial held a sentencing hearing for both Rivera and Burley. At the hearing, one of the victims of the felonious assault, J.J., told the court of the events that lead to the shooting. While J.J. and her sister were driving to get coffee, they saw Rivera and Burley. Burley and J.J. yelled at each other. Burley brandished a gun and pointed it at J.J. and her sister. J.J.'s sister called 911, and J.J. pulled into a parking lot to wait for police. Burley followed and parked nearby. Burley got out of his car and went to J.J. where they argued. Burley returned to his car, leaving his gun there. Burley went back to J.J. and spit on her.

J.J. said Rivera had moved in and out of Burley's car and yelled at J.J. to fight. When Burley finally went back to his car, Rivera argued with him; she then used Burley's gun to shoot at J.J. and her sister, hitting their vehicle. The prosecutor told the trial court that after the shooting, Burley and Rivera left the scene with Burley later fleeing police.

{¶ 5} Regarding the sentence to be imposed, J.J. told the trial court Rivera threatened her in the past and "deserved some time." She also said that Rivera was 21 years old and "deserved a lesson" because "she's the one that fired the gun." J.J. also told the trial court that after posting bond, Rivera held a jail-themed birthday party with her family. J.J. found that act indicative that Rivera showed no remorse for the shooting.

{¶ 6} Rivera apologized to the trial court, her victims, and their families. She said it was not her intention to harm anyone. Rivera told the trial court she was involved with the wrong person, her emotions get the best of her, and that she has been staying away from social media since the incident. Rivera explained the theme of her birthday party by stating she was the first person in her family to be in jail and her family was trying to make light of that fact, not the circumstances of the case.

{¶ 7} Rivera's counsel said his client was remorseful and that Rivera had almost completed a degree in psychology at Cleveland State University. He also informed the court Rivera had been diagnosed with a mental disorder and is in counseling. When requesting that the trial court impose a community-control

sentence, counsel noted Rivera had no prior convictions and the full support of family.

{¶ 8} Before pronouncing sentence, the trial court stated it took into consideration that Rivera had no prior offenses. However, the trial court stated that it also considered “how serious this could be. And how fortunate the victim was that she was not — that she didn’t have contact with the bullet.” The court imposed a four-year prison sentence.¹ In the journal entry of conviction, the trial court stated it considered all required factors of law and found a prison sentence to be consistent with the purpose of R.C. 2929.11.²

LAW AND ARGUMENT

{¶ 9} Rivera raises one assignment of error, which reads:

The trial court abused its discretion by imposing a prison sentence contrary to R.C. 2929.14 and the purposes and principles of the felony sentencing guidelines.

{¶ 10} Rivera argues that the trial court abused its discretion by imposing a four-year prison sentence where she presented mitigating factors to the trial court in that she had no prior criminal convictions, she was a college student, she suffered

¹ Burley was sentenced to serve an aggregate term of 17 months in prison.

² The trial court did not impose an indefinite sentence in accord with the Reagan Tokes Law. Because this error in the sentence was not raised by either Rivera or the state, we will not address it. *See State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, ¶ 27 (“[I]f a court has jurisdiction over the case and the defendant, any sentence based on an error in the court’s imposition of postrelease control is voidable. The sentence may be set aside only if it is successfully challenged on direct appeal.”).

from a mental disorder and was in counseling, and that she expressed remorse. The state argues that the trial court considered the applicable sentencing factors and imposed a sentence in accordance with the law.

{¶ 11} We do not review felony sentences to determine whether the trial court abused its discretion; we employ the standard of review for felony sentences set forth in R.C. 2953.08(G)(2). *State v. Marcum*, 146 Ohio St. 3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 9-10. The standard of review for felony sentences is set forth in R.C. 2953.08(G)(2). *Id.* at ¶ 9. Pursuant to R.C. 2953.08(G)(2), this 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” if we “clearly and convincingly” find the record does not support the sentencing court’s statutory findings under certain statutes that are not relevant in this appeal, or that the sentence is “otherwise contrary to law.” “[A] sentence is ‘contrary to law’ if (1) the sentence falls outside the statutory range for the particular degree of offense, or (2) the trial court fails to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors in R.C. 2929.12.” *State v. Whitaker*, 8th Dist. Cuyahoga Nos. 107584 and 107967, 2019-Ohio-2823, ¶ 11. Further, our review of felony sentences is limited and we do not weigh the factors in R.C. 2929.11 and 2929.12. *State v. Viers*, 8th Dist. Cuyahoga No. 111303, 2022-Ohio-4083, ¶ 31, citing *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649, ¶ 42.

{¶ 12} Rivera pleaded guilty to felonious assault, a felony of the second degree. R.C. 2929.13(D) provides that there is a presumption of a prison sentence for felonies of the second degree. Further, R.C. 2929.14(A)(2)(a) provides that the minimum term of incarceration for a felony of the second degree is to be a prison sentence of two, three, four, five, six, seven, or eight years. The four-year prison sentence imposed by the trial court is within the range of applicable sentences. Further, the record reflects the trial court considered the purposes and principles of sentencing in R.C. 2929.11, the factors set forth in R.C. 2929.12, and the mitigation offered by Rivera. As such, our review of the sentence does not lead us to clearly and convincingly find the sentence to be contrary to law.

{¶ 13} Rivera's assignment of error is overruled.

CONCLUSION

{¶ 14} Rivera fired a weapon at two people and hit the vehicle they were in. She entered a plea of guilty to felonious assault, a felony of the second degree, and was sentenced to serve a term of four years in prison. The record reflects the trial court considered the applicable sentencing statutes and the mitigation evidence offered by Rivera in imposing sentence. Because the trial court considered the applicable sentencing statutes and the mitigation and imposed a prison sentence within the range authorized by law, the sentence is not clearly and convincingly contrary to law.

{¶ 15} Judgment affirmed.

It is ordered that appellee recover of 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 appeal 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.

MICHELLE J. SHEEHAN, PRESIDING JUDGE

LISA B. FORBES, J., and
MICHAEL JOHN RYAN, J., CONCUR