

[Cite as *State v. Carter*, 2004-Ohio-6365.]

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

LAMONT CARTER

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 04 CA 8

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 02 CR 031

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 23, 2004

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Wise, J.

{¶1} Appellant Lamont Carter appeals the sentence rendered by the Coshocton County Court of Common Pleas on the basis that it imposes an unnecessary burden on the state's resources. The following facts give rise to this appeal.

{¶2} In March 2002, the Coshocton County Grand Jury indicted appellant on one count of trafficking in more than 25 grams, but less than 100 grams of crack cocaine, which is a first degree felony. This matter proceeded to trial and following deliberations, the jury returned a guilty verdict. The trial court conducted a sentencing hearing on October 18, 2002. The trial court sentenced appellant to eight years imprisonment, a mandatory \$10,000 fine and a five-year driver's license suspension.

{¶3} Appellant timely appealed his conviction to this Court. On January 5, 2004, we affirmed appellant's conviction but remanded the matter for re-sentencing. In doing so, we stated:

{¶4} "Upon review of the transcript of the sentencing hearing, we find the trial court failed to state on the record at the sentencing hearing the findings required by R.C. 2929.14(E)(4)¹ and *Comer*, supra. We therefore hold that a remand for resentencing is warranted." *State v. Carter*, Coshocton App. No. 02 CA 028; 2004-Ohio-39, at ¶65.

{¶5} Following remand, the trial court conducted a re-sentencing hearing. Defense counsel requested the trial court to impose a minimum sentence or a sentence less than eight years because appellant was a first-time offender. The trial court reviewed the pre-sentence investigation report, addressed the recidivism and

¹ R.C. 2929.14(E)(4) addresses consecutive sentences. We believe the Court intended to cite R.C. 2929.14(B).

seriousness factors contained in R.C. 2929.12 and the facts presented at trial. Thereafter, the trial court again imposed an eight-year prison term.

{¶6} Appellant timely filed a notice of appeal and sets forth the following assignment of error for our consideration:

{¶7} “THE IMPOSITION OF A PRISON SENTENCE IN THIS CASE IMPOSES AN UNNECESSARY BURDEN ON STATE RESOURCES.”

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{¶8} Appellant maintains, in his sole assignment of error, the imposition of an eight-year prison sentence results in an unnecessary burden on state resources. We disagree.

{¶9} In support of this argument, appellant cites R.C. 2929.13(A), which provides that, “[t]he sentence shall not impose an unnecessary burden on state or local government resources.” Appellant argues the eight-year prison term rendered by the trial court creates an unnecessary burden, on the state, because he committed the crime only to make money.

{¶10} Appellant did not use a weapon or make threats while committing the crime. There was no victim in the case. The offense occurred when appellant sold 35 grams of crack cocaine, valued at \$1,500, to a confidential informant. Appellant argues there are no factors indicating this conduct was more serious under R.C. 2929.12. Further, the only factor cited by the trial court concerning the issue of recidivism was appellant’s juvenile convictions and adult misdemeanors. Appellant contends these facts warrant the minimum sentence.

{¶11} R.C. 2953.08(G)(2) addresses an appellate court's review of an appeal from a felony sentence. This statute provides:

{¶12} "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.

{¶13} "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 of 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 either of the following:

{¶14} "(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (E)(4) of section 2929.14, or division (H) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

{¶15} "(b) That the sentence is otherwise contrary to law."

{¶16} Based upon R.C. 2953.08, we find a question arises as to whether appellant has a right to appeal his sentence upon the grounds that it is an unnecessary burden on the state's resources. We recently addressed this issue in *State v. Miller*, Ashland App. No. 04-COA-003, 2004-Ohio-4636. In the *Miller* decision, we rejected this argument noting that:

{¶17} "R.C. 2953.08 does not specify this [unnecessary burden on the state's resources] as grounds for appealing a sentence in a criminal case as a matter of right. Appellant does not argue that the trial court failed to make the required findings

pursuant to R.C. 2929.12. Nor does appellant argue the trial court erred in finding that appellant was not amenable to an available community control sanction. Appellant fails to support his argument that the imposition of prison sanction in this case, constitutes an ‘unnecessary burden on State or local resources.’” [Citations omitted.] Id. at ¶22.

{¶18} In reaching this conclusion, in *Miller*, we cited the case of *State v. Ober* (Oct. 10, 1997), Greene App. No. 97CA0019. In *Ober*, the Second District Court of Appeals explained:

{¶19} “* * * Courts may consider whether a criminal sanction would unduly burden resources when deciding whether a second degree felony offender has overcome the presumption in favor of imprisonment because the resource principle is consistent with the overriding purposes and principles of felony sentencing set forth in R.C. 2929.11. [Citation omitted.]

{¶20} “Although resource burdens may be a relevant sentencing criterion, R.C. 2929.13(D) does not require trial courts to elevate resource conservation above the seriousness and recidivism factors. Imposing a community control sanction on Ober may have saved state and local government funds; however, this factor alone would not usually overcome the presumption in favor of imprisonment.” *Miller* at ¶24, ¶25, quoting *Ober* at 4.

{¶21} Although appellant assigns the above argument as error, in his brief, appellant essentially argues the trial court erred when it refused to impose the minimum sentence. R.C. 2929.14(B) requires a sentencing court to sentence a first offender to the shortest term authorized unless the court “finds on the record that the shortest prison term will demean the seriousness of the offender’s conduct or will not adequately

protect the public from future crime by the offender or others.” Pursuant to R.C. 2929.14(B), when imposing a nonminimum sentence on a first offender, a trial court is required to make its statutorily sanctioned findings at the sentencing hearing. *State v. Comer*, 99 Ohio St.3d 463, paragraph two of the syllabus, 2003-Ohio-4165.

{¶22} However, R.C. 2929.14(B) does not require the trial court to give its reasons for its finding that the seriousness of the offender’s conduct will be demeaned or that the public will not be adequately protected from future crimes before it can lawfully impose more than the minimum authorized sentence. *State v. Edmonson*, 86 Ohio St.3d 324, syllabus, 1999-Ohio-110. In *Edmonson*, the Ohio Supreme Court stated that “[t]he structure of the various sentencing statutes suggests that the General Assembly approached felony sentencing by mandating a record reflecting that judges considered certain factors and presumptions to confirm that the court’s decision-making process included all of the statutorily required sentencing consideration.” *Id.* at 327.

{¶23} In the case sub judice, the trial court made the necessary findings mandated by R.C. 2929.14(B) when it chose not to impose the minimum sentence. Specifically, pursuant to R.C. 2929.14(B)(2), the trial court stated, “* * * the shortest prison term available would demean the seriousness of the defendant’s conduct and will not adequately protect the public from future crime by the defendant or others.” *Tr. Sentencing Hrng.*, Feb. 12, 2004, at 36. Having made this finding, the trial court was permitted to impose a prison term that exceeded the minimum sentence for this particular offense.

{¶24} Further, the trial court identified the factors that established a likelihood of recidivism and found no factors present to indicate that recidivism was unlikely. *Id.* at

36-37. Finally, the trial court also discussed factors regarding the seriousness of the offense. *Id.* at 37.

{¶25} Based upon our review of the record, we conclude the trial court properly sentenced appellant to an eight-year prison term, even though such sentence exceeds the minimum authorized sentence.

{¶26} Appellant's sole assignment of error is overruled.

{¶27} For the foregoing reasons, the judgment of the Court of Common Pleas, Coshocton County, Ohio, is hereby affirmed.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.

JUDGES

