[Cite as *State v. Heidorn*, 2004-Ohio-3749.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-030700 TRIAL NO. B-0302520
Plaintiff-Appellee,	:	*D E C I S I O N.*
vs.	:	
STEVEN HEIDORN,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: July 16, 2004

Michael K. Allen, Hamilton County Prosecuting Attorney, and *Judith Anton Lapp*, Assistant Prosecuting Attorney, for Appellee,

Michaela M. Stagnaro, for Appellant.

Please note: This case has been removed from the accelerated calendar.

MARK P. PAINTER, Judge.

{¶1} Defendant-appellant Steven Heidorn, while intoxicated, drove the wrong way on Interstate 75 and hit another vehicle head-on, killing the passenger in his vehicle and seriously injuring the driver of the other vehicle. Heidorn pleaded guilty and was convicted of aggravated vehicular assault[1] and aggravated vehicular homicide.[2] The trial court imposed a sentence of four years' incarceration for each conviction, to be served concurrently, along with a permanent revocation of Heidorn's driver's license. Heidorn now appeals, arguing that the trial court improperly sentenced him. We affirm.

{¶2} Heidorn's convictions for aggravated vehicular assault and aggravated vehicular homicide were third-degree and second-degree felonies, respectively. The third-degree felony carried a mandatory prison term of one, two, three, four, or five years, while the second-degree felony carried a mandatory prison term of two, three, four, five, six, seven, or eight years.[3]

{¶3} If a sentencing court imposes a prison term on a felony offender who has not previously served a prison term, the court must impose the shortest prison term authorized, unless "[t]he 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."[4]

[1] R.C. 2903.08(A)(1).
[2] R.C. 2903.06(A)(1).
[3] R.C. 2929.14(A)(2) and (3).
[4] R.C. 2929.14(B)(2).

{¶4} Heidorn contends that the trial court did not make the required findings on the record in support of a sentence greater than the minimum. He also claims that a minimum sentence would not have demeaned the seriousness of his conduct and would have adequately protected the public. He further asserts that the trial court should have considered more lenient sentences imposed in other similar cases.

{¶5} An appellate court may modify a sentence only if it clearly and convincingly finds that the record does not support the sentencing court's findings or that the sentence is contrary to law.[5]

{¶6} The difficulty with Heidorn's argument is that Heidorn's trial counsel, both in his written sentencing memorandum to the trial court and orally at the sentencing hearing, stated that Heidorn had admitted that a minimum sentence would demean the seriousness of his crime.

{¶7} In the sentencing memorandum, Heidorn's counsel wrote, "The Defendant further concedes that the minimum term would demean the seriousness of the Defendant's conduct although the Defendant respectfully submits that any prison term serves to protect the public from future crime by this particular Defendant." At the sentencing hearing, Heidorn's counsel stated, "And I agreed in my sentencing memorandum with Mr. Gibson [the prosecuting attorney], that indeed this is such a serious thing that I understand the Court's position. And I agree with Mr. Gibson that a minimum sentence, the Court may well find, may demean the seriousness, and then we agree that the issue is just how many years the Court feels is a fair sentence."

{¶8} It is clear that both parties and the court understood that Heidorn acknowledged that he should not receive the minimum sentence. The prosecuting

[5] R.C. 2953.08(G)(2).

attorney stated to the court that Heidorn's sentence "cries out for a prison term of more than the minimum, and I think the defense concedes that in their sentencing memorandum."

{¶9} Under *State v. Comer*, "when imposing a nonminimum sentence on a first offender, a trial court is required to make its statutorily sanctioned findings at the sentencing hearing."[6] While the trial court did not explicitly state on the record at the sentencing hearing that imposing more than the minimum sentence would demean the seriousness of Heidorn's conduct, we agree with the state that Heidorn had clearly agreed that he should not receive the minimum sentence.

{¶10} Under the invited-error doctrine, a party is not entitled to take advantage of an error that he himself invited or induced the trial court to make.[7] Therefore, Heidorn cannot now claim that the imposition of more than the minimum sentence was in error when he and his counsel chose to pursue a strategy at the sentencing hearing that included acknowledging that a minimum sentence would demean the seriousness of his conduct.

{¶11} And while Heidorn has not asserted that he received ineffective assistance of counsel, we are convinced that it was a rational strategy for Heidorn's counsel to acknowledge the seriousness of what Heidorn had done in an effort to plead for leniency from the sentencing court. We note that, faced with a mandatory prison sentence of anywhere between three and thirteen years, Heidorn received four years of incarceration, only one year more than the minimum.

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[6] 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473, paragraph two of the syllabus.
[7] See *State ex rel. Ohio Dept. of Mental Health v. Nadel*, 98 Ohio St.3d 405, 2003-Ohio-1632, 786 N.E.2d 49, at ¶22.

{¶12} Finally, Heidorn argues that the trial court should have considered other cases in which similar crimes were committed by similar offenders. Heidorn's trial counsel submitted numerous examples to the trial court of similar offenses in which some defendants received fewer than four years of incarceration.

{¶13} But the state has included examples in its brief of cases in which defendants received more than four years of incarceration for the same offenses. Regardless, a trial court is not required to engage in an analysis on the record to determine whether defendants who have committed similar crimes have received similar punishments.[8] The goal of the sentencing guidelines is consistency, not uniformity.[9] Consistency requires a trial court to weigh the same factors for each defendant, which ultimately results in an outcome that is rational and predictable.[10]

{¶14} Thus, the only way for Heidorn to demonstrate that his sentence was inconsistent is if he can show that the trial court failed to properly consider the factors and guidelines contained in the sentencing statutes, or that substantially similar offenders, committing substantially similar offenses, and having substantially similar records, behavior, and circumstances, received grossly disproportionate sentences.

{¶15} The record indicates that the trial court considered the sentencing guidelines and factors, and also considered the particular facts of Heidorn's case. At the sentencing hearing, numerous family members and friends spoke on Heidorn's behalf. The court also heard statements from Cincinnati Police Specialist Mike Flamm, who was the first officer on the scene of the crash. In addition, the court heard statements and read

[8] See *State v. Mayes*, 8th Dist. No. 82592, 2004-Ohio-2014, at ¶45; *State v. Quine*, 9th Dist. No. 20968, 2002-Ohio-6987, at ¶12.
[9] See *State v. Agner*, 3rd Dist. No. 8-02-28, 2003-Ohio-5458, at ¶12; *State v. Quine*, supra, at ¶12.
[10] See *State v. Quine*, supra, at ¶12.

victim-impact reports from the driver of the vehicle Heidorn had hit and from several members of the deceased passenger's family.

{¶16} We conclude that the trial court complied with the sentencing statutes and that Heidorn's sentence was not contrary to law. We further conclude that the record supports the imposition of two concurrent four-year prison terms and the permanent revocation of Heidorn's driver's license. Therefore, we overrule Heidorn's assignment of error and affirm the trial court's judgment.

Judgment affirmed.

DOAN, P.J., and **HILDEBRANDT, J.,** concur.

Please Note:

The court has recorded its own entry on the date of the release of this decision.