

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
ADAMS COUNTY

STATE OF OHIO, : Case No. 19CA1082  
Plaintiff-Appellee, :  
v. : DECISION AND  
 : JUDGMENT ENTRY  
DANIELLE JOHNSON, :  
Defendant-Appellant. : **RELEASED: 07/17/2019**

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APPEARANCES:

Brian T. Goldberg, Cincinnati, Ohio, for appellant.

David Kelley, Adams County Prosecutor, and Kris D. Blanton, Adams County Assistant Prosecutor, West Union, Ohio, for appellee.

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Hess, J.

{¶1} Danielle Johnson pleaded guilty to aggravated trafficking in drugs, a third-degree felony, and the trial court sentenced her to 30 months in prison. Johnson maintains her sentence is excessive. She argues she has a severe drug problem for which she has sought treatment, has participated in a program to obtain help with housing and other matters, accepted responsibility by pleading guilty, and acted as only a middle person in the drug transaction at issue. However, she failed to establish by the requisite clear and convincing evidence that her prison term is contrary to law or not supported by the record. Thus, we affirm the trial court's judgment.

## I. FACTS

{¶2} Johnson sold an undercover police officer approximately 6.9 grams of methamphetamine, and the Adams County grand jury indicted her on one count of aggravated trafficking in drugs in violation of R.C. 2925.03(A)(1), a third-degree felony because the crime involved a Schedule II controlled substance in an amount equal to or greater than the bulk amount but less than five times the bulk amount. See R.C. 2925.03(C)(1)(c); R.C. 3719.41, Schedule II(C)(2); R.C. 2925.01(D)(1)(g). Johnson initially pleaded not guilty but later pleaded guilty as charged. At the change of plea hearing, Johnson told the court she acted as a “middle man” in the drug transaction.

{¶3} The trial court accepted the plea, ordered a presentence investigation, and scheduled the sentencing hearing for June 20, 2018. Subsequently, Johnson violated the terms of her bond because she tested positive for use of methamphetamine. She failed to appear for the sentencing hearing, and the trial court ordered that a *capias* be issued for her arrest.

{¶4} The sentencing hearing ultimately took place on January 9, 2019. Johnson’s counsel explained that Johnson had entered Woodhaven Residential Center on July 13, 2018, and had been medically discharged on August 7, 2018. She went to the Southern Ohio Medical Center and received medical clearance, but Woodhaven would not allow her to return. Johnson then went to Recovery Counsel. She completed a residential program and at the time of sentencing was involved in a transitional program to obtain help with housing, employment, and legal matters. Johnson told the court that she had been clean for six months, and her father spoke on her behalf.

{¶5} The trial court noted that Johnson received a high score on the Ohio Risk Assessment System, indicating she was likely to reoffend. She had “eight prior felony convictions, three misdemeanor convictions, and five felony juvenile convictions.” Her community control had been revoked on two occasions, and she had violated conditions of bond multiple times. The court also found that she was not remorseful. After considering the record, oral statements, presentence investigation report, principles and purposes of felony sentencing in R.C. 2929.11(A), and seriousness and recidivism factors in R.C. 2929.12, the trial court sentenced her to 30 months in prison.

## II. ASSIGNMENT OF ERROR

{¶6} Johnson assigns the following error for our review:

THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY IMPOSING A SENTENCE OF THIRTY MONTHS, WHEN THAT SENTENCE WAS NOT SUPPORTED BY THE RECORD.

## III. STANDARD OF REVIEW

{¶7} When reviewing felony sentences appellate courts must apply the standard of review 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, ¶ 1, 7. R.C. 2953.08(G)(2) provides that “[t]he appellate court’s standard for review is not whether the sentencing court abused its discretion”; rather, the appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either:

- (a) That the record does not support the sentencing court’s findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;
- (b) That the sentence is otherwise contrary to law.

{¶8} “Although R.C. 2953.08(G)(2)(a) does not mention R.C. 2929.11 and 2929.12, the Supreme Court of Ohio has determined that the same standard of review applies to those statutes.” *State v. Shankland*, 4th Dist. Washington Nos. 18CA11 & 18CA12, 2019-Ohio-404, ¶ 19, citing *Marcum* at ¶ 23.

{¶9} “The defendant bears the burden of establishing by clear and convincing evidence that the sentence is either contrary to law or not supported by the record.” *Id.* at ¶ 20. Clear and convincing evidence is

that measure or degree of proof which is more than a mere “preponderance of the evidence,” but not to the extent of such certainty as is required “beyond a reasonable doubt” in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.

*State ex rel. Rogers v. Dept. of Rehab. & Correction*, 155 Ohio St.3d 545, 2018-Ohio-5111, 122 N.E.3d 1208, ¶ 5, quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

#### IV. ANALYSIS

{¶10} In the sole assignment of error, Johnson maintains that her prison term is excessive. Johnson’s sentence is not contrary to law because it was within the statutory range, the trial court stated that it considered the factors in R.C. 2929.11 and 2929.12, and it had no obligation to make specific findings regarding these factors. See *State v. Brown*, 4th Dist. Ross No. 18CA3643, 2018-Ohio-5431, ¶ 30; R.C. 2929.14(A)(3)(b) (prison term for a third-degree felony not enumerated in R.C. 2929.14(A)(3)(a) shall be “nine, twelve, eighteen, twenty-four, thirty, or thirty-six months”). However, Johnson asserts that the record does not support her sentence because it demonstrates she has a severe drug problem, sought treatment during the

pendency of this case, participated in a transitional program, accepted full responsibility for her actions by pleading guilty, and served as only a middle person in the drug transaction. Johnson complains that her sentence is only six months less than the maximum sentence even though she “clearly needs drug treatment and not incarceration.” She asks this court to reduce her sentence or vacate it and remand for a new sentencing hearing.

{¶11} Johnson challenges the weight the trial court accorded the pertinent sentencing factors. “We have consistently rejected similar contentions. Simply because the court did not balance the factors in the manner appellant desires does not mean that the court failed to consider them, or that clear and convincing evidence shows that the court’s findings are not supported by the record.” *Brown* at ¶ 36. “[P]recedent refutes any contention that each statutory or other relevant factor is entitled to equal or a certain weight in the balancing process.” *State v. Yost*, 4th Dist. Meigs No. 17CA10, 2018-Ohio-2719, ¶ 19. And here, the trial court was free to place additional weight on Johnson’s criminal background, failure to comply with the terms of her bond, and failure to appear for the initial sentencing hearing.

{¶12} Johnson did not meet her burden to establish by clear and convincing evidence that her prison term is either contrary to law or not supported by the record. Thus, we overrule the sole assignment of error and affirm the trial court’s judgment.

JUDGMENT AFFIRMED.

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Adams County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Smith, P.J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: \_\_\_\_\_  
Michael D. Hess, Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**