

[Cite as *State v. Young*, 2022-Ohio-4223.]

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

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case
 No. 22CA10 :
 :
 v. :
 :
 JOSHUA YOUNG, : DECISION AND
 : JUDGMENT ENTRY
 :
 Defendant-Appellant. :

APPEARANCES:

Jeffery M. Blosser, Columbus, Ohio, for appellant.

Jeffrey C. Marks, Ross County Prosecuting Attorney, and Pamela C. Wells, Ross County Assistant Prosecuting Attorney, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:11-17-22
ABELE, J.

{¶1} This is an appeal from a Ross County Common Pleas Court judgment of conviction and sentence. Joshua Young, defendant below and appellant herein, raises one assignment of error for review:

“THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY SENTENCING HIM IN CONTRAVENTION OF OHIO’S SENTENCING STATUTES.”

{¶2} On December 3, 2021, the Ross County Grand Jury

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returned an indictment that charged appellant with two counts of Unlawful Sexual Conduct with a Minor, both felonies of the third degree. On February 22, 2022, appellant pleaded guilty to one count of the indictment and the trial court dismissed the second count. On March 10, 2022, appellant appeared, with counsel, for sentencing. The parties jointly recommended to the court a sentence of three years in prison. The court, however, rejected the joint recommendation and, instead, imposed the maximum five year sentence. This appeal followed.

{¶3} In his sole assignment of error, appellant asserts that the trial court did not impose a sentence that complies with Ohio's sentencing statutes. In particular, appellant argues that the court failed to fully consider the purposes and principles of felony sentencing under R.C. 2929.11 and 2929.12. In support of his argument, appellant cites the dissenting opinion in *State v. Jones*. 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.2d 649.

{¶4} Appellee, however, argues, as appellant also acknowledges, that the Ohio Supreme Court held in *Jones* that appellate courts cannot review trial court sentences for compliance with R.C. 2929.11 and 2929.12. In *Jones*, the court held that R.C. 2953.08(G)(2)(b) does not provide a basis for an appellate court to modify or vacate a sentence based on its view

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that the sentence is not supported by the record under R.C. 2929.11 and 2929.12. *Jones*.

{¶5} Moreover, in *State v. Poole*, 4th Dist., Adams NO. 21CA1151, 2022-Ohio-2391, this court wrote:

Because both R.C. 2929.11 and R.C. 2929.12 require the trial court to consider the factors outlined in those two statutory provisions, *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 31, then a trial court's failure to consider the factors would render the sentence "in violation of statute" and thus "contrary to law." This was our established precedent prior to *Jones* and nothing in our interpretation of *Jones* requires us to abandon it. *State v. Allen*, 4th Dist. Pickaway No. 19CA31, 2021-Ohio-648, ¶ 19 ("under the Supreme Court's decision in *Jones*, a reviewing court no longer needs to determine whether a trial court's consideration of the factors in R.C. 2929.11 and 2929.12 are supported in the record. The court's consideration of the factors enumerated in these statutes is sufficient"); see also *State v. Neal*, 4th Dist. Lawrence Nos. 14CA31 & 14CA32, 2015-Ohio-5452, ¶ 55 ("A sentence is contrary to law * * * if the trial court fails to 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"). "Although a trial court has a mandatory duty to consider the relevant statutory factors under R.C. 2929.11 and 2929.12, the trial court is not required to specifically analyze each factor on the record or to explain its reasoning before imposing a sentence." *Id.* at ¶ 58; *Jones* at ¶ 20, citing *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 31.

{¶6} In the case sub judice, our review of the transcript and sentencing entry reveals that the trial court considered both R.C. 2929.11 and R.C. 2929.12. A trial court's statement

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in its sentencing entry that it considered the applicable statutory factors is sufficient to fulfill a court's obligations under R.C. 2929.11 and 2929.12. *State v. Neal*, 4th Dist. Lawrence Nos. 14CA31 & 14CA32, 2015-Ohio-5452 at ¶ 59.

{¶7} Consequently, the record in this case clearly and convincingly supports the sentence that the trial court imposed. Here, the trial court specifically considered the factors enumerated in R.C. 2929.11 and 2929.12. Although we recognize that appellant seeks to have this court adopt the dissenting view expressed in *Jones*, we, as an intermediate level appellate court, are obligated to follow Ohio Supreme Court decisions. Thus, appellant seeks appellate review of sentencing factors that this court is not empowered to conduct, regardless of the merit in appellant's argument.

{¶8} Accordingly, based upon the foregoing reasons, we overrule appellant's assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

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JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the 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 Ross 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, it is continued for a period of 60 days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the 60-day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the 45-day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said 60 days, the stay will terminate as of the date of such dismissal.

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

Smith, P.J. & Hess, J.: Concur in Judgment & Opinion

For the Court

BY: _____

Peter B. Abele, Judge

NOTICE TO COUNSEL

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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.