

[Cite as *State v. Williams*, 2002-Ohio-2695.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 18993

vs. : T.C. CASE NO. 01-CR-311

JOSEPH R. WILLIAMS : (Criminal appeal from
Court of Common Pleas)

Defendant-Appellant :

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O P I N I O N

Rendered on the 31st day of May, 2002.

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GRADY, J.

{¶1} Defendant, Joseph Williams, appeals from his conviction and sentence for aggravated robbery and felonious assault.

{¶2} Williams was a participant in a robbery during which the victim was shot. Williams was indicted on one count of aggravated robbery, R.C. 2911.01(A)(1), and one count of felonious assault, R.C. 2903.11(A)(2). A three year gun specification was attached to each charge, per R.C.

2941.145.

{¶3} Williams entered guilty pleas to both charges pursuant to a negotiated plea agreement. In exchange, the State dismissed the gun specifications. The trial court sentenced Williams to five years imprisonment on the aggravated robbery and four years on the felonious assault, the sentences to run concurrently.

{¶4} Williams has timely appealed to this court from his conviction and sentence.

FIRST ASSIGNMENT OF ERROR

{¶5} "THE TRIAL COURT ERRED BY FAILING TO GIVE THE MANDATORY NOTIFICATIONS REQUIRED BY O.R.C.2929.19(B)(3) TO DEFENDANT, JOSEPH R. WILLIAMS, AT THE SENTENCING HEARING."

{¶6} R.C. 2929.19(B)(3) requires the trial court, when imposing a prison term, to provide certain notifications to the offender at sentencing. The statute provides in relevant part:

{¶7} "Subject to division (B)(4) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

{¶8} ** * *

{¶9} "(b) Notify the offender that, as part of the sentence, the parole board may extend the stated prison term for certain violations of prison rules for up to one-half of the stated prison term;

{¶10} "(c) Notify the offender that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree, for a felony sex offense, or for a felony of the third degree in the commission of which the offender caused or threatened to cause physical harm to a person;

{¶11} "* * *

{¶12} "(e) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section 2967.131 of the Revised Code, the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender;

{¶13} "(f) Require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in section 341.26, 753.33, or 5120.63 of the Revised Code, whichever is applicable to the offender who is serving a prison term, and require that the results of the drug test administered under any of those sections indicate that the offender did not ingest or was not injected with a drug of abuse."

{¶14} Pursuant to R.C. 2967.11, the parole board has

authority to punish a violation of prison rules by extending a prisoner's sentence, the so called "bad time" provision. R.C. 2929.19(B)(3)(b) requires the trial court to notify an offender of that fact at the sentencing hearing. In *State ex rel. Bray v. Russell* (2000), 89 Ohio St.3d 132, the Ohio Supreme Court struck down R.C. 2967.11 as an unconstitutional violation of the separation of powers doctrine. Accordingly, the trial court's failure in this case to notify Williams about the "bad time" provision, which is no longer in force, is harmless error. *State v. Woods* (Mar. 15, 2001), Cuyahoga App. No. 77713, unreported.

{¶15} R.C. 2929.19(B)(3)(c) and (e) require the trial court to advise an offender at sentencing that upon his release from prison he may be required to serve a period of "post release control" under the supervision of the parole board pursuant to R.C. 2967.28, and the consequences for violating any provision of that post release control, including imposition of additional prison time up to one-half of the original sentence imposed by the trial court.

{¶16} The trial court did not orally provide this notification to Williams or address post release control during sentencing. Nevertheless, Williams was adequately advised about post release control. The plea form which Williams signed contained information about the terms of his post release control and the potential penalty for violating it. Likewise, the trial court's sentencing/termination entry contained information about post release control. Such

notification is sufficient to satisfy the requirements of R.C. 2967.28 and R.C. 2929.19(B)(3). *Woods v. Telb* (2000), 89 Ohio St.3d 504; *State v. Bassett* (August 30, 2001), Crawford App. No. 3-01-07, unreported; *State v. Yoho* (Feb. 14, 2000), Belmont App. No. 99-BA-10, unreported.

{¶17} R.C. 2929.19(B)(3)(f) requires that the trial court admonish an offender who is sentenced to serve a prison term to not use drugs. With respect to Williams' complaint that the trial court failed to comply with this provision during sentencing, our previous rejection of this same claim applies in this case:

{¶18} "In *State v. McDargh, supra*, we disposed of this same claim in the following manner:

{¶19} "Appellant does not indicate how he was prejudiced by the trial court's failure to comply with the requirements of R.C. 2929.19(B)(3)(f).

{¶20} "R.C. 5120.63(B) requires that the Ohio Department of Rehabilitation and Corrections establish and administer a statewide random drug testing program in state correctional institutions. Nothing in R.C. 2929.19(B)(3)(f) requires the trial court to notify the defendant that he may be subjected to random drug testing while the defendant is incarcerated.

{¶21} "The same rationale applies here. The requirements which R.C. 2929.19(B)(3)(f) imposes were intended to facilitate drug testing of prisoners in state institutions by discouraging a defendant who is sentenced to

a prison term from using drugs. If a defendant at that point is incarcerated, as almost all defendants are, the utility of this admonition is elusive, at best. However, the General Assembly has come to favor such prescriptions imposed by statute on the judicial branch, and the courts of this state are instructed to give them the utmost deference whether they are sensible or not. Even so, in this particular instance the court's failure to comply with the statutory requirement is harmless error because Defendant Dixon suffered no prejudice to his rights as a result." *State v. Leonard Dixon* (Dec. 28, 2001), Clark App. No. 01CA17, unreported at 15-16.

{¶22} Williams, likewise, has failed to offer any explanation of how he was prejudiced by the trial court's failure to comply with R.C. 2929.19(B)(3)(f). Accordingly, that error is harmless at best.

{¶23} The first assignment of error is overruled.

SECOND ASSIGNMENT OF ERROR

{¶24} "THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO GIVE SUFFICIENT CONSIDERATION TO THE MITIGATING FACTORS SET FORTH IN O.R.C. 2929.12 WHEN SENTENCING MR. WILLIAMS."

{¶25} Williams complains that the trial court abused its discretion when it imposed on him a like five year prison sentence imposed on his co-defendant, Adrian Burke, because the trial court failed to give adequate consideration to certain mitigating factors: that Williams had no prior convictions as an adult, that he was not the shooter, and

that he is remorseful for his actions.

{¶26} The permissible sentencing range for aggravated robbery, a first degree felony, is 3, 4, 5, 6, 7, 8, 9, or 10 years. R.C. 2929.14(A)(1). For felonious assault, a second degree felony, the trial court may impose a sentence of 2, 3, 4, 5, 6, 7, or 8 years. R.C. 2929.14(A)(2). The five year sentence imposed by the trial court for aggravated robbery, and the four year sentence imposed for felonious assault, are well within allowable statutory limits.

{¶27} Causing serious physical harm to a victim is a factor that weighs in favor of a harsher sentence. R.C. 2929.12(B)(2). Although Adrian Burke, not Williams, was the actual shooter, the presentence investigation report indicates that Williams gave Burke the gun he used to shoot the victim. Williams and Burke acted in concert in committing these crimes. As the trial court noted, these crimes were violent and resulted in serious injury to the victim via a gunshot wound.

{¶28} Although Williams has no previous convictions as an adult, R.C. 2929.12(E)(2), he was only nineteen at the time these offenses were committed, and he has a previous delinquency adjudication for arson. R.C. 2929.12(D)(2).

{¶29} As for Williams' claim that he is genuinely remorseful, R.C. 2929.12(E)(5), the presentence report demonstrates that Williams attempted to minimize his responsibility by blaming his co-defendants for what had transpired. That is not genuine remorse, but merely

evasion.

{¶30} At sentencing the trial court stated that it considered the presentence report and all other matters required by law. Moreover, the trial court made the statutory findings required in order to impose more than the minimum sentence. R.C. 2929.14(B); *State v. Edmonson* (1999), 86 Ohio St.3d 324. No abuse of discretion on the part of the trial court in sentencing has been demonstrated.

{¶31} The second assignment of error is overruled. The judgment of the trial court will be affirmed.

WOLFF, P.J. and YOUNG, J., concur.

Copies mailed to:

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