

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

DANIEL L. SAUNDERS,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 17 JE 0015

Criminal Appeal from the
Court of Common Pleas of Jefferson County, Ohio
Case No. 17 CR 56

BEFORE:

Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:

Affirmed.

Atty. Jane M. Hanlin, Jefferson County Prosecutor and
Atty. Edward L. Littlejohn, Jr., Assistant Prosecuting Attorney
Jefferson County Justice Center, 16001 State Route 7, Steubenville, Ohio 43952, for
Plaintiff-Appellee

Atty. Bernard C. Battistel, 2021 Sunset Boulevard, Steubenville, Ohio 43952, for
Defendant-Appellant.

Dated: September 4, 2018

WAITE, J.

{¶1} Appellant, Daniel L. Saunders, challenges the judgment of the Jefferson County Court of Common Pleas sentencing him to a maximum sentence of eight years for his felonious assault conviction. Appellant argues the trial court erred and abused its discretion in imposing the maximum sentence contrary to R.C. 2929.11 and R.C. 2929.12. A review of the record reveals the trial court expressly considered the statutory factors at both the sentencing hearing and in the judgment entry of sentence before imposing the maximum sentence. For the reasons expressed below, Appellant's argument lacks merit. The judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} Appellant's conviction stems from the injuries he inflicted on a twelve-month old child left in his care by the child's mother, who was a co-defendant. On or around April 5, 2015, the minor child sustained a skull fracture, broken arms, a broken leg, broken ribs and broken toe as a result of being pulled out of his crib and thrown down the steps by Appellant. Appellant, who is 6'5" and weighs 345 pounds, contended that he was under the influence of drugs and fell down the stairs with the child. However, medical expert testimony established the child's injuries were the result of child abuse, and not as the result of an accident. The record also establishes that Appellant waited approximately 15 days before seeking medical care for the child. The child was transported to Pittsburgh, where portions of his skull were removed due to brain swelling, resulting in blindness and a permanent shunt in his skull to relieve pressure. The child recovered 90% of his eyesight several months later, but will remain developmentally delayed as a result of his injuries.

{¶13} On June 1, 2016, Appellant was indicted on two counts of endangering children in violation of R.C. 2919.22, one a felony of the second degree and the other a felony of the third degree, in Belmont County Case No. 16-CR-78. Appellant entered a plea of not guilty. On June 14, 2016, Appellant filed a demand for discovery, request for notice of intent to use evidence, and a request for a bill of particulars. On September 1, 2016, the state answered Appellant's requests. On September 16, 2016, Appellant's case was consolidated with that of his co-defendant, the child's mother (Belmont County Case No. 16-CR-77). After multiple continuances, the matter was set for trial on May 23, 2017.

{¶14} On April 17, 2017, a bill of information was filed charging Appellant with one count of felonious assault in violation of R.C. 2903.11, a felony of the second degree, in Jefferson County Case No. 17-CR-56. On that same day a plea hearing was held, at which Appellant entered a guilty plea to the charge of felonious assault found in the bill of information and signed a waiver of grand jury proceedings and indictment.

{¶15} On May 9, 2017, a sentencing hearing was held. Testimony was presented by Jennifer Wolford, M.D., Clinical Director at the UPMC Division of Child Advocacy, who had examined and treated the child. The child's grandmother also gave a victim impact statement. At the conclusion of the testimony, Appellant was sentenced to the maximum term of eight years of imprisonment. The state filed a request to *nolle prosequi* the indictment in case no. 16-CR-78.

{¶16} Appellant now files this timely appeal presenting a single assignment of error.

ASSIGNMENT OF ERROR

THE IMPOSITION OF THE MAXIMUM PERIOD OF INCARCERATION
AGAINST THE DEFENDANT IS CONTRARY TO O.R.C. §2929.11 AND
§2929.12.

{¶7} Appellant’s main argument on appeal is that the trial court’s imposition of a maximum sentence is contrary to law.

{¶8} Appellant was convicted of felonious assault, a second degree felony, and sentenced to the maximum sentence of eight years in prison. See R.C. 2929.14(A)(2). Although Appellant and Appellee both rely on abuse of discretion as our standard of review, this standard no longer applies to felony sentencing appeals. The Ohio Supreme Court has held that the plain language of R.C. 2953.08(G)(2) prohibits applying an abuse of discretion standard to felony sentencing. *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 10, 16. In *Marcum*, the Court held, “an appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court’s findings under relevant statutes or that the sentence is otherwise contrary to law.” *Id.* at ¶ 1.

{¶9} “The trial court has full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum or more than minimum sentences.” *State v. King*, 2013-Ohio-2021, 992 N.E.2d 491, ¶ 45 (2d Dist.). In exercising that discretion, a trial court must consider the statutory principles that apply in felony cases, including those found within R.C. 2929.11 and R.C. 2929.12. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, ¶ 38.

{¶10} R.C. 2929.11 mandates that trial courts be guided by the overriding principles of felony sentencing, including “to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.” The trial court must “consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.” R.C. 2929.11(A).

{¶11} R.C. 2929.11(B) also provides:

A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing * * * commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

{¶12} R.C. 2929.12(B) enumerates nine factors which indicate that an offender's conduct is more serious than conduct normally constituting the offense. These factors include whether the physical or mental injury to the victim was exacerbated because of the physical or mental condition of the victim; serious physical, psychological, or economic harm suffered by the victim as a result of the offense; whether the offender's relationship with the victim facilitated the offense; and whether the offender committed the offense for hire or as part of an organized crime activity.

{¶13} R.C. 2929.12(C) sets forth four factors which indicate the offender's conduct is less serious than conduct normally constituting the offense: whether the

offender acted under strong provocation; whether, in committing the offense, the offender did not cause or expect to cause physical harm to any person or property; and the existence of substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense. R.C. 2929.12(D) and (E) relate to factors trial courts are to consider in determining whether the offender is likely to commit future crimes. R.C. 2929.12(F) requires the sentencing court to consider the offender's military service record.

{¶14} In Appellant's sentencing judgment entry, the trial court referred to the purposes and principles of sentencing, including protecting the public from future crime by the offender and to punish the offender using the minimum sanctions to accomplish these purposes without imposing an unnecessary burden on government resources. (6/12/17 J.E., p. 1.) See R.C. 2929.11(A). Discussing R.C. 2929.12, the trial court also considered factors that indicated Appellant's conduct was more serious than conduct normally constituting the offense: (1) the injury to the victim was worsened because he was only twelve months old; (2) the victim suffered serious physical, psychological and economic harm in that he suffered multiple fractures that were in various stages of healing and suffered blindness; brain bleeding caused him to have seizures; parts of his skull were removed requiring a shunt to be placed in his skull for his lifetime and requiring that he wear a helmet indefinitely, noting that many of the head injuries caused permanent damage; (3) the offense was facilitated by his relationship with the victim as Appellant was entrusted with the child's care in the mother's absence; (4) the offense involved a household victim, as Appellant was the mother's boyfriend who acted in *loco parentis* of the 12 month old victim. (6/12/17 J.E., p. 2.) See R.C. 2929.12 (B), (C).

{¶15} The judgment entry also reflects that the trial court considered factors indicating that Appellant is likely to commit future offenses: (1) Appellant has a history of criminal convictions including receiving stolen property, a fourth degree felony; (2) Appellant failed to respond favorably to sanctions previously imposed; (3) Appellant demonstrated a pattern of drug and/or alcohol abuse that is related to this offense; and (4) Appellant has not expressed any genuine remorse. (6/12/17 J.E., pp. 2-3.)

{¶16} Appellant contends that the trial court did not properly consider factors showing he was unlikely to commit future crimes, stating he had not been adjudicated a delinquent child and he was remorseful. Again, the trial court expressly noted that Appellant had a prior felony conviction and he was on drugs at the time of the instant offense. The trial court also stated:

And I find that there is no genuine -- genuine remorse and let me tell you why. I appreciate -- the Court appreciates [Appellant counsel's] comments in that just exactly what does a defendant need to do to exhibit remorse. Well, the Court has the opportunity to listen to defendants all the time about their appreciation of their actions.

There was nothing at plea proceedings that indicated that there was any remorse of any kind and I'll tell you what a defendant doesn't do. A defendant doesn't laugh and scoff as [Appellant] did when he was called a monster initially by the State of Ohio. Someone who is remorseful doesn't do that or roll their eyes when the Court is making comments.

(5/9/17 Tr., p. 35.)

{¶17} At hearing, the court specifically considered the same factors later addressed in the judgment entry, including: the age of the child, the devastating effect of the injuries he sustained and the economic damage to the family who had to travel back and forth to Pittsburgh for multiple surgeries. (5/9/17 Tr., pp. 32-33.)

{¶18} A sentencing court is not required to make special findings or provide reasons in support of those findings before imposing a maximum sentence. *State v. Green*, 7th Dist. No. 14 BE 0055, 2016-Ohio-4915, ¶ 116. Therefore, the trial court in this matter was not required to make statutory maximum sentencing findings or provide reasons in support of those findings in order to impose a sentence that is within the statutory range for the offense. Based on the foregoing, the record reflects that the trial court thoughtfully considered the statutory factors prior to imposing sentence. Appellant’s assignment of error is without merit and the judgment of the trial court is affirmed.

Donofrio, J., concurs.

Robb, P.J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Jefferson County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.