

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

State of Ohio

Court of Appeals No. OT-09-008

Appellee

Trial Court No. 06-CR-176

v.

Bryce Weatherspoon

DECISION AND JUDGMENT

Appellant

Decided: December 18, 2009

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
Andrew M. Bigler, Assistant Prosecuting Attorney, for appellee.

Howard C. Whitcomb, III, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals the sentence imposed upon him following his conviction for a felony child support violation in the Ottawa County Court of Common Pleas. For the reasons that follow, we affirm.

{¶ 2} In 2006, appellant, Bryce A. Weatherspoon, was named in an indictment by an Ottawa County Grand Jury. Appellant was charged with eight counts of criminal nonsupport in violation of R.C. 2919.21(A), fifth degree felonies.

{¶ 3} Appellant was arrested in 2008 and, on arraignment, entered a plea of not guilty to all counts. Following negotiations, however, appellant agreed to plead guilty to one count of the indictment for the dismissal of the remaining seven counts. Following a plea colloquy, the court accepted appellant's plea and found him guilty. The court deferred sentencing pending a presentence investigation.

{¶ 4} At the sentencing hearing, the court imposed an 11 month term of incarceration. This appeal followed. Appellant sets forth the following two assignments of error:

{¶ 5} "I. The trial court erred in imposing an eleven month sentence upon defendant-appellant in that it did not comply with the requirements of Ohio Revised Code sections 2929.11 et seq[.]

{¶ 6} "II. The trial court abused its discretion in imposing an eleven month sentence upon defendant-appellant as it was against the manifest weight of the evidence[.]"

{¶ 7} We shall discuss appellant's assignments of error together.

{¶ 8} R.C. 2929.11 defines the purposes and principles of criminal sentencing in Ohio. These are "* * * to protect the public from future crime by the offender and others and to punish the offender." The sentencing court has discretion in determining the most effective way to implement the purposes and principles of sentencing. R.C. 2929.12(A). R.C. 2929.12(B)-(E) directs that the court consider a series of enumerated factors in

fashioning a sentence. A sentencing court must consider the guidance provided in R.C. 2929.11 and 2929.12, but it is unnecessary that the court make specific findings or give reasons for imposing a sentence at the sentencing hearing. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, ¶ 38.

{¶ 9} On appeal, the appellate court conducts a two part analysis of a criminal sentence. First, " * * * the appellate court must ensure that the trial court has adhered to all applicable rules and statutes in imposing the sentence." *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶ 14. If, as a matter of law, a sentence is clearly and convincingly contrary to law, the sentence must be vacated. No further consideration is required. *Id.* at ¶ 15.

{¶ 10} If the sentence imposed is not contrary to law, the appellate court must then review the sentence to assure that it is within the guidelines articulated in R.C. 2929.11 and 2929.12. Since the trial court has full discretion to determine whether the sentence satisfies the statutory guidelines, the sentence will not be disturbed on appeal absent an abuse of that discretion. *Id.* at ¶ 17. An abuse of discretion is more than an error of law or a lapse in judgment, the term connotes that the court's attitude is arbitrary, unreasonable or unconscionable. *Id.* at ¶ 19; *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶ 11} In his first assignment of error, appellant asserts that the sentencing court did not properly consider the R.C. 2929.11 and 2929.12 guidance. We note at the outset

that the imposition on an 11 month term of an imprisonment is statutorily authorized for a fifth degree felony. R.C. 2929.14(A)(5). Consequently, the term imposed is not contrary to law.

{¶ 12} As we have already noted, there is no requirement that a court make specific findings or give reasons for imposing a sentence. In this matter, however, the court in both its oral pronouncements at the sentencing hearing and in its sentencing judgment stated that it had employed the R.C. 2929.11 and 2929.12 considerations. Specifically, the court noted that the victim of appellant's crime suffered serious economic harm: a loss in excess of \$35,000. The court also observed that appellant had a history of prior convictions and had not responded well to prior sanctions. The court expressly noted that appellant had a prior nonsupport indictment dismissed to permit him to join the military – which he had not done. (Appellant told the probation office that the military "never got back to him.")

{¶ 13} Appellant maintains that the financial impact could not have been that great, because the victim testified that she had "been doing fine for the last twelve years." While this is an accurate quotation, the victim continues, "I don't think probation would be appropriate because he doesn't do anything, so it wouldn't hurt me if he gets sent away because I have been doing it twelve years for myself * * *."

{¶ 14} Appellant also contends that, because he has not previously been imprisoned, he is entitled, pursuant to R.C. 2929.14(B), to the shortest term authorized by

law. R.C. 2929.14 as originally enacted required certain factual findings to impose a less than minimum sentence for one imprisoned for the first time. The requirement for such findings was found unconstitutional and severed from the statute in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, ¶ 100. The imposition of a less than minimum sentence is now fully within the discretion of the court. *Kalish* at ¶ 11.

{¶ 15} The sentence imposed on appellant is within the law and reasoned. Consequently, the court did not abuse its discretion in fashioning such an order.

{¶ 16} Accordingly, both of appellant's assignments of error are not well-taken.

{¶ 17} On consideration whereof the judgment of the Ottawa County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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