

[Cite as *State v. Craig*, 2010-Ohio-906.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92932

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

WILLIE CRAIG

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-511176

BEFORE: Dyke, P.J., Celebrezze, J., and Jones, J.

RELEASED: March 11, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANT

Fred D. Middleton, Esq.
815 Superior Avenue East, Suite 1717
Cleveland, Ohio 44114

ATTORNEYS FOR APPELLEE

William D. Mason, Esq.
Cuyahoga County Prosecutor
By: John R. Kosko, Esq.
Erin Donovan, Esq.
Assistant County Prosecutors
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

ANN DYKE, P.J.:

{¶ 1} Defendant Willie Craig appeals from the sentence imposed following his guilty plea to a charge of rape. For the reasons set forth below, we affirm.

{¶ 2} On May 30, 2008, defendant was indicted for aggravated burglary, rape, and two counts of kidnapping in connection with the 2003 assault upon L.H.

On February 4, 2009, defendant pled guilty to the rape charge and the remaining charges were dismissed. The trial court subsequently imposed the maximum sentence of ten years and determined that defendant is a Tier III sexual offender.

Defendant now appeals and assigns the following error for our review:

{¶ 3} “The trial court’s sentence of more than the minimum sentence and the maximum sentence was contrary to law because the trial court failed to consider the required statutory criteria and principles pursuant to Ohio Rev. Code Sections 2929.11 and 2929.12.”

{¶ 4} As an initial matter, we note that a defendant’s sentence will not be disturbed on appeal unless the reviewing court finds, by clear and convincing evidence, that the record does not support the sentence or that the sentence is contrary to law. *State v. Tenbrook*, Cuyahoga App. No. 89424, 2008-Ohio-53; *State v. Samuels*, Cuyahoga App. No. 88610, 2007-Ohio-3904.

{¶ 5} We further note that in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, the Ohio Supreme Court held that the provisions of Ohio’s felony sentencing statutes requiring “judicial fact-finding” before imposing a more than minimum sentence, maximum sentence, or consecutive sentences are unconstitutional. The *Foster* Court then severed these provisions,

id. at paragraphs one and three of the syllabus, and held that “[a]fter the severance, judicial fact-finding is not required before a prison term can be imposed within the basic ranges of R.C. 2929.14(A) based upon a jury verdict or admission of the defendant[.]” The *Foster* Court further held that upon resentencing, the trial court will have full discretion to impose a prison sentence within the statutory range and is no longer required to make findings or to give its reasons for imposing non-minimum sentences on an offender who has never served a prison term.

{¶ 6} In *State v. Mathis* (2006), 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, the Court explained as follows:

{¶ 7} “[T]he trial court is no longer compelled to make findings and give reasons at the sentencing hearing since R.C. 2929.19(B)(2) has been excised; nevertheless, in exercising its discretion, the court must carefully consider the statutes that apply to every felony case. Those include R.C. 2929.11, which specifies the purposes of sentencing, and R.C. 2929.12, which provides guidance in considering factors relating to the seriousness of the offense and recidivism of the offender. In addition, the sentencing court must be guided by statutes that are specific to the case itself.”

{¶ 8} Pursuant to R.C. 2929.11(A), “[t]he overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender.” Under R.C. 2929.11(B), “[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."

{¶ 9} Consistency in sentencing is achieved by weighing the sentencing factors. *State v. Georgakopoulos*, Cuyahoga App. No. 81934, 2003-Ohio-4341; *State v. Tish*, Cuyahoga App. No. 88247, 2007-Ohio-1836. "There is no grid under Ohio law under which identical sentences must be imposed for various classification of offenders." *State v. Dawson*, Cuyahoga App. No. 86417, 2006-Ohio-1083. The sentence need not be in lockstep with other sentences, only within the mainstream of local judicial practice. *Id.* Thus, although offenses may be similar, distinguishing factors may justify dissimilar treatment. *Id.*

{¶ 10} In addition, a trial court must consider the seriousness and recidivism factors outlined in R.C. 2929.12 as well as "any other factors that are relevant" to the principles of felony sentencing. R.C. 2929.12(A).

{¶ 11} In applying the foregoing, there is no requirement that the trial court prepare judicial findings under R.C. 2929.11 or 2929.12. The court is required only to carefully consider the statutory factors before imposing its sentence. *State v. Mathis*, *supra*.

{¶ 12} In this matter, the trial court stated that it had considered a number of matters in arriving at the sentence, and in its judgment entry the court noted that

prison is consistent with the purposes of sentencing set forth in R.C. 2929.11 and that it had considered all required factors of the law. The court also explained on the record that although defendant's co-defendant received a lesser term of imprisonment, the co-defendant was not as culpable as defendant. The court stated:

{¶ 13} “Your co-defendant pled and took four years in prison, you were the main perpetrator of the assault. There is a distinction between Mr. Woods’ conduct and yours. You were the person that actually committed the forcible rape. And it was discovered later on when you went to prison, they did a DNA test, which is now law, they discovered you were in fact the unknown assailant.”

{¶ 14} The transcript additionally demonstrates that the trial court considered the factors set forth in R.C. 2929.12, as the court noted the serious physical and psychological harm to L.H., the fact that her baby was present with her and she was pregnant at the time of the rape, that defendant has other convictions, that defendant gave a “lurid account” of the offense in which he claimed that it was consensual, yet the crime scene depicted a forced entry.

{¶ 15} From all of the foregoing, the sentence imposed is within the range set forth in R.C. 2929.14 and is not contrary to law. Moreover, the sentence is fully supported by the record herein. Although defendant received a more severe sentence than the co-defendant, defendant had greater culpability as the actual rapist. The trial court fully complied with R.C. 2929.11 and R.C. 2929.12. The assignment of error is overruled.

Affirmed.

It is ordered that appellee recover from appellant 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 common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

ANN DYKE, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
LARRY A. JONES, J., CONCUR