

[Cite as *State v. Mihalis*, 2016-Ohio-8056.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104308

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**DAVID MIHALIS**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-15-601746-A

**BEFORE:** McCormack, P.J., E.T. Gallagher, J., and S. Gallagher, J.

**RELEASED AND JOURNALIZED:** December 8, 2016

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TIM McCORMACK, P.J.:

{¶1} Defendant-appellant appeals from his conviction for robbery in violation of R.C. 2911.02(A)(3). For the reasons that follow, we affirm the judgment of the Cuyahoga County Court of Common Pleas.

{¶2} On December 22, 2015, Mihalis was charged with one count of robbery in violation of R.C. 2911.02(A)(2). He pleaded not guilty, and the matter was scheduled for trial. On March 7, 2016, a jury trial commenced. After the state rested, the defense moved for Crim.R. 29 acquittal. In the alternative, defense counsel requested the jury be instructed on the lesser included offense of robbery in violation of R.C. 2911.02(A)(3). The court denied counsel's motion for acquittal and ultimately instructed the jury on the lesser included offense.

{¶3} Following the trial, the jury found Mihalis not guilty of robbery in violation of R.C. 2911.02(A)(2) but guilty of the lesser included offense. The court sentenced Mihalis to three years in prison.

{¶4} Mihalis appeals his conviction, assigning three errors for our review:

- I. The conviction lacked sufficient evidence and it was against the manifest weight of the evidence.
- II. Trial counsel was ineffective in neglecting to move the court to waive defendant's costs.
- III. The maximum sentence violated R.C. 2929.11.

Evidence at Trial

{¶5} Mihalis's conviction stems from an incident that occurred at Macy's department store in North Olmsted, Ohio, on December 4, 2015. The state produced video surveillance of Mihalis in Macy's on that day, as well as the testimony of Macy's personnel and the arresting officer.

{¶6} On December 4, Natalie Wallace, assistant asset protection supervisor for Macy's, and Damiana Reyes, a detective in Macy's asset protection department, observed Mihalis from the camera room. Mihalis was in the coat department carrying a large backpack, or book bag, and a Dillard's bag. They observed Mihalis trying on various coats, setting his bags on the ground, looking up at the camera, and repeating this behavior. Wallace and Reyes testified that, in their training and experience, this was suspicious behavior. They observed Mihalis grab his bags and drape a Macy's coat over his arm, "as if it was his own." He then proceeded down the escalator and headed to the north exit. At this point, Wallace left the camera room and proceeded to the north exit. Reyes continued to observe Mihalis pass all points of sale, making no attempt to purchase the coat.

{¶7} When Mihalis passed the last point of sale, Reyes left the camera room and proceeded downstairs and to the exit, where Wallace was positioned. Wallace testified that Mihalis passed the last point of sale, where an associate stood at the register, he looked behind him at Wallace, and he continued out the first set of doors. Reyes heard Wallace identify herself to Mihalis and explain to him that they needed to discuss the Macy's coat on his arm. Wallace then pointed to Reyes, who was approaching Wallace

and Mihalis, and instructed Mihalis to go with Reyes and herself. Reyes testified that at this point, Mihalis became aggressive, so she ran to the exit. Wallace stated that when Reyes reached the exit, “the altercation began.”

{¶8} Wallace testified that Mihalis became uncooperative, refusing to go with the asset protection detectives and not listening to their instructions. Reyes stated that she and Wallace each had their hands on one of Mihalis’s arms, he began to flail his arms, fighting them off, and he dragged them from one end of the vestibule to the other. All the while, Wallace and Reyes were trying to restrain him. During the altercation, a large male customer had arrived at the vestibule, held the exit doors shut, and stared Mihalis down so that Mihalis could not leave. Reyes stated that Mihalis looked very angry, “like he wanted to attack or do something of that nature.” Wallace was eventually successful in handcuffing Mihalis.

{¶9} Heather Biggs, Macy’s sales ambassador, responded to a call requesting assistance with an asset protection situation. Biggs arrived on the scene in the vestibule after Mihalis had been handcuffed, and she helped walk Mihalis to the asset protection room, along with Wallace and Reyes.

{¶10} Biggs stated that Mihalis was upset, as he sat in the room with the women. When Wallace reached for Mihalis’s backpack, Mihalis jumped up and charged at her. Biggs testified that Mihalis then shouted numerous racial slurs at her, calling her “all types of niggers,” and he said, “Get your hands off me, bitch, I’ll slit your throat, I’m going to f\*\*\* kill you.” He also called the other women in the office “dykes, lesbians,

[and] dumb bitches.” He threatened to slash Wallace’s tires or, “better yet, slash your throat.” Wallace described Mihalis as “angry” and “aggressive,” and she said it was getting out of control, she did not know what was going to happen, and she believed Mihalis could hurt someone.

{¶11} At this point, Biggs attempted to hold Mihalis against the wall. He remained extremely aggressive, coming at all of the women in the room. She believed that if he was not handcuffed, he would have hit her. She felt threatened and was uncomfortable. Wallace stated that while the women attempted to restrain Mihalis, he remained aggressive, “doing as much as he can with his elbows.” Reyes testified that she was scared. Shortly thereafter, the police arrived. Reyes stated that Mihalis could not be subdued until the police officers arrived.

{¶12} Officer Jim Yost responded to the scene at Macy’s. Officer Yost testified that as he approached the asset protection office, he heard yelling and screaming coming from inside the office, including racial and other derogatory slurs shouted by Mihalis. The officers had to pound on the door for the women inside to hear them. When someone finally answered the door, he observed the women “wrestling” with Mihalis, struggling to restrain him. Officer Yost testified that it did not appear that the women had everything under control because Mihalis was overpowering them. The officer also testified that the women looked very shaken and appeared shocked.

{¶13} Mihalis testified on his own behalf. He stated that he rode his bicycle halfway to the mall and then he put the bike on a bus and rode the bus for the rest of the

way. Mihalis was traveling with an expensive backpack. He stated that he collects designer bags. The backpack contained two wallets, one of which was empty, designer clothing items with sales tags, and receipts from Giant Eagle, Drug Mart, and Heinen's.

{¶14} He admitted that he never paid for the Macy's coat that was draped over his arm, but he denies that he attempted to steal it. He stated that rather than walking through the first set of doors, he was pushed by Wallace. He also stated that he approached the exit only to look for his bike and that he intended to continue shopping. Mihalis testified that he became upset when Wallace grabbed his arm. He admitted that he stomped his foot in the office, became very upset, and scared the women in the office.

Mihalis admitted to using racial slurs and to calling the women names, such as "lesbian" or dykes," and "there was some yelling going on." Mihalis also refused to allow the women to handcuff him to the bench in the office, yelling, "You're not going to handcuff me to this bench." He denied, however, threatening anyone.

#### Sufficiency and Manifest Weight of the Evidence

{¶15} In his first assignment of error, Mihalis contends that his conviction was not supported by sufficient evidence and his conviction was against the manifest weight of the evidence.

{¶16} When assessing a challenge of sufficiency of the evidence, a reviewing court examines the evidence admitted at trial and determines whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the

syllabus. “The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *Id.* A reviewing court is not to assess “whether the state’s evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction.” *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997).

{¶17} Mihalis was convicted of robbery in violation of R.C. 2911.02(A)(3), which provides as follows: “No person, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, shall \* \* \* [u]se or threaten the immediate use of force against another.” “Force” is defined as “any violence, compulsion or constraint physically exerted by any means upon or against a person \* \* \*.” R.C. 2901.01(A)(1). A physical “tussle” between the victim and the defendant that occurs after the theft is completed is sufficient to establish the “force” element of robbery. *State v. Tillman*, 8th Dist. Cuyahoga No. 99994, 2014-Ohio-829, ¶ 7, citing *State v. Foster*, 8th Dist. Cuyahoga No. 90109, 2008-Ohio-2933.

{¶18} Here, the record shows that Mihalis draped a Macy’s coat over his arm, headed down the escalator, passed all points of sale, and exited the first set of doors at the north exit of the store. Two Macy’s employees attempted to impede Mihalis’s exit, and an altercation ensued. At this point, Mihalis became angry and aggressive. He flailed his arms, attempted to fight the employees off, and dragged the employees from one end of the vestibule to the other. All the while, the employees wrestled with him in attempts



to handcuff him. Reyes testified that Mihalis looked “like he wanted to attack someone,” but a larger customer stepped in to assist the employees by blocking Mihalis’s exit. He continued fighting the employees after he had been escorted to the asset protection office, where he charged at the employees, threw his elbows around, yelled racial slurs, and threatened the employees’ lives.

{¶19} Viewing this evidence in the light most favorable to the state, a rational trier of fact could have found the essential elements of robbery in violation of R.C. 2911.02(A)(3) proven beyond a reasonable doubt. Thus, Mihalis’s conviction was supported by sufficient evidence.

{¶20} While the test for sufficiency of the evidence requires a determination whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has met its burden of persuasion. *Thompkins* at 390. Also unlike a challenge to the sufficiency of the evidence, a manifest weight challenge raises a factual issue.

“The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.”

*Id.* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). A finding that a conviction was supported by the manifest weight of the evidence, however, necessarily includes a finding of sufficiency. *State v. Howard*, 8th Dist. Cuyahoga No. 97695, 2012-Ohio-3459, ¶ 14, citing *Thompkins* at 388.

{¶21} “[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.” *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. A factfinder is free to believe all, some, or none of the testimony of each witness appearing before it. *State v. Ellis*, 8th Dist. Cuyahoga No. 98538, 2013-Ohio-1184, ¶ 18. Although the reviewing court considers the credibility of witnesses in a challenge to the manifest weight of the evidence, it does so “with the caveat that the trier of fact is in the best position to determine a witness’ credibility through its observation of his or her demeanor, gestures, and voice inflections.” *State v. Campbell*, 8th Dist. Cuyahoga Nos. 100246 and 100247, 2014-Ohio-2181, ¶ 39.

{¶22} Mihalis essentially claims that Biggs’s testimony is not believable. First, the credibility of the witnesses rests solely within the province of the trier of fact, who was free to believe all or part of the testimony. As a reviewing court, we will not substitute our own judgment in place of the factfinder’s assessment of Biggs’s testimony.

Second, Biggs’s testimony was corroborated by the testimony of two other witnesses, Wallace and Reyes. Furthermore, Mihalis admitted at trial that he was uncooperative. He testified that there was yelling in the office, he used racial and derogatory slurs,

stomped his foot and scared the women, and he shouted, “You’re not going to handcuff me to this bench.”

{¶23} After reviewing the entire record, we find that this is not one of the exceptional cases where the evidence weighs heavily against the conviction or where the trier of fact lost its way and created a manifest miscarriage of justice.

{¶24} In light of the foregoing, Mihalis’s first assignment of error is overruled.

#### Ineffective Assistance of Counsel

{¶25} In his second assignment of error, Mihalis argues that his trial counsel was ineffective for failing to move the court to waive court costs.

{¶26} In order to establish a claim of ineffective assistance of counsel, the defendant must show that his trial counsel’s performance was deficient in some aspect of his representation and that deficiency prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989). Counsel’s performance will be considered deficient only when that performance falls below an objective standard of reasonableness. *Strickland* at 688.

{¶27} Under *Strickland*, our scrutiny of an attorney’s representation must be highly deferential and we must indulge “a strong presumption that counsel’s conduct falls within the range of reasonable professional assistance.” *Id.* at 689. The defendant must therefore overcome the presumption that the challenged action is sound trial strategy. *Id.* Trial strategy does not constitute ineffective assistance of counsel. *State v. Benitez*,

8th Dist. Cuyahoga No. 98930, 2013-Ohio-2334, ¶ 31, citing *State v. Conway*, 109 Ohio St.3d 412, 2006-Ohio-2815, 848 N.E.2d 810, ¶ 111.

{¶28} In order to show prejudice, a defendant must demonstrate that there is a reasonable probability that but for counsel's errors, the result of the proceeding would have been different. *State v. Geraci*, 8th Dist. Cuyahoga Nos. 101946 and 101947, 2015-Ohio-2699, ¶ 12. As the claim of ineffective assistance of counsel relates to the imposition of costs, the defendant must show that a reasonable probability exists that the trial court would have waived payment of the costs if such motion had been filed. *State v. Graves*, 8th Dist. Cuyahoga No. 103984, 2016-Ohio-7303, ¶ 13, citing *State v. Vanderhorst*, 8th Dist. Cuyahoga No. 97242, 2012-Ohio-2762, ¶ 78; *State v. Bonton*, 8th Dist. Cuyahoga No. 102918, 2016-Ohio-700, ¶ 20. A "reasonable probability" is "probability sufficient to undermine confidence in the outcome" of the proceeding. *Strickland* at 694.

{¶29} R.C. 2947.23(A)(1) governs the imposition of court costs and provides that "[i]n all criminal cases \* \* \* the judge \* \* \* shall include in the sentence the costs of prosecution \* \* \* and render a judgment against the defendant for such costs." The statute does not prohibit a court from assessing costs against an indigent defendant; rather, "it requires a court to assess costs against all convicted defendants." *State v. White*, 103 Ohio St.3d 580, 2004-Ohio-5989, 817 N.E.2d 393, ¶ 8; *State v. Brown*, 8th Dist. Cuyahoga No. 103427, 2016-Ohio-1546, ¶ 12; *Bonton* at ¶ 17. A defendant's financial status is therefore irrelevant for purposes of imposing court costs. *Bonton* at ¶

17, quoting *State v. Clevenger*, 114 Ohio St.3d 258, 2007-Ohio-4006, 871 N.E.2d 589, ¶

3. Accordingly, the fact that Mihalis was deemed indigent for purposes of appointing trial counsel is not a factor the trial court considers before imposing costs. *Bonton* at ¶ 18; citing *State v. Minifee*, 8th Dist. Cuyahoga No. 99202, 2013-Ohio-3146.

{¶30} The trial court, however, has the discretion to waive court costs if the defendant makes a motion to waive costs. *Brown* at ¶ 13, citing *State v. Walker*, 8th Dist. Cuyahoga No. 101213, 2014-Ohio-4841, ¶ 9. Under R.C. 2947.23(C), as amended by Am.Sub.H.B. 247, effective March 22, 2013, the trial court “retains jurisdiction to waive, suspend, or modify the payment of the costs of prosecution \* \* \*, at the time of sentencing or any time thereafter.” Thus, the statute no longer places limits on when a defendant can move for a waiver of court costs. *See State v. Hunter*, 8th Dist. Cuyahoga No. 102245, 2015-Ohio-4180, ¶ 12.

{¶31} Mihalis contends that because trial counsel knew he was indigent because trial counsel was appointed, counsel should have moved the court to waive his costs, and his failure to do so amounts to ineffective assistance of counsel. Mihalis also states that had counsel filed the motion, the court would have granted it.

{¶32} Although Mihalis argues that the court would have granted the motion to waive costs had it been filed, he fails to provide any support for this statement. And the record belies his assertion. Throughout his testimony, Mihalis testified as to numerous properties he and his family own. He stated that he lives in California, but he “has a condominium in Tampa, Florida” and his family owns a home on Kelleys Island. When

asked what he does for a living, Mihalis responded that he is “in the hospitality business” and he is “part owner” of a Best Western in California. On cross-examination, Mihalis also provided that he has a cabin in Arizona. He further stated that he paid for his travel expenses with “restaurant and hotel money” and that he collects designer bags.

{¶33} Moreover, even if the record had supported Mihalis’s indigency, a defendant is no longer required to seek a waiver of court costs at sentencing in order to preserve the issue for appeal. *Brown*, 8th Dist. Cuyahoga No. 103427, 2016-Ohio-1546, ¶ 15. As previously stated, R.C. 2947.23(C), as amended, provides that the court may waive costs at any time. Therefore, it is nearly impossible to establish prejudice as a result of counsel’s failure to move for a waiver of costs at sentencing:

The statutory provision in R.C. 2947.23(C) adds another facet to our ineffective assistance of counsel analysis because a defendant is no longer required to move for a waiver of court costs at the sentencing hearing or waive it — strategic timing may now play a role in trial counsel’s decision — and prejudice resulting from a failure to move at the sentencing hearing is harder, if not impossible, to discern. Trial counsel may have decided as a matter of strategy not to seek a waiver or modification of court costs until some later time when the trial court had time to either reflect upon its sanctions or the vividness of the impact of [the defendant’s] conduct had faded.

*State v. Farnese*, 4th Dist. Washington No. 15CA11, 2015-Ohio-3533, ¶ 15, 16; *State v. Weddington*, 4th Dist. Scioto No. 15CA3695, 2015-Ohio-5249, ¶ 23. As such, any error in failing to move to waive costs is not prejudicial. *Brown*; *State v. Williams*, 3d Dist. Auglaize No. 2-13-31, 2014-Ohio-4425, ¶ 17.

{¶34} In light of the foregoing, Mihalis cannot show that he was prejudiced by counsel’s failure to move for a waiver of costs at sentencing. His second assignment of error is overruled.

#### Sentence

{¶35} In his third assignment of error, Mihalis contends that the maximum sentence imposed “violated R.C. 2929.11.” In support, he provides that a shorter sentence would accomplish “the same result as a maximum sentence.” When reviewing felony sentences, the reviewing court does not review the sentence for an abuse of discretion. R.C. 2953.08(G)(2); *see also State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231. Rather, we may increase, reduce, modify a sentence, or vacate and remand for resentencing if we clearly and convincingly find that the record does not support the sentencing court’s statutory findings under R.C. 2929.14(C)(4) or the sentence is contrary to law. *State v. Wenmoth*, 8th Dist. Cuyahoga No. 103520, 2016-Ohio-5135, ¶ 12, citing R.C. 2953.08(G)(2).

{¶36} A sentence is contrary to law if the sentence falls outside the statutory range for the particular degree of offense or 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. *State v. Pawlak*, 8th Dist. Cuyahoga No. 103444, 2016-Ohio-5926, ¶ 58. A trial court’s imposition of a maximum prison term is not contrary to law as long as the court sentenced the offender within the statutory range and

considered R.C. 2929.11 and 2929.12. *State v. Keith*, 8th Dist. Cuyahoga Nos. 103413 and 103414, 2016-Ohio 5234, ¶ 16.

{¶37} R.C. 2929.11(A) provides that the overriding purposes of felony sentencing are (1) to protect the public from future crime by the offender and others; and (2) 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. Further, the sentence imposed shall be “commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact on the victim, and consistent with sentences imposed for similar crimes by similar offenders.” R.C. 2929.11(B).

{¶38} R.C. 2929.12 provides a nonexhaustive list of sentencing factors the trial court must consider when determining the seriousness of the offense and the likelihood that the offender will commit future offenses. The court that imposes a felony sentence has the discretion to determine the most effective way to comply with the purposes and principles of sentencing. R.C. 2929.12(A).

{¶39} Although the trial court has a mandatory duty to “consider” the statutory factors under R.C. 2929.11 and 2929.12, the court is not required to engage in any factual findings under R.C. 2929.11 or 2929.12. *State v. Combs*, 8th Dist. Cuyahoga No. 99852, 2014-Ohio-497, ¶ 52; *State v. Bement*, 8th Dist. Cuyahoga No. 99914, 2013-Ohio-5437, ¶ 17. “While trial courts must carefully consider the statutes that apply to every felony case, it is not necessary for the trial court to articulate its consideration of



each individual factor as long as it is evident from the record that the principles of sentencing were considered.” *State v. Gonzalez*, 8th Dist. Cuyahoga No. 102579, 2015-Ohio-4765, ¶ 6, citing *State v. Roberts*, 8th Dist. Cuyahoga No. 89236, 2008-Ohio-1942, ¶ 10. This court has held that a trial court’s statement in its sentencing entry that it considered the required statutory factors, without more, is sufficient to fulfill a sentencing court’s obligations under R.C. 2929.11 and 2929.12. *Gonzalez* at ¶ 7.

{¶40} Here, the court sentenced Mihalis within the statutory range for a third-degree felony offense. *See* R.C. 2929.14(A)(3). In doing so, the court considered all of the relevant statutory factors. Prior to imposing sentence, the court noted that it considered the purposes and principles of felony sentencing provided in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12. It further stated as follows:

I have reviewed your record. You are a multi-state offender. You have records in Florida, Arizona, and California, many pages, numerous cycles, various offenses, including prior resisting, DUI’s, failure to appear. You’ve pretty much been in trouble non-stop.

Additionally, the court stated in its journal entry that it considered all required factors of law and found that prison is consistent with the purposes of R.C. 2929.11. We therefore find that the court’s imposition of the 3-year maximum prison term is not contrary to law.

{¶41} To the extent Mihalis disagrees with the court’s consideration of the sentencing factors, how the court weighed the factors, or the length of the sentence imposed, we have no jurisdiction for review. *See State v. Switzer*, 8th Dist. Cuyahoga

No. 102175, 2015-Ohio-2954, ¶ 12. The trial court has the “discretion to determine the weight to assign a particular statutory factor.” *Id.*, quoting *State v. Arnett*, 88 Ohio St.3d 208, 215, 724 N.E.2d 793 (2000); *see also* R.C. 2929.12(A). As our standard of review is not whether the sentencing court abused its discretion, we have no jurisdiction to consider whether the court abused its discretion in how it applied R.C. 2929.11 and 2929.12. *Switzer*; *State v. Szakacs*, 8th Dist. Cuyahoga No. 101787, 2015-Ohio-1382. Under the circumstances in this case, our review is limited to a determination of whether the sentence is contrary to law. *See Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231. And a defendant’s disagreement with the trial court’s discretion and the manner in which it weighed each factor does not make a sentence contrary to law. *State v. Ongert*, 8th Dist. Cuyahoga No. 103208, 2016-Ohio-1543, ¶ 14; *State v. D.S.*, 10th Dist. Franklin No. 15AP-790, 2016-Ohio-2856, ¶ 15.

{¶42} In light of the foregoing, we find that the trial court considered all of the relevant statutory factors, and Mihalis has not demonstrated by “clear and convincing evidence that the record does not support the sentence.” *Marcum* at ¶ 23. Accordingly, Mihalis’s sentence is not contrary to law.

{¶43} Mihalis’s third assignment of error is overruled.

{¶44} Judgment affirmed.

It is ordered that appellee recover of 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.

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TIM McCORMACK, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and  
SEAN C. GALLAGHER, J., CONCUR