

[Cite as *State v. Neal*, 2017-Ohio-100.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104358

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHRISTOPHER L. NEAL

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-600297-C

BEFORE: Laster Mays, J., Jones, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: January 12, 2017

ATTORNEY FOR APPELLANT

Erin R. Flanagan
Erin R. Flanagan, Esq. Ltd.
75 Public Square, Suite 1325
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor

By: Kerry A. Sowul
Assistant County Prosecutor
Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Christopher L. Neal’s (“Neal”) sole issue on appeal is that the trial court erred in failing to consider the statutory felony sentencing purposes and guidelines in imposing punishment subsequent to his guilty plea in this case. We disagree.

{¶2} Neal pleaded guilty on February 10, 2016, to two counts of a six- count indictment: Count 5, drug possession, R.C. 2925.11, and Count 6, possession of criminal tools with a forfeiture specification, R.C. 2923.24(A) and 2923.1417(A). Both charges are fifth-degree felonies. The state conceded that the trafficking and possession counts merged and elected to proceed on the trafficking count. Neal was sentenced in March 2016 to three years of community control sanctions (“CCS”).

{¶3} While recognizing the trial court’s broad discretion in imposing sentences within the statutory range,¹ Neal argues that the trial court failed to explicitly consider the sentencing factors in R.C. 2929.11 and 2929.12, and articulate those grounds for the record. The trial court, Neal offers, should have recited the grounds for imposing a three-year CCS for minor drug offenses, in light of Neal’s minimal criminal history, pursuant to R.C. 2929.12:

Unless otherwise required by section 2929.13 or 2929.14 of the Revised Code, a court that imposes a sentence under this chapter upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code. In exercising that discretion, the court shall consider

¹ *State v. Pluhar*, 8th Dist. Cuyahoga No. 102012, 2015-Ohio-3344.

the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct, the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism, and the factors set forth in division (F) of this section pertaining to the offender's service in the armed forces of the United States and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.

{¶4} The Ohio Supreme Court recently clarified the current standard for appellate review of felony sentences:

Applying the plain language of R.C. 2953.08(G)(2), we hold that 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. In other words, an appellate court need not apply the test set out by the plurality in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124.

State v. Marcum, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1.

{¶5} Neal concedes that there is no mandatory duty for a trial court to explain its analysis of the statutory sentences pursuant to our holding in *State v. Kronenberg*, 8th Dist. Cuyahoga No. 101403, 2015-Ohio-1020, ¶ 27. Neal further acknowledges that a trial court is only required to indicate that the statutory factors have been considered. *Id.*, citing *State v. Kamleh*, 8th Dist. Cuyahoga No. 97092, 2012-Ohio-2061, ¶ 61.

{¶6} The trial court and Neal discussed Neal's history of drug-related misdemeanor offenses in the city of Euclid and his admission of facilitating the sale of crack cocaine. Neal requested court-ordered counseling for his marijuana habit. A prolonged discussion ensued regarding the circumstances underlying the charges, Neal's efforts to complete his education, his current living situation and efforts to care for his

wife and children. The trial court voiced an appreciation for Neal's candor in response to inquiry about his marijuana use.

{¶7} Advising Neal that the two felonies qualified for imprisonment or CCS at the court's discretion, the trial court sentenced Neal to up to six months in the Nancy R. McDonnell Community Based Correctional Facility ("CBCF"), and three years of CCS with an explanation of violation ramifications. Neal was also subject to a six-month driver's license suspension, cell phone forfeiture, fees, and costs.

{¶8} The trial court acknowledged an understanding that Neal's behavior was motivated by his efforts to care for his family and the obstacles that Neal faced. Sharing words of encouragement, the trial court walked Neal step-by-step through the terms and conditions of the CBCF retention programs, probation, and postrelease control. Thus, the record demonstrates the trial court's attempts to, based on Neal's background, the charges, and mitigating circumstances, afford Neal with an opportunity to turn his life around and provide for his family, receive treatment for his drug addiction, and work on obtaining his GED through CBCF.

{¶9} At the conclusion of the hearing, counsel responded that Neal did not wish to appeal. The sentencing entry provides, in part:

The court considered all required factors of the law. * * * The court finds that a community control/probation sanction will adequately protect the public and will not demean the seriousness of the offense. * * * Defendant is high risk with multiple felonies. Violation of the terms and conditions may result in more restrictive sanctions, or a prison term of 12 month(s) as approved by law.

{¶10} We find that the sentence is not contrary to law and that the record clearly and convincingly supports the trial court's findings. *Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, at ¶ 1. The journal entry reflects consideration of the required statutory factors. *Kronenberg*, 8th Dist. Cuyahoga No. 101403, 2015-Ohio-1020, at ¶ 27. We find that the assigned error is without merit.

{¶11} The trial court's order is affirmed.

It is, therefore, 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.

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

ANITA LASTER MAYS, JUDGE

LARRY A. JONES, SR., P.J., and
MARY J. BOYLE, J., CONCUR