

[Cite as *State v. Jones*, 2017-Ohio-8884.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105526

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CARDELL JONES

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-610564-A

BEFORE: Kilbane, P.J., S. Gallagher, J., and Blackmon, J.

RELEASED AND JOURNALIZED: December 7, 2017

ATTORNEY FOR APPELLANT

Erin E. Hanson
McGinty, Hilow & Spellacy Co., L.P.A.
The Rockefeller Building, Suite 1300
614 W. Superior Avenue
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor
Carl Mazzone
Eben McNair
Assistant County Prosecutors
The Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY EILEEN KILBANE, P.J.:

{¶1} Defendant-appellant, Cardell Jones (“Jones”), appeals his sentence for attempted carrying of a concealed weapon. For the reasons set forth below, we affirm.

{¶2} In October 2016, Jones was arrested and charged in two separate indictments in Cuyahoga C.P. Nos. CR-16-610564-A and CR-16-610565-A. In CR-610564-A, Jones was charged with one count of having a weapon while under disability and one count of attempted carrying of a concealed weapon. In CR-610565-A, Jones was charged in a nine-count indictment with five counts of sexual battery, three counts of unlawful sexual conduct with a minor, and one count of gross sexual imposition (“GSI”).¹

{¶3} In January 2017, Jones pled guilty, pursuant to a plea agreement with the state, to attempted carrying of a concealed weapon in CR-610564-A and two counts of sexual battery and one count of unlawful sexual conduct with a minor in CR-610565-A.

{¶4} At the sentencing hearing in February 2017, the trial court sentenced Jones to a 12-month term of imprisonment for attempted carrying of a concealed weapon. The trial court ordered Jones to serve this 12-month prison term concurrently with the 12-year sentence it imposed on him for sexual battery and unlawful sexual conduct with a minor in CR-610565-A.

¹ CR-610564-A is the subject of the instant appeal, and CR-610565-A is the subject of the companion appeal in *State v. Jones*, 8th Dist. Cuyahoga No. 105527.

{¶5} It is from this order that Jones appeals, raising the following single assignment of error for our review:

Assignment of Error

The trial court's imposition of a maximum sentence is not supported by the record in this matter.

{¶6} Jones argues that at the sentencing hearing, the trial court focused on his conduct related to the charges of sexual battery and unlawful sexual conduct with a minor, but “made no findings about the seriousness of [his] conduct with regards to the [attempted carrying of a concealed weapon charge]” in the present case. He asserts that the trial court did not find “that the twelve-month sentence [for attempted carrying of a concealed weapon] would be consistent with sentences imposed for similar crimes by similar offenders.” We find this argument unpersuasive.

{¶7} R.C. 2953.08(A) sets forth the grounds on which a defendant may appeal of a felony sentence. *State v. Smith*, 8th Dist. Cuyahoga No. 100206, 2014-Ohio-1520, ¶ 12. Applying R.C. 2953.08 to the instant case, the only basis available to Jones to appeal his sentence is to argue that it is contrary to law. *See* R.C. 2953.08(A)(4). In *Smith*, we held:

The “contrary to law” provision of R.C. 2953.08(A)(4) applies to the length of sentences only insofar as they fall outside the statutory limits for the particular degree of offense. *See State v. Holmes*, 8th Dist. Cuyahoga No. 99783, 2014-Ohio-603, ¶ 10.

* * *

Another possible way to attack a sentence as being contrary to law is to argue that the court failed 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. Hodges*, 8th Dist. Cuyahoga No. 99511, 2013-Ohio-5025, ¶ 7.

Id. at ¶ 13-14.

{¶8} Here, Jones does not dispute that the 12-month sentence he received for attempted carrying of a concealed weapon, a fifth-degree felony, is within the applicable statutory limits. *See* R.C. 2929.14(A)(5). Jones does argue, however, that this sentence is not supported by the record because, at sentencing, the trial court focused on his conduct related to the companion case and did not make specific findings regarding his conduct related to the present case based upon the factors enumerated in R.C. 2929.11 and 2929.12.

{¶9} In *Smith*, we explained:

We have held that the court fulfills its duty under [R.C. 2929.11 and 2929.12] by indicating that it has considered the relevant sentencing factors. *State v. Saunders*, 8th Dist. Cuyahoga No. 98379, 2013-Ohio-490, ¶ 4. Importantly, the court need not go through each factor on the record — it is sufficient that the court acknowledges that it has complied with its statutory duty to consider the factors without further elaboration. *See State v. Pickens*, 8th Dist. Cuyahoga No. 89658, 2008-Ohio-1407, ¶ 6.

Id. at ¶ 14.

{¶10} In the instant case, the trial court complied with its statutory duty to consider the purposes and principles of felony sentencing as set forth in R.C. 2929.11 and the sentencing factors as set forth in R.C. 2929.12. At sentencing, the trial court stated:

THE COURT: I've considered the purposes and principles of the Ohio Revised Code Section regarding sentencing.

{¶11} In its sentencing journal entry, the trial court reiterated its finding that “prison is consistent with the purpose of R.C. 2929.11.”

{¶12} Based on the foregoing, Jones has not demonstrated that his sentence is contrary to law. Accordingly, the sole assignment of error is overruled.

{¶13} 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.

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

MARY EILEEN KILBANE, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
PATRICIA A. BLACKMON, J., CONCUR