

[Cite as *Solon v. Broderick*, 2018-Ohio-4900.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107043

CITY OF SOLON

PLAINTIFF-APPELLEE

vs.

JOHN M. BRODERICK

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Bedford Municipal Court
Case No. 17CRB02591

BEFORE: McCormack, J., Kilbane, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: December 6, 2018

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TIM McCORMACK, J.:

{¶1} Defendant-appellant John M. Broderick (“Broderick”) appeals his sentence for one count of disorderly conduct in violation of Solon Codified Ordinances 648.04, a fourth-degree misdemeanor. On appeal, Broderick contends that the trial court abused its discretion when it imposed a sentence of a 30-day suspended jail term and one year of supervised probation that included, among other conditions, a prohibition on firearms in Broderick’s household. For the following reasons, we affirm.

Procedural and Substantive History

{¶2} On December 22, 2017, officers from the Solon Police Department responded to a domestic situation at Broderick’s home. Broderick, who was highly intoxicated, had been arguing with his wife. The argument escalated, and Broderick struck his wife in the face twice and jumped on top of her. The couple’s 17-year-old son, hearing his mother’s screams, came into the room and pulled Broderick off of the victim and pinned him down while the couple’s 15-year-old daughter called the police. The responding officers arrested Broderick, and he was

charged with one count of domestic violence, in violation of R.C. 2919.25(A). The officers also removed 15 firearms from Broderick's residence.

{¶3} On December 27, 2017, the Bedford Municipal Court issued a Temporary Protection Order barring Broderick from his residence. On December 28, 2017, Broderick entered a plea of not guilty to domestic violence. A plea agreement was negotiated wherein the city reduced Broderick's charge from domestic violence to disorderly conduct, in violation of Solon Codified Ordinances 648.04.

{¶4} Broderick pleaded guilty to disorderly conduct on February 19, 2018. The court proceeded to announce that it would be sentencing Broderick to a suspended jail term of 30 days and one year of supervised probation that included the following conditions: (1) have no similar offenses charged; (2) have no temporary protection orders issued or violent offenses charged; (3) have no criminal offenses; (4) satisfactorily complete domestic violence program; (5) have no alcohol or illegal drug use; (6) submit to random alcohol or drug screening; (7) comply with all standard terms and conditions as established by the Probation Department with no probation violations; and (8) have no weapons in the marital residence during probation. Broderick's counsel objected to the prohibition on weapons in the home. After some discussion among the court, the prosecutor, and Broderick's counsel, the court stated that it was continuing the sentencing hearing to February 28, 2018, in order to confirm that it had the legal authority to include the prohibition on weapons as a condition of Broderick's probation.

{¶5} On February 28, 2018, Broderick's counsel restated his position that the weapons prohibition was not a valid condition of probation for disorderly conduct. The court noted Broderick's objections but ultimately sentenced him to a suspended jail term of 30 days and one year of supervised probation including all of the conditions listed above. At the sentencing

hearing, the court stated it had considered the three-part test in *Jones* and found that, in light of Broderick's conduct, the court's concern for creating a safe home for the victim, and the connection between firearms and domestic violence generally, the *Jones* test was satisfied. *State v. Jones*, 49 Ohio St.3d 51, 53, 550 N.E.2d 469 (1990).

{¶6} Broderick appealed his sentence. In his sole assignment of error, he argues that the trial court's prohibition on weapons as a condition of his probation was an abuse of discretion.

Law and Analysis

{¶7} We review the trial court's imposition of community control sanctions for an abuse of discretion. *State v. Cooper*, 2016-Ohio-8048, 75 N.E.3d 805, ¶ 31 (8th Dist.), citing *State v. Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888, 814 N.E.2d 1201, ¶ 10. "Although a trial court is granted broad discretion in imposing community control sanctions, its discretion is not limitless." *State v. White*, 10th Dist. Franklin No. 14AP-1027, 2015-Ohio-3844, ¶ 5, citing *Talty* at ¶ 11.

{¶8} The Ohio Supreme Court has held that in determining whether a condition of probation is related to the interests of doing justice, rehabilitating the offender, and ensuring his good behavior, courts should consider "whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation." *Jones*, 49 Ohio St.3d at 53, 550 N.E.2d 469. All three conditions must be satisfied for the reviewing court to find that the trial court did not abuse its discretion. *White* at ¶ 10. Further, the conditions "cannot be overly broad so as to unnecessarily impinge upon the probationer's liberty." *Talty* at ¶ 13, quoting *Jones* at 52.

{¶9} Broderick challenges the prohibition on weapons, arguing that none of the *Jones* conditions are met. First, he argues that his conviction requires no rehabilitation. Second, he argues that firearms had nothing to do with his conviction because he did not brandish a firearm while committing the offense. Third, he argues that the condition does not have a relationship to criminal conduct and is not reasonably related to future criminality because he legally owns and possesses his firearms. We find these arguments unpersuasive.

{¶10} With respect to rehabilitation, Broderick argues that because he has no prior convictions, and in this case pleaded guilty solely to disorderly conduct, he is in no need of rehabilitation. Broderick offers no support for this assertion, and we cannot conclude that a disorderly conduct conviction, especially when it arises out of a drunken violent rage against one's spouse, does not necessitate some rehabilitation.

{¶11} Broderick also argues that the prohibition on weapons bears no relationship to his disorderly conduct conviction. In support, Broderick points to this court's decision in *State v. Mahon*, arguing that the prohibition impinges upon his liberty and his Second Amendment rights. *State v. Mahon*, 8th Dist. Cuyahoga No. 106043, 2018-Ohio-295. The facts of this case are easily distinguishable from those in *Mahon*. In that case, the court imposed a community control condition requiring Mahon to refrain from consuming alcohol or drugs and attending any place or function where alcohol or drugs are sold, used, or served. This court found that condition bore no reasonable relationship to Mahon's crime — an isolated, nonviolent offense that resulted in a conviction on one count of unlawful use of a telecommunications device.

{¶12} Here, Broderick emphasizes that his disorderly conduct conviction did not involve his use of a firearm. This is not disputed. However, "[t]he mere fact that a defendant reaches a plea agreement for a lesser offense does not mean that a trial court should disregard the

underlying facts giving rise to the indictment and ultimate conviction.” *State v. Holloway*, 8th Dist. Cuyahoga No. 97906, 2012-Ohio-4936, ¶ 13. Trial courts have the discretion to consider facts and circumstances leading to a conviction. Here, that includes the fact Broderick violently attacked his wife by striking her in their home, and he did so with 15 deadly weapons at his disposal.

{¶13} Further, in upholding a federal ban on firearms possession as applied to any person with a prior misdemeanor conviction of domestic violence, even for acts of force undertaken recklessly, the United States Supreme Court recognized that “[f]irearms and domestic strife are a potentially deadly combination.” *Voisine v. United States*, 579 U.S. ___, 136 S.Ct. 2272, 2276, 195 L.Ed.2d 736 (2016), quoting *United States v. Hayes*, 555 U.S. 415, 426, 129 S.Ct. 1079, 172 L.Ed.2d 816 (2009). At sentencing, the trial court discussed *Voisine* and adopted the Supreme Court’s rationale, stating that “[w]eapons combined with a combative hostile environment mixed with alcohol is a recipe for disaster.” Broderick did not use a firearm in the commission of this offense. We join the nation’s highest court in choosing not to ignore the connection between firearms and offenses involving physical violence.

{¶14} Finally, Broderick argues that the prohibition on weapons does not have a relationship to criminal conduct nor is it reasonably related to future criminality, noting that there has been no argument or allegation that his firearms are not lawfully owned or possessed. Further, Broderick argues that it is inconsistent to allow him, the perpetrator of the offense, back into the marital home, while prohibiting firearms from the home. We disagree. It is not necessary for a firearm to be illegally owned or possessed for it to be used in the commission of a crime, in a domestic violence setting or otherwise. The court was clear that in prohibiting

firearms from the home it sought to avoid a deadly escalation of a situation like the one for which Broderick was convicted.

{¶15} For the foregoing reasons, we find the prohibition of weapons in the home as a condition of probation satisfies the requirements outlined in *Jones*, 49 Ohio St.3d 51, 550 N.E.2d 469. Therefore, we cannot conclude that the trial court abused its discretion in imposing this condition on Broderick. We affirm the judgment of the trial court.

{¶16} 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 municipal 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.

TIM McCORMACK, JUDGE

MARY EILEEN KILBANE, P.J., CONCURS;
MELODY J. STEWART, J., CONCURS IN JUDGMENT ONLY