

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2008-L-083
WAYNE T. WYKOF,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 08 CR 000012.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Teri R. Daniel*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

DIANE V. GRENDELL, P. J.,

{¶1} Defendant-appellant, Wayne T. Wykof, appeals the Judgment Entry of Sentence, rendered by the Lake County Court of Common Pleas, sentencing him to serve an aggregate prison term of sixteen years for crimes more fully described below. For the following reasons, we affirm the decision of the court below.

{¶2} On February 1, 2008, Wykof was indicted by the Lake County Grand Jury on the following charges: one count of Operating a Vehicle Under the Influence of Alcohol, a Drug of Abuse, or a Combination of Them, a felony of the third degree in violation of R.C. 4511.19(A)(1)(a), with a R.C. 2941.1413 specification that he had previously been convicted or pled guilty to five or more violations of R.C. 4511.19(A) or (B) within twenty years of the current offense; one count of Operating a Vehicle Under the Influence of Alcohol, a Drug of Abuse, or a Combination of Them, a felony of the third degree in violation of R.C. 4511.19(A)(2), with a R.C. 2941.1413 specification that he had previously been convicted or pled guilty to five or more violations of R.C. 4511.19(A) or (B) within twenty years of the current offense; one count of Driving Under Suspension, a misdemeanor of the first degree in violation of R.C. 4510.11(A); one count of Harassment with Bodily Substance, a felony of the fifth degree in violation of R.C. 2921.38(A); one count of Harassment with Bodily Substance, a felony of the fifth degree in violation of R.C. 2921.38(B); and one count of Harassment with Bodily Substance, a felony of the fifth degree in violation of R.C. 2921.38(C).

{¶3} On March 13, 2008, Wykof entered a Written Plea of Guilty to one count of Operating a Vehicle Under the Influence of Alcohol, a Drug of Abuse, or a Combination of Them, in violation of R.C. 4511.19(A)(1)(a), with a R.C. 2941.1413 specification, and one count of Harassment with Bodily Substance, in violation of R.C. 2921.38(C). The court entered a Nolle Prosequi on the remaining counts of the indictment.

{¶4} On April 21, 2008, following a sentencing hearing, the trial court ordered Wykof to serve a five-year term of imprisonment for Operating a Vehicle Under the Influence of Alcohol, a Drug of Abuse, or a Combination of Them, a five-year term of

imprisonment for the R.C. 2941.1413 specification, and a five-year term of imprisonment for Harassment with Bodily Substance. Five years is the maximum prison term that may be imposed for a third degree felony. R.C. 2929.14(A)(3). The court ordered all three prison terms to be served consecutively with each other and with a one-year prison term imposed in a separate case, for an aggregate prison sentence of sixteen years. The court also ordered Wykof to pay a mandatory fine of \$5,000, suspended his driver's license for life, and notified him of the possibility of post release control for a period of up to three years.

{¶5} Wykof timely appeals and raises the following assignment of error: "The trial court erred by sentencing the defendant-appellant to the maximum, consecutive term of imprisonment."

{¶6} Wykof maintains his prison sentence was not supported by the record because the trial court failed to give "appropriate weight" to Wykof's "genuine remorse" of the events underlying the charges.

{¶7} The overriding purposes of felony sentencing in Ohio "are to protect the public from future crime by the offender *** and to punish the offender." R.C. 2929.11(A). A sentencing court "has discretion to determine the most effective way to comply with the purposes and principles of sentencing." R.C. 2929.12(A). "In exercising that discretion, the court shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct and the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing." R.C. 2929.12(A).

{¶8} Among the factors a court is required to consider, “indicating that the offender is not likely to commit future crimes,” is whether “[t]he offender shows genuine remorse for the offense.” R.C. 2929.12(E)(5); cf. R.C. 2929.12(D)(5) (identifying the failure to show genuine remorse as a factor “indicating that the offender is likely to commit future crimes”).

{¶9} It is well-established that R.C. 2929.12(A) does not require a sentencing court to make specific findings regarding the seriousness and recidivism factors. Ohio’s felony sentencing law only requires the trial court to “consider” the mitigating circumstances in the exercise of its discretion. *State v. Glenn*, 11th Dist. No. 2003-L-022, 2004-Ohio-2917, at ¶47 (“[a] trial court is only required to *consider* mitigating factors”) (emphasis sic). Thus, the Ohio Supreme Court has characterized the mandate of R.C. 2929.12(A) as a “general judicial guide for every sentencing *** grant[ing] the sentencing judge discretion ‘to determine the most effective way to comply with the purposes and principles of sentencing.’” *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, at ¶¶36-37 (citation omitted). “It is important to note that there is no mandate for judicial factfinding in the general guidance statutes. The court is merely to ‘consider’ the statutory factors.” *Id.* at ¶42.

{¶10} In the present case, Wykof expressed his remorse by apologizing to the officers for his conduct upon arrest and explaining the “serious emotional distress” he had been under as the result of deaths in his family. Wykof also explained he suffers from depression and anger over events that occurred during his youth. “I’m *** also here today to take full responsibility in all of my actions. I don’t go around and put [the] blame on others unless it involves others, and this does not. It feels like a pattern for

me in a way I can't understand it. Also these past few years my mind is getting weak and can't take no more. And I hope you will understand some of these things I have said and something can come about it. I've asked for treatment and I've been cheated even out of that years ago. Prison is not always the answer to some. But really to understand some people asking for it means it and people to help understand that. [Sic.]”

{¶11} The trial court noted that, in a thirty-two year period, Wykof was convicted of thirty-five crimes, including eleven felonies and twelve Operating a Vehicle Under the Influence offenses. The court did not accept that Wykof showed genuine remorse: “It has not been exhibited throughout the course of this case until the eleventh hour at this time.”

{¶12} There was no error in the trial court's decision to impose maximum, consecutive sentences. The court properly considered whether Wykof showed genuine remorse and acted within its discretion by imposing the maximum, consecutive sentences, regardless of whether it accepted Wykof's show of remorse as genuine. “[T]he trial court is not obligated, in the exercise of its discretion, to give any particular weight or consideration to any sentencing factor. Provided that the sentencing court duly considers the appropriate sentencing factors, it has full discretion to impose a sentence within the statutory range.” *State v. Holin*, 174 Ohio App.3d 1, 2007-Ohio-6255, at ¶34 (citations omitted); *State v. Spencer*, 11th Dist. No. 2008-L-002, 2008-Ohio-3906, at ¶¶12-17.

{¶13} The sole assignment of error is without merit.

{¶14} The judgment of the Lake County Court of Common Pleas, sentencing Wykof to an aggregate prison term of sixteen years, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.