

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

STATE OF OHIO,	:	<b>OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2008-L-126</b>
ROBERT L. HARRIS,	:	
Defendant-Appellant.	:	7/24/09

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 08 CR 000142.

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. GRENDALL, J.

{¶1} Defendant-appellant, Robert L. Harris, appeals the judgment of the Lake County Court of Common Pleas, sentencing him to serve an aggregate prison term of four years for crimes described more fully below. For the following reasons, we affirm the decision of the court below.

{¶2} On March 28, 2008, Harris was indicted by the Lake County Grand Jury for Grand Theft of a Motor Vehicle, a felony of the fourth degree in violation of R.C. 2913.02(A)(1), Receiving Stolen Property, a felony of the fourth degree in violation of R.C. 2913.51(A), and Failure to Comply with Order or Signal of Police Officer, a felony of the fourth degree in violation of R.C. 2921.331(B).

{¶3} At the time of his indictment, Harris was under post-release control, arising out of convictions in Cuyahoga County for Failure to Comply with Order or Signal of Police Officer, Receiving Stolen Property, and Assault on a Police Officer.

{¶4} On June 23, 2008, Harris pled guilty to Receiving Stolen Property and Failure to Comply with Order or Signal of Police Officer. On the State's motion, the trial court entered a Nolle Prosequi to the Grand Theft of a Motor Vehicle count.

{¶5} On July 24, 2008, a sentencing hearing was held. Following the hearing, the trial court sentenced Harris to serve an eighteen month prison term, the maximum term for a felony of the fourth degree, for Receiving Stolen Property to be served consecutively to an eighteen month prison term for Failure to Comply. The court further imposed a one-year prison term, to be served consecutively, for committing a felony while on "parole," i.e. post-release control. R.C. 2929.141(A)(1). Harris' aggregate prison sentence is four years. The court ordered Harris to pay restitution in the amount of \$4,512 to the victims of the crimes. The court journalized Harris' sentence on July 29, 2008.

{¶6} On August 21, 2008, Harris filed his Notice of Appeal. Harris raises the following assignment of error: "The trial court erred by sentencing the defendant-appellant to the maximum term of imprisonment."

{¶7} “[A]ppellate courts must apply a two-step approach when reviewing felony sentences. First, they must examine the sentencing court’s compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court’s decision in imposing the term of imprisonment is reviewed under the abuse-of-discretion standard.” *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, at ¶26.

{¶8} “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).

{¶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. *Kalish*, 2008-Ohio-4912, at ¶17 (“R.C. 2929.11 and 2929.12 \*\*\* are not fact-finding statutes”). 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} Harris argues that the trial court “ignored” or “discounted” certain mitigating factors in imposing the maximum sentence for his crimes. Specifically, the court failed to give appropriate consideration to the fact Harris did not expect to damage the victim’s vehicle, suffers from alcohol addiction and mental illness, and was not taking his psychotropic medications at the time he committed the offenses because he could not afford them.

{¶11} Since Harris does not contend that the trial court failed to comply with the applicable rules and statutes governing felony sentencing, we must consider whether the decision to impose maximum sentences in light of the mitigating evidence constitutes an abuse of discretion. We find no abuse of discretion.

{¶12} In contrast to the mitigating evidence presented, the trial court determined Harris demonstrated the greatest likelihood of recidivism given his extensive criminal history and the fact that he was under post-release control when he committed the current offenses. Harris’ criminal history indicates that he has been imprisoned seven times during his adult life and has numerous felony convictions for Theft and Receiving Stolen Property involving motor vehicles, Assault, and Failure to Comply. Harris was also evaluated by a psychologist prior to sentencing who concluded that, in light of his criminal history, it was questionable whether treatment would have a “substantial effect”

on Harris' ability to amend his life. Thus, the court's decision to impose maximum sentences was not unreasonable. *State v. Holin*, 174 Ohio App.3d 1, 2007-Ohio-6255, at ¶34 ("the trial court is not obligated, in the exercise of its discretion, to give any particular weight or consideration to any sentencing factor ) (citations omitted); *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, at paragraph three of the syllabus ("[t]rial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences").

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

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

MARY JANE TRAPP, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.