

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	<b>OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2019-T-0031</b>
EMMETT B. WILLIAMS, JR.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 2018 CR 01015.

Judgment: Affirmed.

*Dennis Watkins, Trumbull County Prosecutor, and Ashleigh Musick and Ryan J. Sanders, Assistant Prosecutors, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).*

*Michael A. Partlow, 112 South Water Street, Suite C, Kent, OH 44240 (For Defendant-Appellant).*

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Emmett B. Williams, appeals the May 7, 2019 Entry on Sentence of the Trumbull County Court of Common Pleas sentencing him to a prison term of 11 months. For the reasons discussed herein, we affirm.

{¶2} Mr. Williams was indicted on one count of Receiving Stolen Property, a felony of the fifth degree, in violation of R.C. 2913.51(A)(C). Though he initially pleaded

not guilty, Mr. Williams changed his plea to guilty after reaching an agreement with the state. The agreement did not include a joint sentencing recommendation.

{¶3} The state offered the following factual basis for the charge:

{¶4} [O]n November 5, 2018, this defendant was the driver of a vehicle that was traffic stopped by [Ohio State Patrol] \* \* \* for having no front license plate. During the course of the stop the rear license plate was found to be stolen, having been reported stolen two months previously. Also this defendant made admissions to the trooper that he had taken the license plate off of another vehicle and place in onto his.

{¶5} The State would have offered into evidence the video recording from the trooper’s cruiser as well as the stolen license plate and testimony from the trooper.

{¶6} The court accepted his guilty plea and sentenced him to 11 months imprisonment, plus fines and costs, and ordered to submit to DNA testing. Mr. Williams now appeals, assigning one error for our review:

{¶7} The trial court erred by sentencing appellant to a term of 11 months incarceration as the record does not support such a sentence.

{¶8} When reviewing felony sentences, 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.” *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, ¶1.

{¶9} Mr. Williams argues that though the trial court reviewed and considered his prior criminal history, “[b]eyond that, the record is unclear as to why the [t]rial [c]ourt imposed the sentence that it did.” He asserts that he showed great remorse and explained how the nature and severity of his drug problem contributed to his actions, thus he should have been sentenced to community-control sanctions.

{¶10} The trial court, however, was well within its statutory right to impose a prison term. The mandatory community-control sanctions of R.C. 2929.13(B)(1)(a) do not apply as Mr. Williams has four prior felony convictions. Moreover, pursuant to R.C. 2929.13(B)(1)(b):

{¶11} The court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence or that is a qualifying assault offense if any of the following apply:

{¶12} \* \* \*

{¶13} (ix) The offender at the time of the offense was serving, or the offender previously had served, a prison term.

{¶14} (x) The offender committed the offense while under a community control sanction, while on probation, or while released from custody on a bond or personal recognizance.

{¶15} Mr. Williams had previously served prison terms and was on community-control sanctions at the time of the offense. Thus, the court had discretion to impose a prison term.

{¶16} Furthermore, the sentence was not contrary to law, nor was it the maximum sentence the court could have imposed. R.C. 2929.14(A) states, in pertinent part:

{¶17} if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a prison term that shall be one of the following: \* \* \* (5) For a felony of the fifth degree, the prison term shall be a definite term of six, seven, eight, nine, ten, eleven, or twelve months.

{¶18} Finally, in its Entry on Sentencing, the court expressly stated it considered “the record, oral statements, the pre-sentence investigation report, and any victim impact statements, as well as the principles and purposes of sentencing under [R.C.]

2929.11, and has balanced the seriousness and recidivism factors of [R.C.] 2929.12,” which includes consideration of showings of remorse and other mitigating circumstances. At the sentencing hearing, the court stated it considered Mr. Williams’ four prior felony offenses, that he has served prior prison terms, that he was on community-control sanctions at the time of the offense, and that the Pre-Sentencing Investigation report showed he was highly likely to recidivate. In light of these factors, the court found Mr. Williams was not amenable to available community-control sanctions.

{¶19} As his sentence is not contrary to law and is supported by the record, Mr. Williams’ assignment of error is not well taken.

{¶20} The judgment of the Trumbull County Court of Common Pleas is affirmed.

MATT LYNCH, J.,

MARY JANE TRAPP, J.,

concur.