

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

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2019-P-0092
MATTHEW J. CLaar,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2019 CR 00099.

Judgment: Affirmed.

Victor V. Vigluicci, Portage County Prosecutor, and *Theresa M. Scahill*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Alexander Keane, P.O. Box 92, Canfield, OH 44406 (For Defendant-Appellant).

MATT LYNCH, J.

{¶1} Defendant-appellant, Matthew J. Claar, appeals the sentence imposed for Domestic Violence by the Portage County Court of Common Pleas. For the following reasons, we affirm the judgment of the court below.

{¶2} On January 31, 2019, Claar was indicted for one count of Domestic Violence, a felony of the fourth degree in violation of R.C. 2919.25, to which he entered a plea of not guilty.

{¶3} On April 12, 2019, Claar entered a plea of guilty to an amended charge of

fifth-degree Domestic Violence.

{¶4} On July 19, 2019, Claar was sentenced to a prison term of twelve months (the maximum sentence for a fifth-degree felony).

{¶5} On August 19, 2019, Claar filed a Notice of Appeal. On appeal, he raises the following assignment of error:

{¶6} “[1.] The trial court erred by failing to make the findings regarding recidivism and seriousness of the offense at the sentencing hearing.”

{¶7} “The court hearing an appeal [of a felony sentence] shall review the record, including the findings underlying the sentence or modification given by the sentencing court.” R.C. 2953.08(G)(2). “The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing * * * if it clearly and convincingly finds * * * [t]hat the record does not support the sentencing court’s findings under division * * * (C)(4) of section 2929.14, or * * * [t]hat the sentence is otherwise contrary to law.” R.C. 2953.08(G)(2)(a) and (b).

{¶8} When imposing a sentence for a felony, the trial court “has discretion to determine the most effective way to comply with the purposes and principles of [felony] sentencing” and “shall consider the factors * * * relating to the seriousness of the conduct” and “the factors * * * relating to the likelihood of the offender’s recidivism.” R.C. 2929.12(A).

{¶9} In the sole assignment of error, Claar argues the trial court failed to make findings regarding the seriousness of the offense and/or the likelihood of recidivism. “[W]hile the trial court spoke at the sentencing hearing to the consideration of the general

purposes and principles [of sentencing] under R.C. 2929.11, no mention was made of the recidivism and seriousness factors.” Appellant’s brief at 4.

{¶10} Contrary to Claar’s position, the trial court is under no obligation to make mention of the seriousness and recidivism factors of R.C. 2929.12. The Ohio Supreme Court has described R.C. 2929.12 as “a general judicial guide for every sentencing.” *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶ 36. “It is important to note that there is no mandate for judicial fact-finding in the general guidance statutes. The court is merely to ‘consider’ the statutory factors.” *Id.* at ¶ 42. “The Code does not specify that the sentencing judge must use specific language or make specific findings on the record in order to evince the requisite consideration of the applicable seriousness and recidivism factors.” *State v. Arnett*, 88 Ohio St.3d 208, 215, 724 N.E.2d 793 (2000). “A silent record raises the presumption that a trial court considered the factors contained in R.C. 2929.12.” *State v. Adams*, 37 Ohio St.3d 295, 525 N.E.2d 1361 (1988), paragraph three of the syllabus; *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 18, fn 4.

{¶11} Claar cites to Criminal Rule 32(A)(4) for the proposition that a court shall, “[i]n serious offenses, state its statutory findings and give reasons supporting those findings, if appropriate.” The preceding cases demonstrate that it is neither appropriate nor necessary for a sentencing court to state its findings regarding the seriousness and recidivism factors. This court has similarly held that a court which has “met its obligations under *Foster*” has likewise “satisfied the standard of propriety set forth under Crim.R. 32(A)(4).” *State v. Williams*, 11th Dist. Lake Nos. 2007-L-131 and 2007-L-137, 2008-Ohio-2122, ¶ 46.

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

{¶13} For the foregoing reasons, Claar's sentence for Domestic Violence is affirmed. Costs to be taxed against the appellant.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.