

**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 NOS. 2020-P-0026
	:	2020-P-0027
	:	2020-P-0028
QUENTON D. BURRELL,	:	
Defendant-Appellant.	:	

Criminal Appeals from the Portage County Court of Common Pleas, Case Nos. 2018 CR 00316, 2018 CR 00992, and 2018 CR 01157.

Judgment: Affirmed.

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

James W. Armstrong, Leippy & Armstrong, 2101 Front Street, Riverfront Centre, Suite 101, Cuyahoga Falls, OH 44221 (For Defendant-Appellant).

MATT LYNCH, J.

{¶1} Defendant-appellant, Quenton D. Burrell, appeals the imposition of the maximum sentence of three years for third-degree Aggravated Trafficking in Drugs and one year for Possession of Drugs. For the following reasons, Burrell’s sentences are affirmed.

{¶2} The present consolidated appeal arises from three cases, although the assigned error only pertains to two of Burrell’s convictions. In Portage County Court of Common Pleas No. 18 CR 00316 (Appeal No. 2020-P-0026), Burrell pled guilty to

Possession of Cocaine, a felony of the fifth degree in violation of R.C. 2925.11(A) and (C)(4)(a). In Portage County Court of Common Pleas No. 18 CR 00992 (Appeal No. 2020-P-0027), he pled guilty to Failure to Appear, a felony of the fourth degree in violation of R.C. 2937.29 and 2937.99. In Portage County Court of Common Pleas No. 18 CR 01157 (Appeal No. 2020-P-0028), he pled guilty to Aggravated Trafficking in Drugs (Methamphetamine), a felony of the third degree in violation of R.C. 2925.03(A) and (C)(1)(b).

{¶3} On November 4, 2019, Burrell was sentenced in all three cases. He received concurrent prison sentences of twelve months for Possession, twelve months for Failure to Appear, and thirty-six months for Aggravated Trafficking. An Order and Journal Entry memorializing the sentences was issued on November 6, 2019.

{¶4} On March 5, 2020, Burrell filed Notices of Appeal having obtained leave of this court to file delayed appeals. On appeal, Burrell raises the following assignment of error:

{¶5} “[1.] The trial court committed plain error by failing to follow R.C. 2929.14(C)(4) by sentencing Appellant to maximum sentences without articulating the required statutory findings.”

{¶6} “[A] defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed upon the defendant [when] * * * [t]he sentence consisted of or included the maximum definite prison term allowed for the offense by division (A) of section 2929.14 * * * of the Revised Code or, with respect to a non-life felony indefinite prison term, the longest minimum prison term * * *.” R.C. 2953.08(A)(1). Burrell received a twelve-month prison sentence for Possession, the maximum term

allowed for felonies of the fifth degree, and a thirty-six-month prison sentence for Aggravated Trafficking, the maximum term allowed for felonies of the third degree.

{¶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} Burrell argues that the trial court “failed to articulate the required findings regarding the thirty-six-month maximum sentence for Aggravated Trafficking in Drugs pursuant to R.C. 2929.14(C)(4), and thus committed plain error.” Appellant’s brief at 6. Division (C)(4), however, only applies to the imposition of consecutive sentences which were not imposed in the present case.

{¶9} Relative to the imposition of maximum sentences, the Ohio Supreme Court has declared: “Trial 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.” *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph seven of the syllabus. Burrell maintains that, despite *Foster*, “due process necessitates the trial court make findings justifying why a maximum sentence is appropriate, otherwise the statutory right to appeal a maximum sentence is hindered by insufficient facts for proper appellate

review.” Appellant’s brief at 8.

{¶10} Burrell’s arguments fail to account for the changes in Ohio felony sentencing law. The statutory right to appeal a maximum sentence in R.C. 2953.08(A)(1) was enacted in 1995 at a time when findings were required for imposing the maximum term pursuant to former R.C. 2929.14(C). See *Foster* at ¶ 62-64. The findings requirement was found unconstitutional in *Foster* and subsequently removed from the statute in 2011 by Am.Sub.H.B. No. 86 while the language in R.C. 2953.08(A)(1) has never been amended. Admittedly, the statutory right to appeal a maximum sentence will seldom be vindicated given the court’s discretion to impose such sentences and the absence of any requirement that the court make findings before doing so. These circumstances simply reflect the current state of Ohio felony sentencing law and do not, in any sense, deprive Burrell of due process.

{¶11} Burrell makes the further argument that, during the sentencing hearing, the trial court “never mentioned anything related to the seriousness of the offense or Mr. Burrell’s possible recidivism as articulated in R.C. 2929.12.” The court’s silence regarding the seriousness and recidivism factors it was considering when determining Burrell’s sentence deprived trial counsel of the possibility of “specifically and directly” addressing those issues and, thus, deprived Burrell of due process.

{¶12} Again, we disagree. This court has emphasized on multiple occasions that “the trial court is under no obligation to make mention of the seriousness and recidivism factors of R.C. 2929.12.” *State v. Claar*, 11th Dist. Portage No. 2019-P-0092, 2020-Ohio-1331, ¶ 10:

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.

Id.

{¶13} The law is well-settled that for every defendant being sentenced for a felony the sentencing court must consider the statutory seriousness and recidivism factors but need not make findings nor explain its reasoning. The defendant’s opportunity to be heard is at the sentencing hearing where he “may present information relevant to the imposition of sentence in the case” and address the court if he “has anything to say as to why sentence should not be imposed.” R.C. 2929.19(A). Due process does not afford a defendant the opportunity to respond to the court’s consideration of the record, presentence report, and other information before it except by way of appeal from the sentence imposed.

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

{¶15} For the foregoing reasons, Burrell’s sentences are affirmed. Costs to be taxed against the appellant.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.