

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. John W. Wise, J.
Plaintiff-Appellee	:	Hon. Earle E. Wise, J.
	:	
-vs-	:	
	:	Case No. 20CA000009
JAMES L. MORLAND, JR.	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal appeal from the Guernsey County Court of Common Pleas, Case No. 19CR000439

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: November 6, 2020

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Gwin, P.J.

{¶1} Appellant James L. Morland, Jr. appeals from the March 3, 2020 entry of conviction and sentence of the Guernsey County Court of Common Pleas. Appellee is the State of Ohio.

Facts & Procedural History

{¶2} On December 30, 2019, appellant was charged with one count of domestic violence in violation of R.C. 2919.25(A) and R.C. 2919.25(D)(4), a felony of the third degree.

{¶3} The trial court held a change of plea and sentencing hearing on March 3, 2020. As part of a negotiated plea, appellee moved to amend the indictment to attempted domestic violence pursuant to R.C. 2923.02 and R.C. 2919.25, a felony of the fourth degree, which was granted. The trial court conducted a plea colloquy with appellant and reviewed the plea form with appellant. Appellant stated he understood the maximum sentence is eighteen (18) months in prison and a \$5,000 fine.

{¶4} After accepting appellant's plea, the trial court immediately conducted a sentencing hearing.

{¶5} Appellee requested a sentence of seventeen (17) months, noting the following: the victim told law enforcement she was scared for her life; injuries to the victim included a swollen eye and knot on her forehead; the victim reported this has happened many times before; and appellant has previous convictions for assault, two prior domestic violence convictions, and drug convictions.

{¶6} Counsel for appellant argued: appellant has taken responsibility for his crime; the most serious crime appellant has been convicted of in the past is a felony of

the fourth degree; the victim could not be located in this case; there is no record of the victim receiving medical attention; there was a question of whether appellant and the victim were cohabitating; appellant acknowledges that a pattern of drug and alcohol abuse has led him to this point, but is benefiting from treatment; appellant should not receive the maximum sentence because he is not the worst offender; and appellant believes a mandatory sentence of eight (8) months in prison would adequately protect society and would not demean the seriousness of the offense.

{¶7} Appellant spoke on his own behalf at the sentencing hearing, stating he was doing well in rehab and sought to finish the program. Upon questioning by the trial court, appellant admitted he was previously terminated from a drug and alcohol program for illegally conveying contraband into the facility. Further, after reading the police report, the trial judge inquired of appellant as to whether the victim's three young children were at home when the incident occurred. Appellant stated the children were home and that they probably now look at him as "a bad guy." Appellant noted he witnessed his own father commit violence upon his mother as a child.

{¶8} The trial court noted appellant's previous convictions and stated the behavior, "had to stop." The trial judge stated he read the transcript of the preliminary hearing, reviewed the victim impact statement, reviewed the incident report, reviewed a pre-sentence investigation that was completed for appellant's 2008 conviction, listened to the arguments of counsel, and listened to the statement of appellant. Further, the trial court stated, "I have to follow the purposes and principles of sentencing and in all the cases that come before me * * * my job is under 2929.11 is to protect the public from future crime by Mr. Morland and others and to punish him using the minimum sanctions I

deem accomplish that without an unnecessary burden on state or local resources. I have to consider the need for incarcerating him, deterring him, rehabilitating him, [and] providing for restitution.”

{¶9} As to harm caused, the trial court stated the victim had bruises all over her hands and up both arms, a swollen eye, a knot on her forehead, and she was afraid for her life. The victim reported appellant beat her and punched her throughout the morning. With regards to recidivism, the trial court found appellant has a history of criminal convictions, including domestic violence, trafficking in drugs, and assault, and has not responded to sanctions imposed in the past. The trial court noted the lack of remorse by appellant. While the trial court categorized this as a “difficult decision,” it found the maximum sentence of eighteen (18) months is the appropriate sentence.

{¶10} The trial court issued a judgment entry of conviction and sentence on March 3, 2020, sentencing appellant to a stated prison term of eighteen months. The entry states the trial court considered the record, statements, “as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11 and weighed the seriousness and recidivism factors found in Ohio Revised Code Section 2929.12.” Specifically, the court found the following factors contained in R.C. 2929.12(B), (C), (D), and (E) applied in this case: (1) appellant has a history of criminal convictions; (2) appellant has failed to respond favorably to sanctions imposed in the past, but appellant was in the CHANGE program at the Guernsey County Jail; and (3) appellant has shown no remorse for the offense and the offense happened in front of the children.

{¶11} Appellant appeals the March 3, 2020 judgment entry of the Guernsey County Court of Common Pleas and assigns the following as error:

{¶12} “I. THE TRIAL COURT ERRED BY IMPOSING UPON THE DEFENDANT-APPELLANT A MAXIMUM PRISON SENTENCE NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE CONTAINED IN THE RECORD.”

I.

{¶13} In his sole assignment of error, appellant argues the trial court erred in sentencing him to a maximum prison term of eighteen months. Appellant contends he took responsibility for his crime, his previous convictions were never more serious than a fourth-degree felony, the victim’s injuries were minor, he acknowledged a pattern of alcohol and drug abuse led to these events, and this was not the worst form of the offense.

{¶14} We review felony sentences using the standard of review set forth in R.C. 2953.08. *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231. R.C. 2953.08(G)(2) provides we may either increase, reduce, modify, or vacate a sentence and remand for resentencing where we clearly and convincingly find that either the record does not support the sentencing court’s findings under R.C. 2929.13(B) or (D), 2929.14(B)(2)(e) or (C)(4), or 2929.20(I), or the sentence is otherwise contrary to law. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.2d 659.

{¶15} Clear and convincing evidence is that evidence “which will provide in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954). “Where the degree of proof required to sustain an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof.” *Id.*

{¶16} Accordingly, pursuant to *Marcum*, this Court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that: (1) the record does not support the trial court's findings under relevant statutes, or (2) the sentence is otherwise contrary to law.

{¶17} A trial court's imposition of a maximum prison term is not contrary to law as long as the court sentences the offender within the statutory range for the offense, and in doing so, considers the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors set forth in R.C. 2929.12. *State v. Webb*, 5th Dist. Muskingum No. CT2018-0069, 2019-Ohio-4195. Although a trial court must consider the factors in R.C. 2929.11 and R.C. 2929.12, there is no requirement that the court state its reasons for imposing a maximum sentence, or for imposing a particular sentence within the statutory range. *Id.* There is no requirement in R.C. 2929.12 that the trial court states on the record that it has considered the statutory criteria concerning seriousness and recidivism or even discussed them. *Id.* We note, however, that in the instant case, the trial court did specifically reference the statutory factors.

{¶18} Appellant argues that appellee only requested a seventeen-month sentence and thus the trial court's maximum sentence was not supported by clear and convincing evidence. However, as this Court has previously stated, a trial court is not bound to follow a sentence that has been recommended by the prosecutor. *State v. Mathias*, 5th Dist. Fairfield No. 2019 CA 00052, 2020-Ohio-4224; *State ex rel. Duran v. Kelsey*, 106 Ohio St.3d 58, 2005-Ohio-3674, 831 N.E.2d 430.

{¶19} Appellant further contends that he took responsibility for his crime, his previous convictions were never more serious than a fourth-degree felony, the victim's

injuries were minor, he acknowledged a pattern of alcohol and drug abuse led to these events, and this was not the worst form of the offense. Thus, appellant believes the trial court's maximum sentence was not supported by clear and convincing evidence. We disagree.

{¶20} In this case, a sentence of eighteen months is within the statutory framework set forth in R.C. 2929.14(A)(4) for a felony of the fourth degree. The sentence is therefore not contrary to law. The trial court stated the sentencing factors, the victim impact statement, the record, and the arguments of the parties were taken into account in fashioning the sentence. At sentencing and in the sentencing entry, the trial court specifically cited factors including appellant's record of prior felony and misdemeanor convictions, his failure to respond favorably to past sanctions, his lack of remorse, and the fact that the offense happened in front of the victim's three young children.

{¶21} Based on the foregoing, we find the trial court considered the purposes and principles of sentencing (R.C. 2929.11) as well as the factors the court must consider when determining an appropriate sentence (R.C. 2929.12). Although not required to do so, the trial court set forth its reasons for the maximum sentence on the record. While appellant may disagree with the weight given to these factors by the trial judge, appellant's sentence was within the applicable statutory range for a felony of the fourth degree and therefore, we have no basis for concluding that it is contrary to law.

{¶22} Upon review, we do not find clear and convincing evidence that the record does not support the trial court's findings or that the sentence is contrary to law. R.C. 2953.08(G)(2). Appellant's assignment of error is overruled.

{¶23} The March 3, 2020 judgment entry of conviction and sentence of the Guernsey County Court of Common Pleas is affirmed.

By Gwin, P.J.,

Wise, John, J., and

Wise, Earle, J., concur