

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

CHAD KINSER

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Craig R. Baldwin, J.

Case No. CT2019-0089

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Muskingum County
Court of Common Pleas, Case No.
CR2019-0192

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 13, 2020

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Appellant Chad Kinser appeals the judgment entered by the Muskingum County Common Pleas Court convicting him of failure to comply (R.C. 2921.331(B)) and unauthorized use of a motor vehicle (R.C. 2913.03(A)) and sentencing him to an aggregate term of thirty-six months incarceration. Appellee is the state of Ohio.

STATEMENT OF THE CASE¹

{¶2} Appellant was indicted by the Muskingum County Grand Jury on April 10, 2019 for the offenses of failure to comply (risk of harm), a felony of the third degree, in violation of R.C. 2921.331(B); failure to comply (flee after felony), a felony of the fourth degree, in violation of R.C. 2921.331(B); and receiving stolen property (motor vehicle), a felony of the fourth degree, in violation of R.C. 2913.51(A). Appellant was arrested on April 2, 2019, and arraigned on April 17, 2019, where he entered a plea of not guilty to the charges.

{¶3} The trial court set a bond in the amount of \$100,000 cash, property, or surety. On May 23, 2019, Castle Bail Bonds posted bond for Appellant in the amount of \$100,000. Appellant last reported on bond on June 4, 2019. A warrant was issued for Appellant's arrest on June 6, 2019 for his failure to abide by a condition of his bond. The State filed a motion for forfeiture of bail on June 10, 2019.

{¶4} The matter was set for jury trial on June 13, 2019. Appellant failed to appear for the jury trial. On June 25, 2019, the trial court issued an order of bond forfeiture.

{¶5} Appellant was arrested on a warrant and appeared on October 8, 2019, for a plea hearing. The charge of receiving stolen property was amended to unauthorized

¹ A rendition of the facts is not necessary to our resolution of the issue raised on appeal.

use of a motor vehicle, a misdemeanor of the third degree. Count two of the indictment was dismissed. Appellant entered pleas of guilty to Count One of the indictment, failure to comply (risk of harm), and to Count Three as amended, unauthorized use of a motor vehicle.

{¶6} After receiving and reviewing a presentence investigation report, the trial court held a sentencing hearing. At the hearing, Appellant expressed remorse for his actions. Counsel for Appellant provided the court with letters from individuals representing Appellant is reliable and hardworking, and has a job waiting for him upon release from prison. Counsel argued Appellant acted under the stress of having lost his wife and his business, and prior to these actions successfully ran a business and raised a family.

{¶7} The trial court sentenced Appellant to thirty-six months in prison for failure to comply, and six months in prison for unauthorized use of a motor vehicle, to be served concurrently. It is from the November 20, 2019 judgment of conviction and sentence Appellant prosecutes this appeal, assigning as error:

THE TRIAL COURT ERRED WHEN IT SENTENCED KINSER TO MAXIMUM TERMS OF INCARCERATION, IN VIOLATION OF HIS RIGHTS TO DUE PROCESS, GUARANTEED BY SECTION 10, ARTICLE I OF THE OHIO CONSTITUTION AND THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

{¶8} Appellant argues the trial court failed to properly weigh the seriousness and recidivism factors against the mitigating factors in the instant case, pursuant to R.C. 2929.12. He argues he expressed remorse, and was under considerable stress from losing his wife and business when he committed these offenses. He argues he has been respected as a reliable and hard worker, and has a job waiting for him when he gets out of prison.

{¶9} We review felony sentences using the standard of review set forth in R.C. 2953.08. *State v. Cox*, 5th Dist. Licking No. 16-CA-80, 2017-Ohio-5550, ¶10, citing *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶22. 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 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. See also, *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.2d 659, ¶28.

{¶10} 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 so doing, considers the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors set forth R.C. 2929.12. *State v. Santos*, 8th Dist. Cuyahoga No. 103964, 2016-Ohio-5845, ¶ 12. Although a trial court must consider the factors in R.C. 2929.11 and 2929.12, there is no requirement the court state its reasons for imposing a maximum sentence, or for imposing a particular sentence within the statutory range. *Id.* R.C. 2929.12 does not require the trial court to state on the record it has considered the statutory criteria concerning seriousness and recidivism.

State v. Hayes, 5th Dist. Knox No. 18CA10, 2019-Ohio-1629, ¶49, *citing State v. Polick*, 101 Ohio App.3d 428, 431, 655 N.E.3d 820 (4th Dist. 1995).

{¶11} At the sentencing hearing, the trial court noted it had reviewed the presentence investigation report, and stated as follows:

Upon review of this, there were several things I would note. First of all, there's a warrant for you out of Madison County, a warrant for you out of Fairfield County, and a warrant for you out of Hartwell, Georgia.

There's also - - in this particular case, the Court did listen to you once and let you out on bond where you proceeded to leave the state, didn't appear, and were eventually found in Kentucky where you were not supposed to be.

And I understand you've been going through this turmoil, but your criminal history goes all the way back in to the early 2000s with felonies in Kentucky for a variety of theft offenses, possession of forged instruments, so on, so forth. Back in '98, you were put on community control for a couple years and revoked several times.

Your misdemeanor record goes from then and then picks up again starting in 2018 with domestic violence and in to the problems you had with your wife.

{¶12} Sent. Tr. 6-7.

{¶13} In the sentencing entry, the trial court recited it had considered the principles and purposes of sentencing under R.C. 2929.11 and the balance of seriousness and recidivism factors under R.C. 2929.12. The court again noted in the entry Appellant had violated the conditions of his bond by leaving the state without permission, was previously on community control which was revoked, and had three outstanding warrants for his arrest. Judgment Entry, November 20, 2019.

{¶14} 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 that 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, and we find no basis for concluding the sentence is contrary to law.

{¶15} The assignment of error is overruled. The judgment of the Muskingum County Common Pleas Court is affirmed.

By: Hoffman, P.J.
Wise, John, J. and
Baldwin, J. concur

