

[Cite as *State v. Thomson*, 2018-Ohio-5322.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 28900

Appellee

v.

JASEN THOMSON

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 2017 07 2344

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 31, 2018

CARR, Judge.

{¶1} Appellant, Jasen Thomson, appeals the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} On July 24, 2017, the Summit County grand jury indicted Thomson on one count of aggravated of possession of drugs, one count possession of heroin, two counts of illegal use or possession of drug paraphernalia, and one count of driving under suspension. Thomson ultimately pleaded guilty to aggravated possession of drugs and driving under suspension. The remaining charges in the indictment were dismissed. The trial court ordered a presentence investigation report.

{¶3} Prior to sentencing, Thomson successfully moved the trial court for a furlough from the Summit County Jail in order to attend a Social Security Disability Hearing on September 6, 2017. Thomson did not return at the time specified in the trial court’s furlough

order and the trial court issued a *capias*. Thomson was taken into custody approximately two months later and the trial court issued an order reinstating the case on the active docket. The matter proceeded to sentencing on November 13, 2017. The trial court sentenced Thomson to a 12-month term of incarceration for aggravated possession of drugs and 180 days in jail for driving under suspension. The trial court further ordered that the sentences be served concurrently.

{¶4} On appeal, Thomson raises one assignment of error.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED BY GIVING APPELLANT THE MAXIMUM SENTENCE AVAILABLE CONTRARY TO THE RELEVANT SENTENCING FACTORS.

{¶5} In his sole assignment of error, Thomson argues that the trial court erred in giving him a maximum sentence. This Court disagrees.

{¶6} “In reviewing a felony sentence, [t]he appellate court’s standard for review is not whether the sentencing court abused its discretion.” (Internal quotations omitted.) *State v. Boatright*, 9th Dist. Summit No. 28101, 2017-Ohio-5794, ¶ 44, quoting *State v. Howard*, 9th Dist. Lorain No. 15CA010857, 2016-Ohio-7077, ¶ 5, quoting R.C. 2953.08(G)(2). “[A]n appellate 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.” (Internal quotations omitted.) *Boatright* at ¶ 44, quoting *Howard* at ¶ 5, quoting *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, ¶ 1. “Clear and convincing evidence is that which will produce in the mind of the

trier of facts a firm belief or conviction as to the facts sought to be established.” (Internal quotations and citations omitted.) *Boatright* at ¶ 44, quoting *Howard* at ¶ 5.

{¶7} “[A] court must carefully consider the statutes that apply to every felony case[,] * * * includ[ing] R.C. 2929.11, which specifies the purposes of sentencing, and R.C. 2929.12, which provides guidance in considering factors relating to the seriousness of the offense and recidivism of the offender.” *State v. Davison*, 9th Dist. Lorain No. 10CA009803, 2011-Ohio-1528, ¶ 12, quoting *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, ¶ 38.

{¶8} “Although a sentencing judge must consider the principles and purposes of sentencing in imposing a sentence, he or she is not required to make findings or give [his or her] reasons before imposing a maximum sentence.” *State v. Linde*, 9th Dist. Summit No. 26714, 2013-Ohio-3503, ¶ 21, citing *Mathis* at paragraph three of the syllabus. “[W]here the trial court does not put on the record its consideration of [R.C.] 2929.11 and [R.C.] 2929.12 * * *, it is presumed that the trial court gave proper consideration to those statutes.” *State v. Thrasher*, 9th Dist. Summit No. 27547, 2015-Ohio-2504, ¶ 4, quoting *State v. Steidl*, 9th Dist. Medina No. 10CA0025-M, 2011-Ohio-2320, ¶ 13, quoting *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶ 18, fn. 4. “Unless the record shows that the court failed to consider the factors, or that the sentence is strikingly inconsistent with the factors, the court is presumed to have considered the statutory factors if the sentence is within the statutory range.” (Internal quotations and citations omitted.) *Thrasher* at ¶ 4, quoting *State v. Fernandez*, 9th Dist. Medina No. 13CA0054-M, 2014-Ohio-3651, ¶ 8.

{¶9} In this case, Thomas was convicted of aggravated possession of drugs in violation of R.C. 2925.11(A), a felony of the fifth degree. The trial court imposed a 12-month term of incarceration, the maximum possible sentence. *See* R.C. 2929.14(A)(5). Thomson does not

argue that his sentence fell outside the lawful statutory range. Instead, Thomson contends that the imposition of a maximum sentence in this case was strikingly inconsistent with the pertinent sentencing factors. Thomson contends that a community control sanction with a treatment component would have been appropriate given that he is suffering with addiction.

{¶10} While Thomson argues that the circumstances of this case do not justify a maximum sentence, we are unable to reach the merits of his assignments of error. In cases where the appellant does not provide a complete record to facilitate our review, this Court must presume regularity in the trial court's proceedings. *State v. Jalwan*, 9th Dist. Medina No. 09CA0065-M, 2010-Ohio-3001, ¶ 12, citing *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980). A review of the sentencing transcript reveals that the trial court relied on the presentence investigation report in making its sentencing decision. Thomson has not provided this Court with the presentence investigation report in this case. Accordingly, this Court must presume regularity in the trial court's proceedings and affirm. *See State v. Grady*, 9th Dist. Summit No. 27626, 2017-Ohio-7849, ¶ 7.

{¶11} Thomson's assignment of error is overruled.

III.

{¶12} Thomson's assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

TEODOSIO, P. J.
HENSAL, J.
CONCUR.

APPEARANCES:

ALAN M. MEDVICK, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and C. RICHLEY RALEY, JR., Assistant Prosecuting Attorney, for Appellee.