

[Cite as *State v. Candy*, 2010-Ohio-2500.]

IN THE COURT OF APPEALS OF MIAMI COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 09CA0028
vs.	:	T.C. CASE NO. 08CR533
AARON T. CANDY	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

. . . . .

O P I N I O N

Rendered on the 4<sup>th</sup> day of June, 2010.

. . . . .

Gary Nasal, Prosecuting Attorney, 201 W. Main Street, Troy, OH 45373  
Attorney for Plaintiff-Appellee

Charles W. Slicer, III, Atty. Reg. No. 0059927, 111 W. Forst Street, Suite 205, Dayton, OH 45402  
Attorney for Defendant-Appellant

. . . . .

GRADY, J.:

{¶ 1} Defendant, Aaron Candy, entered a plea of no contest to one count of non-support of his dependents in violation of R.C. 2919.21(B), (G) (1), a felony of the fifth degree. The trial court found Defendant guilty and set sentencing for March 30, 2009. Defendant failed to appear for sentencing and a warrant was issued

for his arrest. After Defendant was arrested, he appeared for sentencing on May 18, 2009, at which time the trial court sentenced Defendant to eleven months in prison.

{¶ 2} Defendant appealed to this court from his conviction and sentence. Defendant's appellate counsel filed an *Anders* brief, *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 19 L.Ed.2d 493, stating that he could find no meritorious issues for appellate review. We notified Defendant of his appellate counsel's representations and afforded him ample time to file a pro se brief. None has been received. This case is now before us for our independent review of the record. *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

{¶ 3} Defendant's appellate counsel has identified one possible issue for appeal:

ASSIGNMENT OF ERROR

{¶ 4} "THE TRIAL COURT ERRED WHEN IT DETERMINED THAT APPELLANT WAS NOT AMENABLE TO COMMUNITY CONTROL, THEREBY IMPOSING AN ELEVEN MONTH TERM OF INCARCERATION."

{¶ 5} Defendant challenges his sentence and argues that because he was working at the time of sentencing and had begun to make payments on his support arrearage, the trial court erred by not placing him on community control and instead sentencing him to eleven months in prison.

{¶ 6} In *State v. Jeffrey Barker*, Montgomery App. No. 22779, 2009-Ohio-3511, at ¶36-38, we wrote:

{¶ 7} “The trial court has full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum, consecutive, or more than minimum sentences. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, at paragraph 7 of the syllabus. Nevertheless, in exercising its discretion the trial court must consider the statutory policies that apply to every felony offense, including those set out in R.C. 2929.11 and 2929.12. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, at ¶ 37.

{¶ 8} “When reviewing felony sentences, an appellate court must first determine whether the sentencing court complied with all applicable rules and statutes in imposing the sentence, including R.C. 2929.11 and 2929.12, in order to find whether the sentence is contrary to law. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124. If the sentence is not clearly and convincingly contrary to law, the trial court's decision in imposing the term of imprisonment must be reviewed under an abuse of discretion standard. *Id.*

{¶ 9} “The term “abuse of discretion” connotes more than an error of law or judgment; it implies that the trial court's attitude

is unreasonable, arbitrary, or unconscionable.’ *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.”

{¶ 10} The record demonstrates that the trial court reviewed the presentence investigation report in this case and considered the seriousness and recidivism factors in R.C. 2929.12. The court also considered the victim impact statement, the statements by Defendant and his attorney, and the purposes and principles of felony sentencing. R.C. 2929.11. The eleven month sentence imposed by the trial court is clearly within the range of punishments available for a felony of the fifth degree. R.C. 2929.14(A)(5). There is nothing in this record that suggests the trial court did not comply with all applicable rules and statutes in imposing its sentence. The court’s sentence is not clearly and convincingly contrary to law. *Kalish*.

{¶ 11} With respect to the seriousness factors, the court noted that Defendant’s son is now fifteen and yet Defendant’s ex-wife has received only two support payments from Defendant throughout his son’s life. Except for Defendant’s most recent payment one week before sentencing, the last payment Defendant made was in May 2008, one year before. Defendant’s present arrearage is twenty thousand dollars, and the victims, his children, have suffered serious economic harm. R.C. 2929.12(B)(2).

{¶ 12} With respect to the recidivism factors, the court noted

that Defendant has a very extensive criminal record, fourteen pages of prior convictions. R.C. 2929.12(D)(2), (3). The court also noted that Defendant has previously served a prison term. R.C. 2929.13(B)(1)(g). Finally, the court noted that Defendant had previously lied a number of times about appearing for court proceedings and paying his child support.

{¶ 13} On these facts the trial court clearly did not abuse its discretion in finding that Defendant is not amenable to community control sanctions and that a prison term is consistent with the purposes and principles of sentencing in R.C. 2929.11, and in sentencing Defendant to eleven months in prison. This assignment of error lacks arguable merit.

{¶ 14} In addition to reviewing the possible issues for appeal raised by Defendant's appellate counsel, we have conducted an independent review of the trial court's proceedings and have found no error having arguable merit. Accordingly, Defendant's appeal is without merit and the judgment of the trial court will be affirmed.

BROGAN, J. And FROELICH, J., concur.

Copies mailed to:

Gary Nasal, Esq.  
Charles W. Slicer, III, Esq.  
Aaron T. Candy  
Hon. Robert J. Lindeman