

IN THE COURT OF APPEALS OF CHAMPAIGN COUNTY, OHIO

STATE OF OHIO :
 Plaintiff-Appellee : C.A. CASE NO. 09CA0024
 vs. : T.C. CASE NO. 08CR340
 KERMETH MADISON COCHRAN, III : (Criminal Appeal from
 Defendant-Appellant : Common Pleas Court)

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O P I N I O N

Rendered on the 23rd day of July, 2010.

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 OH 43078
 Attorney for Plaintiff-Appellee

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GRADY, J.:

{¶ 1} Defendant, Kermeth Cochran, entered a plea of guilty in the Champaign County Common Pleas Court to one count of arson in violation of R.C. 2909.03(A)(1), (B)(2)(b), a felony of the fourth degree. Pending sentencing, Defendant requested the trial court to reduce his \$25,000 cash or surety pretrial bond and release

him on his own recognizance. The State opposed that request. The trial court refused to reduce Defendant's bond. The trial court sentenced Defendant to the maximum allowable prison term of eighteen months and ordered Defendant to pay restitution to the victim in the amount of \$2,480.00.

{¶ 2} Defendant appealed to this court from his conviction and sentence. Defendant's appointed 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 she 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. Defendant has filed a pro se brief raising two issues, which are the same as the two possible issues for appeal raised by Defendant's appellate counsel. 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 three possible issues for appeal.

FIRST ASSIGNMENT OF ERROR

{¶ 4} "THE TRIAL COURT ERRED WHEN IT SENTENCED DEFENDANT TO THE MAXIMUM PRISON TERM."

{¶ 5} Defendant argues that the trial court abused its discretion in imposing the maximum eighteen month prison term for

arson.

{¶ 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, 845 N.E.2d 470, 2006-Ohio-856, 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, 846 N.E.2d 1, 2006-Ohio-855, 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, 896 N.E.2d 124, 2008-Ohio-4912. 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 trial court considered the presentence investigation report, the purposes and principles of felony sentencing, R.C. 2929.11, and the statements by the parties at sentencing. The court also informed Defendant about post-release control requirements. The trial court complied with applicable rules and statutes in imposing its sentence. Furthermore, although the eighteen month prison term the court imposed for arson is the maximum allowable sentence for a fourth degree felony, R.C. 2929.14(A)(4), it is nevertheless within the authorized range of available punishments. Defendant's sentence is not clearly and convincingly contrary to law. *Kalish*.

{¶ 11} This case arises out of Defendant's conduct in setting fire to a vehicle that belonged to a woman with whom Defendant had been in a relationship. This arson offense was committed while Defendant was on post-release control, R.C. 2929.12(D)(1). Defendant has a history of prior criminal convictions for felonious assault and domestic violence, including two previous prison terms, R.C. 2929.12(D)(2), (3). Although Defendant stated that he was sorry for what he had done, he went on to minimize his responsibility, saying: "I felt like I was pushed into a corner."

R.C. 2929.12(D)(5).

{¶ 12} The record supports the sentence imposed on Defendant. No abuse of discretion on the part of the trial court has been demonstrated. This assignment of error lacks arguable merit.

SECOND ASSIGNMENT OF ERROR

{¶ 13} "THE TRIAL COURT ERRED WHEN IT ORDERED DEFENDANT TO PAY RESTITUTION FOR THE FULL KELLY BLUE BOOK VALUE OF THE VEHICLE."

{¶ 14} Defendant argues that the trial court abused its discretion in ordering him to pay restitution to the victim of the offense in the amount of \$2,480.00.

{¶ 15} In *State v. MacQuarrie*, Montgomery App. No. 22763, 2009-Ohio-2182, this court stated, at ¶6-8:

{¶ 16} "If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold a hearing on restitution if the

offender, victim, or survivor disputes the amount.

{¶ 17} "An order of restitution must be supported by competent, credible evidence in the record. *State v. Warner* (1990), 55 Ohio St.3d 31, 69, 564 N.E.2d 18. 'It is well settled that there must be a due process ascertainment that the amount of restitution bears a reasonable relationship to the loss suffered.' *State v. Williams* (1986), 34 Ohio App.3d 33, 34, 516 N.E.2d 1270. 'A sentence of restitution must be limited to the actual economic loss caused by the illegal conduct for which the defendant was convicted.' *State v. Banks* (Aug. 19, 2005), Montgomery App. No. 20711, 2005-Ohio-4488. 'Implicit in this principle is that the amount claimed must be established to a reasonable degree of certainty before restitution can be ordered.' *State v. Golar* (October 31, 2003), Lake App. No.2002-L-092, 2003-Ohio-5861.

{¶ 18} "A trial court abuses its discretion in ordering restitution in an amount that was not determined to bear a reasonable relationship to the actual loss suffered. *State v. Williams*, 34 Ohio App.3d 33, 516 N.E.2d 1270. Thus, we review the trial court's decision under an abuse of discretion standard. 'The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable.' *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 218, 450 N.E.2d 1140, quoting *State v. Adams* (1980),

62 Ohio St.2d 151, 404 N.E.2d 144. * * * *State v. Collins*, Montgomery App. Nos. 21510 and 21689, 2007-Ohio-5365, at ¶ 12-13.”

{¶ 19} At sentencing the prosecutor referenced the presentence investigation report and indicated that the victim’s economic loss as a result of Defendant’s crime was \$2,480.00, which represents the Kelley Blue Book value of the victim’s vehicle. Defendant did not dispute that amount, request a hearing thereon, or otherwise object. Accordingly, Defendant has waived all error except plain error. *MacQuarrie*.

{¶ 20} The trial court’s order of restitution in the amount of \$2,480.00 was consistent with the report of the amount of the victim’s economic loss. Based upon this record, we find no plain error in the trial court’s order of restitution in the amount of \$2,480.00. This record contains competent, credible evidence that was the amount of economic loss suffered by the victim as a result of Defendant’s arson offense, and the trial court properly relied upon that information in ordering restitution. R.C. 2929.18(A)(1); *MacQuarrie*. This assignment of error lacks arguable merit.

THIRD ASSIGNMENT OF ERROR

{¶ 21} “THE TRIAL COURT ERRED WHEN IT REFUSED TO CHANGE DEFENDANT’S BOND AFTER HE PLED GUILTY BUT BEFORE HE WAS SENTENCED.”

{¶ 22} After Defendant pled guilty, he requested that the trial court reduce his \$25,000 cash or surety pretrial bond so he could be free while awaiting sentencing. The State objected, citing Defendant's prior criminal history, his history of violence against women with whom he has been involved, his threats against the victim in this case, and his mental health issues. The trial court refused to reduce Defendant's bond. Defendant now argues that the court's refusal to reduce his bond pending sentencing was an abuse of discretion.

{¶ 23} Crim.R. 46(H) provides that in the discretion of the court, the same (pretrial) bond may continue pending sentencing.

In light of Defendant's guilty plea to arson, his background, the nature and circumstances of this offense, and the fact that Defendant was on post-release control, the court clearly did not abuse its discretion in denying Defendant's request to reduce his bond pending sentencing. In any event, Defendant now having been sentenced, there is no relief we can order even were we to find the trial court erred. This assignment of error lacks arguable merit.

{¶ 24} 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:

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Hon. Roger B. Wilson