



HALL, J.

{¶ 1} Dontrae Sparks appeals from his conviction and sentence on one count of burglary, a third-degree felony.

{¶ 2} In his sole assignment of error, Sparks contends the trial court erred in imposing a statutory maximum three-year prison sentence.

{¶ 3} The record reflects that 19-year-old Sparks was arrested in the early morning hours of July 10, 2017 after two break-ins were reported at a Clark County apartment complex. Police responded to burglary complaints from two separate victims, a male and a female. The male reported that someone had entered his ninth-floor apartment and stolen a white “tablet” computer. The female, who resided on the eighth floor in the same building, reported that she actually had seen the perpetrator in her apartment. Police promptly located Sparks on the sixth floor and detained him for questioning. He had a steak knife in his possession. The female victim identified Sparks at the scene as being the person she had seen inside her apartment.

{¶ 4} After being transported to the police station, Sparks admitted opening the female victim’s door and crawling through her apartment and into her bedroom while she was in bed under blankets calling 911. At some point, Sparks also admitted breaking into the male victim’s apartment and stealing the tablet. He told police that he had started on the ninth floor and had worked his way down to the sixth floor, using the knife to try to “jimmy” doors. Sparks ultimately was indicted on one count of aggravated burglary, a first-degree felony, for breaking into the male victim’s apartment and stealing the tablet. Pursuant to plea negotiations, he agreed to plead guilty to one count of burglary, a third-degree felony. In exchange, the State agreed that he would not be charged with any

additional crimes for his actions. The trial court accepted the plea and entered a finding of guilt.

{¶ 5} In his pre-sentence investigation interview, Sparks claimed he entered the male victim's apartment and took the tablet because he believed the male victim had stolen money from his grandmother. During an initial sentencing hearing, the trial court questioned Sparks about this version of events. When the trial court asked why he was breaking into multiple apartments, Sparks denied entering, or trying to enter, any other apartments. He specifically denied being in the female victim's apartment. He claimed not to remember telling police that he had done anything other than enter the male victim's apartment. The trial court continued the sentencing hearing so it could pursue the matter further. The hearing resumed a few days later. At that time, the trial court heard testimony from an officer who investigated the break-ins and spoke with Sparks at the police station following his arrest. Consistent with the facts set forth above, the officer testified that Sparks had admitted breaking into multiple apartments and trying to open the doors of others.

{¶ 6} Following arguments from counsel, Sparks spoke on his own behalf. He claimed to have "remembered nothing" when the trial court previously had inquired about his actions. He then proceeded to recall that he actually had done everything the officer claimed, including entering two victims' apartments. Based on the record before it, including a PSI report, the trial court imposed a three-year prison sentence. In so doing, the trial court noted, among other things, that Sparks originally had been charged with a first-degree felony and that his story about being motivated only by the alleged theft of his grandmother's money was not credible based on the admitted facts.

{¶ 7} In his assignment of error, Sparks challenges his statutory maximum three-year prison sentence. He acknowledges that the sentence was not contrary to law. He argues, however, that we should modify it downward because the record clearly and convincingly does not support it. Sparks asserts that the trial court did not specify, in any detail, how it analyzed the statutory seriousness and recidivism factors. By engaging in his own point-by-point analysis, Sparks contends his conduct was less serious than conduct normally constituting burglary and that he is less likely than the typical offender to commit future crimes. He maintains that he was acting to recover his grandmother's stolen money and that he was intoxicated at the time. He contends the seriousness and recidivism factors clearly and convincingly do not support his sentence in light of his "young age, low OARS risk score, relatively clean criminal history, education and educational aspirations, and strong family and friend support."

{¶ 8} Upon review, we find Sparks's assignment of error to be without merit. As a preliminary matter, the trial court was not required to make any specific findings regarding its consideration of the seriousness and recidivism factors in R.C. 2929.12(B) through (E). *State v. Mitchell*, 2d Dist. Clark No. 2014-CA-108, 2016-Ohio-1422, ¶ 12. Nor was the trial court "required to discuss every statutory factor listed in R.C. 2929.12, or find a majority or any particular number of factors" in order to impose the sentence it did. *State v. Ulrich*, 2d Dist. Montgomery No. 23737, 2011-Ohio-758, ¶ 35.

{¶ 9} With regard to the seriousness of Sparks's offense, the trial court explained that it was considering "the fact that [he was] originally indicted on a first degree felony and that the State reduced [his] charge to a third-degree felony." (Final Disposition Tr. at 13). In evaluating the relative seriousness of Sparks's offense, the trial court was entitled

to consider the indicted charge of aggravated burglary and the fact that Sparks pled guilty to a lesser charge as part of a plea bargain. *State v. Gore*, 10th Dist. Franklin No. 15-AP-686, 2016-Ohio-7667, ¶ 12. This is particularly true where the record contains factual support for the trial court's finding that the victim was present when Sparks broke into his apartment and that Sparks was armed with a knife, creating "an extremely dangerous situation." (Final Disposition Tr. at 13).

{¶ 10} Sparks asserts, however, that several statutory "less serious" factors apply. Specifically, he contends (1) the victim induced or facilitated the offense, (2) he acted under strong provocation, (3) he did not cause or expect to cause any physical harm to any person or property, and (4) there are substantial grounds to mitigate his conduct. The first, second, and fourth of these factors are premised on Sparks's claim that he broke into the male victim's apartment in an effort to recover money that he believed had been stolen from his grandmother. This argument fails to establish the applicability of the "less serious" factors for at least two reasons. First, the record contains no evidence that the male victim actually did steal any money from Sparks's grandmother. Second, and more importantly, the trial court explicitly rejected Sparks's explanation for why he went into the male victim's apartment. On this issue, the trial court stated:

The only interest I had in the other potential incidents was I was trying to validate or crosscheck the credibility of the defendant when he said that he broke into [the male victim's] apartment with the sole objective of retrieving money that he believed was stolen from his grandmother.

I think it's clear to the Court that either that was entirely made up or giving the defendant the benefit of the doubt he may have gone into that

apartment to try to retrieve money he believed was taken from his grandmother, but that wasn't the only reason that he went into the apartment because he was apparently making efforts to go into other apartments, owned or rented by people that didn't steal something from his grandmother.

So I don't find it mitigating, Mr. Sparks, that you were just going into [the male victim's] apartment to retrieve property that you believed to have been stolen.

(Final Disposition Tr. at 12-13).

**{¶ 11}** The foregoing conclusions by the trial court negate Sparks's arguments that the victim induced or facilitated the offense, that he acted under strong provocation, and that there were substantial grounds to mitigate his conduct. The only potentially-applicable "less serious" factor was that Sparks may not have caused or expected to cause any physical harm to any person or property.

**{¶ 12}** With regard to the recidivism factors, the record reflects that Sparks had a prior juvenile delinquency adjudication for gross sexual imposition (that was reduced from rape) and for criminal trespass. He also had a prior misdemeanor conviction as an adult. The record additionally suggests a lack of genuine remorse, as evidenced by Sparks's initial insistence to the trial court that he did not enter, or attempt to enter, multiple apartments and his claim that he entered the male victim's apartment only to recover money he believed had been stolen from his grandmother.

**{¶ 13}** Sparks argues, however, that several statutory factors suggest that recidivism is less likely: (1) he has not been adjudicated a delinquent child, (2) he had not

been convicted of or pleaded guilty to a criminal offense prior to committing the current offense, (3) he led a law-abiding life for a significant number of years prior to committing the current offense, (4) the current offense was committed under circumstances not likely to recur, and (5) he shows genuine remorse.

**{¶ 14}** The first factor—lack of a prior delinquency adjudication—manifestly did not apply because Sparks had a delinquency adjudication for gross sexual imposition. The second factor did appear to apply. Although his PSI report shows an adult misdemeanor conviction, that conviction occurred roughly one month after the current offense. With regard to the third factor—leading a law-abiding life for a significant number of years prior to the instant offense—its applicability is questionable. Sparks’s juvenile cases for gross sexual imposition and criminal trespass occurred in 2013 and 2016. His adult misdemeanor conviction occurred in August 2017, but it is unclear when he committed that offense. Regardless, the trial court reasonably could have concluded that Sparks had not led a law-abiding life for a significant number of years. The record also did not support Sparks’s claim that his offense was committed under circumstances not likely to recur. Again, this argument is premised on his claim that he was only trying to recover his grandmother’s money, an argument the trial court rejected. Finally, as we explained above, the record suggests a lack of genuine remorse in light of Sparks’s apparent failure to be less than truthful to the trial court.

**{¶ 15}** Sparks also argues that he is relatively young, has a high-school diploma, has been accepted to college, and has little experience with the criminal-justice system. He notes too that his ORAS risk score was “low.” With regard to this last consideration, the State responds that Sparks’s risk score was only two points away from crossing into

the “moderate” range.

{¶ 16} After considering all of the issues addressed above, we do not find that the record clearly and convincingly fails to support the trial court’s imposition of a three-year prison sentence. To the contrary, the record supports the sentence. In our view, the most notable factors supporting the sentence are (1) the fact that Sparks was allowed to plead guilty to a reduced charge of burglary when he actually committed aggravated burglary and (2) Sparks’s initial failure to be honest with the trial court about the multiple offenses he committed, and his on-going failure to be honest about his reason for breaking into the male victim’s apartment. In any event, because Sparks has not established that the record clearly and convincingly does not support his sentence, we cannot modify it.

{¶ 17} Sparks’s assignment of error is overruled, and the judgment of the Clark County Common Pleas Court is affirmed.

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WELBAUM, P. J., and DONOVAN, J., concur.

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