

[Cite as *State v. Knott*, 2017-Ohio-9401.]

STATE OF OHIO, BELMONT COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

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| STATE OF OHIO, |) | |
| |) | |
| PLAINTIFF-APPELLEE, |) | |
| |) | CASE NO. 16 BE 0062 |
| V. |) | |
| |) | OPINION |
| ANTONIO DWAYNE KNOTT, |) | |
| |) | |
| DEFENDANT-APPELLANT. |) | |

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| CHARACTER OF PROCEEDINGS: | Criminal Appeal from Court of Common Pleas of Belmont County, Ohio Case No. 16 CR 52 |
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| JUDGMENT: | Affirmed |
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| APPEARANCES: For Plaintiff-Appellee | No brief filed |
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| For Defendant-Appellant | Attorney Peter Galyardt Assistant Public Defender 250 East Broad St., Suite 1400 Columbus, Ohio 43215 |
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JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: December 18, 2017

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DONOFRIO, J.

{¶1} Defendant-appellant, Antonio Knott, appeals the Belmont County Court of Common Plea's decision to sentence him to three years of incarceration.

{¶2} Appellant was indicted on one count of trafficking heroin in violation of R.C. 2925.03(A)(2)(C)(6)(e), a felony of the first degree, and on one count of possession of heroin in violation of R.C. 2925.11(A)(C)(6)(d), a felony of the second degree. Pursuant to a plea agreement, appellant's trafficking heroin charge was dismissed and appellant's possession of heroin charge was amended to a possession of heroin charge in violation of R.C. 2925.11(A)(C)(6)(c), a felony of the third degree. Appellant pled guilty to the amended charge. At the conclusion of the change of plea hearing, the trial court ordered a presentence report to be completed prior to the sentencing hearing.

{¶3} Relevant to this appeal, the presentence report contains appellant's entire criminal record. Appellant had been convicted of multiple driving under suspension charges, multiple traffic offenses, multiple drug related offenses, two contempt of court charges, and a felony non-support of dependents charge. The most severe charges appellant has been convicted of were aggravated theft and burglary. Appellant's criminal record begins on October 8, 2004 and continued until the disposition of the case at bar. Despite this criminal record, the risk assessment labeled appellant's final risk level as "moderate" and the final assessment/recommendation was that appellant should receive community supervision.

{¶4} The presentence report was submitted to the trial court for appellant's sentencing hearing. At the sentencing hearing, plaintiff-appellee, the State of Ohio, stated that it "[stood] by the presentence investigation." Additionally, appellant's counsel at the sentencing hearing asked the trial court to consider appellant's behavioral health issues which lead to appellant's homelessness for approximately three to four years which, he contended, led to several of his past criminal charges. At the end of the sentencing hearing, after consulting Ohio law, principals and factors for sentencing, reviewing the immediate file, and reviewing the presentence report,

the trial court sentenced appellant to three years of incarceration with 53 days of credit for time served. This was the maximum penalty appellant could have received for his convicted offense.

{¶15} On November 8, 2016, the trial court submitted its journal entry memorializing appellant's sentence. Appellant timely filed his notice of appeal on November 21, 2016. Appellant now raises one assignment of error.

{¶16} Appellant's sole assignment of error states:

ANTONIO KNOTT'S SENTENCE IS NOT SUPPORTED BY COMPETENT, CREDIBLE EVIDENCE IN THE RECORD. FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS, UNITED STATES CONSTITUTION; ARTICLE I, SECTIONS 10 AND 16, OHIO CONSTITUTION. R.C. 2953.08; R.C. 2929.11. PLEA TR. 3; SENTENCING TR. 6-8; PRESENTENCE INVESTIGATION REPORT; NOV. 8, 2016 JUDGMENT ENTRY.

{¶17} Appellant raises multiple arguments challenging his sentence. Appellant argues that his sentence was not proportional to his conduct in his convicted offense, his sentence is contrary to the presentence report's recommendation, and his sentence is a clear burden on state government resources.

{¶18} The state failed to timely file a brief in this appeal. As such, pursuant to App. R. 18(C), this Court may accept the appellant's statement of the facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain such action.

{¶19} An appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court's findings under relevant statutes or that the sentence is otherwise contrary to law. *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231 ¶ 1 citing R.C. 2953.08(G)(2).

{¶10} First, appellant argues that R.C. 2929.11 requires a sentencing court to

use the minimum sanctions in order to protect the public from the offender and to punish the offender and that every sentence imposed is consistent for similar crimes committed by similar offenders. Appellant argues that because of his reduced role in the crime for which he was convicted and the presentence report's conclusion that appellant's risk level was moderate with a recommended community-control sentence, the trial court failed to follow R.C. 2929.11.

{¶11} In addition to R.C. 2929.11, the trial court also analyzed appellant's characteristics pursuant to R.C. 2929.12. (Sent. Tr. 5). The sentencing court has the discretion to determine the most efficient way to comply with the purposes and principals set forth in R.C. 2929.11. R.C. 2929.12(A). Furthermore, the sentencing court is also to consider factors related to the seriousness of the offense, factors related to likelihood of recidivism, and the offender's prior service in the U.S. armed forces. *Id.*

{¶12} In its journal entry dated November 8, 2016, the trial court listed all of the factors pursuant to R.C. 2929.12 it was supposed to consider. The trial court noted that, pursuant to R.C. 2929.12(B) and (D), appellant had multiple misdemeanor convictions as well as felony convictions. The trial court continued that, as indicated by appellant's multiple criminal convictions, appellant had not responded to sanctions previously imposed and appellant has demonstrated a pattern of criminal activity without a good faith attempt at treatment or change of lifestyle. Furthermore, pursuant to R.C. 2929.12(C) and (E), the trial court noted that there appeared to be no factor that would indicate appellant was less likely to recidivate.

{¶13} Ultimately, the trial court's sentence is not clearly and convincingly error. Appellant has a record of multiple criminal convictions including felony convictions as well as drug related convictions. It is also worth noting that, pursuant to R.C. 2929.14(A)(3)(b), a prison term for a felony of the third degree shall be nine, twelve, eighteen, twenty-four, thirty, or thirty-six months. As appellant's sentence was for three years of incarceration, or thirty-six months, the trial court's sentence was not contrary to law.

{¶14} Second, appellant argues that the trial court's sentence in this case is a clear burden on government resources. However, appellant relies on the same arguments previously addressed. Therefore, this argument does not require any additional analysis.

{¶15} Accordingly, appellant's sole assignment of error lacks merit and is overruled.

{¶16} For the reasons stated above, the trial court's decision is hereby affirmed.

Waite, J., concurs.

DeGenaro, J., concurs.