[Cite as *State v. Montgomery*, 2010-Ohio-3077.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

State of Ohio | Court of Appeals No. OT-09-034

Appellee | Trial Court No. 09-CR-082

v.

Jarmearl Montgomery | **DECISION AND JUDGMENT**

Appellant | Decided: June 30, 2010

* * * * *

Mark Mulligan, Ottawa County Prosecuting Attorney, and
Matthew S. Shuh, Assistant Prosecuting Attorney, for appellee.

Howard C. Whitcomb, III, for appellant.

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SINGER, J.

{¶ 1} Appellant appeals maximum, consecutive sentences for attempted aggravated assault and failure to appear in the Ottawa County Court of Common Pleas. For the reasons that follow, we affirm.

{¶ 2} Appellant is Jarmearl M. Montgomery. On April 5, 2009, appellant was present at a Port Clinton roadhouse when a fight broke out among patrons. As the fight went on, appellant, who had not been one of the original participants, threw a beer bottle at one of the combatants, striking the victim in the head. The victim suffered a fractured skull, requiring that he be transported by air ambulance to a Toledo hospital.

{¶ 3} Appellant was arrested and eventually named in an indictment charging two counts of felonious assault, both second degree felonies. Appellant initially pled not guilty, but following plea negotiations agreed to plead guilty to a bill of information for one count of attempted aggravated assault, a fifth degree felony.

{¶ 4} On June 18, 2009, the trial court accepted appellant's plea, found him guilty and ordered a presentence investigation. Sentencing was scheduled for July 30, 2009.

{¶ 5} Appellant failed to appear at his sentencing hearing, resulting in a second indictment for two counts of failure to appear, fourth degree felonies. Appellant was eventually arrested and returned to Ottawa County. Appellant pled not guilty to the new charges, but again, following negotiations, agreed to change his plea to guilty to a single count of failure to appear.

{¶ 6} On November 5, 2009, a combined plea change and sentencing hearing was held. The court accepted appellant's guilty plea to the failure to appear offense, found him guilty and dismissed the remaining charges. The court then sentenced appellant to a 12 month period of incarceration for the attempted aggravated assault and 18 months for

the failure to appear, the maximum period statutorily permissible for each degree of offense. The court ordered that the sentences be served consecutively.

{¶ 7} Appellant now appeals this judgment of conviction. Appellant sets forth the following two assignments of error:

{¶ 8} "I. The trial court erred in imposing the maximum sentence upon defendant-appellant in that it did not comply with the requirements of Ohio Revised Code Section 2929.11 et seq[.]

{¶ 9} "II. The trial court abused its discretion in imposing the maximum sentence upon defendant-appellant as it was against the manifest weight of the evidence[.]"

{¶ 10} We shall discuss appellant's assignments of error together.

{¶ 11} Appellant insists that the record is devoid of a detailed analysis by the court of its consideration of the requisite sentencing factors delineated in R.C. 2929.11 through R.C. 2929.14. According to appellant, the court gave insufficient indicia of its weighing of the seriousness and recidivism factors mandatory under R.C. 2929.12 and did not explain why it refused to impose the shortest prison term authorized as required by R.C. 2929.14. Moreover, appellant asserts, the evidence before the court was insufficient to justify imposition of the maximum sentence on the attempted aggravated assault count and certainly not enough to support consecutive maximum sentences.

{¶ 12} On an appeal from a felony sentencing judgment, a reviewing court must first determine whether the sentence imposed complies with the applicable sentencing

rules and statutes. If the sentence is clearly and convincingly contrary to law, it must be vacated. When the sentence is in conformity with the law, the sentencing decision is reviewed under an abuse of discretion standard. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶ 4. An abuse of discretion is more than a mistake of law or a lapse of judgment, the term connotes that the court's attitude is arbitrary, unreasonable or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶ 13} Trial courts are not required to make findings or give reasons for imposing maximum, consecutive or more than minimum sentences. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, ¶ 100. A sentencing court must consider the guidance provided in R.C. 2929.11 and 2929.12, but it is unnecessary that the court make specific findings or give reasons for imposing a sentence at the sentencing hearing. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, ¶ 38.

{¶ 14} The sentences imposed in this case are within the permissible range authorized for fourth and fifth degree felonies. R.C. 2929.14(A)(4) and (5). The trial court expressly stated both at the sentencing hearing and in its sentencing judgment that it considered the R.C. 2929.11 and 2929.12 factors.

{¶ 15} Like the trial court, we have reviewed the surveillance tape of the incident introduced by appellant. Appellant's acts were unprovoked and vicious. Any doubt that appellant was actually responsible for the victim's serious injury has already been factored into the plea agreement.

{¶ 16} With respect to the sentence imposed on the failure to appear conviction, appellant's refusal to comply with the authority of the judiciary is chronic. His record contains multiple prior failures to appear and multiple failures to comply with the order of the court.

{¶ 17} Given these considerations, there is nothing to suggest that the court's attitude with respect to sentencing was arbitrary, unreasonable or unconscionable. Accordingly, both of appellant's assignments of error are not well-taken.

{¶ 18} On consideration whereof, the judgment of the Ottawa County Court of Common Pleas is affirmed. It is ordered that appellant pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Arlene Singer, J. _______________________________
JUDGE

Thomas J. Osowik, P.J.

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Keila D. Cosme, J. JUDGE
CONCUR.

____
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.