

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

State of Ohio

Court of Appeals No. WM-15-003

Appellee

Trial Court No. 14CR000094

v.

Robert W. Harvey

DECISION AND JUDGMENT

Appellant

Decided: July 24, 2015

* * * * *

Kirk E. Yosick, Williams County Prosecutor, and
Katherine J. Zartman, Assistant Prosecuting Attorney, for appellee

Dwight L. Cain, for appellant.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} Appellant, Robert Harvey, appeals the judgment of the Williams County Court of Common Pleas, sentencing him to 36 months in prison following acceptance of his guilty plea to one count of failure to notify change of address. We affirm.

A. Facts and Procedural Background

{¶ 2} On July 27, 1999, appellant entered a plea of guilty to one count of rape in violation of R.C. 2907.02(A)(1)(b). As a result, appellant was subsequently sentenced to six years in prison, classified as a “sexually oriented offender,” and informed that, upon his release from prison, he would be required to register as a sex offender pursuant to R.C. 2950.03.

{¶ 3} Thereafter, on May 21, 2007, appellant was indicted on one count of failure to provide notice of change of address in violation of R.C. 2950.05(E)(1), a felony of the third degree. He was eventually convicted and sentenced to one year in prison.

{¶ 4} After he was released, on July 15, 2014, appellant was indicted in the present case on one count of failure to notify change of address in violation of R.C. 2950.05(F)(1), a felony of the first degree. The indictment was later amended to a felony of the third degree. Following five months of pretrial proceedings, appellant appeared before the trial court for a plea hearing on January 26, 2015. At that hearing, appellant entered a plea of guilty to the sole count charged in the indictment. The trial court accepted appellant’s plea, ordered the preparation of a presentence investigation report, and continued the matter for sentencing.

{¶ 5} On February 20, 2015, appellant’s sentencing hearing was held. At sentencing, appellant explained that he forgot to notify authorities of his change of address because his grandmother was terminally ill and he was tending to her care.

Despite his reasons in support of leniency, the trial court imposed a 36-month prison sentence. The court noted that this was not appellant's first conviction for failure to notify of a change of address. The court also questioned appellant's basis for failing to provide the required notification since appellant indicated that his grandmother's health was the reason he failed to provide notification in the 2007 case.

{¶ 6} Appellant has timely appealed the trial court's imposition of sentence. This appeal was placed on the accelerated calendar pursuant to 6th Dist.Loc.App.R. 12.

B. Assignment of Error

{¶ 7} On appeal, appellant raises the following assignment of error:

- 1) The Trial Court's Imposition of the Maximum Prison Term Was Contrary to Law.

II. Analysis

{¶ 8} In his sole assignment of error, appellant argues that his sentence was contrary to law.

{¶ 9} We review felony sentences under the two-prong approach set forth in R.C. 2953.08(G)(2). R.C. 2953.08(G)(2) provides that an appellate court may increase, reduce, modify, or vacate and remand a disputed sentence if it clearly and convincingly finds either of the following:

- (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of

section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

{¶ 10} Here, appellant concedes that R.C. 2953.08(G)(2)(a) does not apply. Thus, the issue before us is whether the sentence imposed in this case was contrary to law.

{¶ 11} In evaluating appellant's claim that his sentence was contrary to law, we are mindful of the Supreme Court of Ohio's decision in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124. Although *Kalish* is no longer controlling in our review of felony sentences, "it may still be utilized in the course of determining whether a sentence is clearly and convincingly contrary to law." *State v. Tammerine*, 6th Dist. Lucas No. L-13-1081, 2014-Ohio-425, ¶ 15. In *Kalish*, the Supreme Court of Ohio determined that a sentence was not clearly and convincingly contrary to law where the trial court considered the R.C. 2929.11 purposes and principles of sentencing, considered the R.C. 2929.12 seriousness and recidivism factors, properly applied post release control, and imposed a sentence within the statutory range.¹ *Kalish* at ¶ 18.

{¶ 12} Regarding the trial court's consideration of the purposes and principles of sentencing under R.C. 2929.11 and the seriousness and recidivism factors under R.C. 2929.12, the sentencing entry states that the trial court "considered the principles and purposes of sentencing under [R.C.] 2929.11 and * * * balanced the seriousness and recidivism factors, as provided in [R.C.] 2929.12 * * *." Further, at the sentencing

¹ Appellant does not assert that the trial court incorrectly imposed post release control.

hearing, the trial court examined appellant's criminal history, specifically noting appellant's 2007 conviction for failure to register his change of address. Thus, we find the trial court considered R.C. 2929.11 and 2929.12 prior to imposing appellant's sentence. Moreover, R.C. 2929.14(A)(3)(b) provides for prison terms ranging from 9 months to 36 months for felonies of the third degree. Thus, the trial court's imposition of a 36-month prison sentence was within the permissible statutory range.

{¶ 13} In light of the foregoing, we find that the trial court met its obligations to consider the sentencing statutes in fashioning a sentence that was within the permissible statutory range. Thus, we conclude that appellant's sentence was not clearly and convincingly contrary to law.

{¶ 14} Accordingly, appellant's sole assignment of error is not well-taken.

III. Conclusion

{¶ 15} The judgment of the Williams County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgement affirmed.

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

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, J.
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:
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