[Cite as *State v. Martin*, 2019-Ohio-2659.]

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

State of Ohio — Court of Appeals No. S-18-024

Appellee — Trial Court No. 18CR211

v.

Charles L. Martin — **DECISION AND JUDGMENT**

Appellant — Decided: June 28, 2019

* * * * *

Timothy Braun, Sandusky County Prosecuting Attorney, and
Joseph H. Gerber, Assistant Prosecuting Attorney, for appellee.

W. Alex Smith, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Appellant, Charles Martin, appeals from the judgment of the Sandusky County Court of Common Pleas, convicting him, following a guilty plea, of one count of possession of cocaine, a felony of the second degree. For the reasons that follow, we affirm.

I. Facts and Procedural Background

{¶ 2} On June 19, 2018, appellant was indicted on one count of trafficking in cocaine and one count of possession of cocaine, both felonies of the first degree. Appellant pleaded guilty to an amended count one of the indictment for possession of cocaine, a felony of the second degree, in violation of R.C. 2925.11(A) and (C)(4)(d).

{¶ 3} At the plea agreement and sentencing hearing, appellant testified to having crashed into a building after leaving a bar. Officers broke into the car to remove appellant, who suffered a broken skull and elbow. Officers found 86 grams of cocaine on the driver's side of the floorboard of the vehicle.

{¶ 4} The state agreed to dismiss the trafficking count and appellant pleaded guilty to the amended count one, possession of cocaine, a felony of the second degree. The case proceeded immediately to sentencing and appellant waived a presentence investigation, as appellant wished to move his case along. The state recommended a two-year sentence, which is the minimum sentencing requirement for the charge. Appellant's prior criminal history showed he was convicted of drug trafficking, a felony of the fourth degree, and served a prison term of seven months before judicial release in 2002. Appellant also had a misdemeanor offense of domestic menacing in 2017.

{¶ 5} After addressing appellant and informing him of his rights and the effect of the guilty plea, the court accepted the plea and found appellant guilty. Appellant was sentenced to a prison term of three years, with credit given for 30 days served. The court reasoned that appellant is a repeat offender and, therefore, would not receive the minimum two-year sentence because of appellant's prior drug conviction. A fine of

$2,500 was imposed, and appellant's driving privileges were to be suspended for five years upon release from the mandatory prison term.

II. Assignments of Error

{¶ 6} Appellant has timely appealed the trial court's June 19, 2018 judgment of conviction, and now asserts two assignments of error for our review:

1. The trial court abused its discretion when it imposed a sentence without considering the sentencing factors under R.C. 2929.11 and 2929.12.

2. The defendant's plea was not made knowingly and voluntarily when he was not advised of a potential license suspension.

III. Analysis

A. Whether the trial court abused its discretion when it imposed a sentence without considering the sentencing factors under R.C. 2929.11.

{¶ 7} Appellant argues that his sentence was an abuse of discretion. However, as addressed in appellee's brief, abuse of discretion is no longer the standard of review for felony sentencing. R.C. 2953.08(G)(2) establishes the proper appellate standard of review.

{¶ 8} Felony sentences for appellate review are controlled by R.C. 2953.08(G)(2), which states, in relevant part, that an appellate court may increase, reduce, modify, or vacate and remand a felony sentence if the appellate court "clearly and convincingly" finds appellant's sentence contrary to law. R.C. 2953.08(G)(2)(b). A sentence is not clearly and convincingly contrary to law when the trial court had "considered the R.C.

2929.11 purposes and principles of sentencing, had considered the R.C. 2929.12 seriousness and recidivism factors, had properly applied post release control, and had imposed a sentence within the statutory range." *State v. Tammerine*, 6th Dist. Lucas No. L-13-1081, 2014-Ohio-425, ¶ 15. The issue here is whether the trial court considered R.C. 2929.11 and R.C. 2929.12.

{¶ 9} Appellant argues the trial court made no indication that it considered the purposes and principles of felony sentencing under R.C. 2929.11 and balanced the seriousness and recidivism factors under R.C. 2929.12. While appellant concedes that a prison sentence is appropriate, he contends that a judge is required to impose the minimum sentence needed to punish the defendant and protect the public without placing an undue burden on state resources.

{¶ 10} A sentencing court is not required to use any specific language or make specific findings to demonstrate that it considered the sentencing criteria. *See State v. Arnett*, 88 Ohio St.3d 208, 724 N.E.2d 793, ¶ 799 (2000); *State v. Thebeau*, 6th Dist. Ottawa No. OT-14-017, 2014-Ohio-5598, ¶ 16. In *State v. Neal*, this court concluded that a trial court is in compliance with R.C. 2929.11 and 2929.12 when its findings are supported by the record and sentencing entry. *State v. Neal*, 6th Dist. Lucas No. L-16-1267, 2017-Ohio-8923. Here, the sentencing entry explicitly states, "The Court considered the record, oral statements and the defendant's prior criminal history and has also considered the principles and purposes of sentencing under R.C. 2929.11 and has balanced the seriousness and recidivism factors under R.C. 2929.12." At sentencing, the court reasoned that appellant would have been a candidate for the minimum sentence had

he not had the prior conviction, but he came back as a repeat offender. This reasoning is in line with R.C. 2929.12, which states that the sentencing court shall consider, inter alia, whether there has been a demonstrated pattern of drug or alcohol abuse in relation to the offense and whether there has been a history of criminal convictions. *See* R.C. 2929.12(D)(2) and (D)(4). Given the above, as held in *Neal*, the court complied with its obligations under R.C. 2929.11 and 2929.12 "in light of the trial court's statements at the hearing, as well as the language contained in the sentencing entry." *Neal* at ¶ 20.

{¶ 11} Thus, although the state recommended the minimum, the trial court took into consideration appellant's prior drug offense and prison term. The record shows that the trial court considered both the seriousness and recidivism factors underlying this case, as well as properly considered appellant's prior drug trafficking conviction and the seriousness of the crime. Accordingly, the record does not show that appellant's sentence is clearly and convincingly contrary to law.

{¶ 12} Appellant's first assignment of error is not well-taken.

B. Whether the defendant's plea was made knowingly and voluntarily when he was not advised of a potential license suspension.

{¶ 13} In addition to the prison sentence and fine, the court imposed a five-year driver's license suspension. In the second assignment of error, appellant argues the court failed to advise him that a license suspension of any kind was possible, in violation of Crim.R. 11(C)(2)(a). Specifically, appellant contends, following *State v. Moore*, 111 Ohio App.3d 833, 677 N.E.2d 408 (7th Dist.1996), that maximum penalties must be

addressed on the record, and since the court did not address the license suspension orally, Crim.R. 11 was not followed and the plea is invalid.

{¶ 14} A court must determine that the defendant "is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved." Crim.R. 11(C)(2)(a). Strict compliance with the rule is required where constitutional rights are concerned. However, "[w]hen the rights involved are not constitutional * * * substantial compliance with the rule is sufficient." *State v. Minton*, 6th Dist. Ottawa Nos. OT-13-030, OT-13-031, 2014-Ohio-2218, ¶ 10. The issue here is whether the court was in substantial compliance with Crim.R. 11. "Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving." *Id.*, citing *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990).

{¶ 15} The record does not show that appellant was orally advised of the possibility of a license suspension. However, written notice of a potential license suspension for not more than five years was provided in the plea agreement. Ohio courts have consistently found substantial compliance when a license suspension is disclosed on a written plea agreement but no oral notice was given. *See State v. Schultz*, 2013-Ohio-2218, 993 N.E.2d 410, ¶ 50-51 (5th Dist.); *State v. Green*, 10th Dist. Franklin No. 10AP-934, 2011-Ohio-6451, ¶ 11; *State v. Fry-McMurray*, 2016-Ohio-6998, 72 N.E.3d 9, ¶ 27-29 (7th Dist.). Therefore, we hold the court substantially complied with Crim.R. 11, and appellant's guilty plea was knowingly and voluntarily made. Appellant's second assignment of error is not well-taken.

IV. Conclusion

{¶ 16} For the foregoing reasons, we find that substantial justice has been done the party complaining, and the judgment of the Sandusky County Court of Common Pleas is affirmed. Appellant is ordered to 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.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J.
CONCUR. _____
JUDGE