

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

State of Ohio
Appellee

Court of Appeals No. S-18-047
Trial Court No. 18CR617

v.

John B. Stacy
Appellant

DECISION AND JUDGMENT
Decided: June 28, 2019

* * * * *

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

James H. Ellis, III, for appellant.

* * * * *

ZMUDA, J.

I. Background and Procedure

{¶ 1} On May 18, 2018, appellant John B. Stacy furnished 17-year old A.R. with Oxycodone and Xanax pills, which A.R. then crushed and snorted with appellant. At the time, appellant was 30 years old and lived in a camper near the home of A.R.'s father, on

the same property. Appellant was subsequently charged with two counts of corrupting another with drugs, in violation of R.C. 2925.02(A)(4)(a), felonies of the second degree.

{¶ 2} On September 21, 2018, appellant entered a guilty plea to Count 2 of the indictment, with the state agreeing to dismiss Count 1 at sentencing. The Court informed appellant, prior to his plea, that Count 2 carried a prison term of 2 to 8 years, with a presumption for incarceration for the second-degree felony offense. After accepting appellant's plea and finding him guilty, the trial court continued the matter for a presentence investigation report.

{¶ 3} On November 12, 2018, the trial court held a sentencing hearing. After considering the presentence investigation report, the record, a statement from the victim's father, and the statements of the appellant and the prosecutor, the trial court imposed a prison term of two years. At the sentencing hearing, appellant acknowledged, through his attorney, the presumption for a prison sentence rather than community control for his offense.

{¶ 4} Appellant now appeals his sentence, assigning the following as error:

THE TRIAL COURT ERRED BY FAILING TO COMPLY WITH
APPLICABLE STATUTES IN SENTENCING THE APPELLANT.

II. Analysis

{¶ 5} Appellant challenges his prison sentence, arguing a community control sanction would have better served the purposes of sentencing under R.C. 2929.11, and that the trial court failed to consider the sentencing factors under R.C. 2929.12. In response, appellee, the state of Ohio, notes that appellant entered a guilty plea to a charge 2.

carrying a presumption for a prison term, and therefore may not challenge the two-year prison term as unlawful. Even if appellant could raise this challenge, appellee argues that the record supports the trial court's findings, as articulated in the sentencing entry.

{¶ 6} We review a felony sentence, not for abuse of discretion, but pursuant to R.C. 2953.08(G)(1). *State v. Knight*, 6th Dist. Lucas No. L-13-1066, 2014-Ohio-2222, ¶ 15, citing *State v. Tammerine*, 6th Dist. Lucas No. L-13-1081, 2014-Ohio-425, ¶ 11.

After review of the record and any findings articulated in support of the sentence, we may “increase, reduce, modify, or vacate and remand a disputed sentence” if we find, by clear and convincing evidence, either that “the record does not support the trial court’s findings” under R.C. 2929.13(B) or (D) or “the sentence is otherwise contrary to law.” *Knight* at ¶ 16, quoting R.C. 2953.08(G)(2).

{¶ 7} Appellant was charged with 2 counts of corrupting another with drugs, in violation of R.C. 2925.02(A)(4)(a), which provides:

(A) No person shall knowingly do any of the following:

* * *

(4) By any means, do any of the following:

(a) Furnish or administer a controlled substance to a juvenile who is

at least two years the offender’s junior, when the offender knows the age of

the juvenile or is reckless in that regard[.]

Count 1 arose from furnishing A.R. with Oxycodone, a schedule II controlled substance, and Count 2 arose from furnishing A.R. with Xanax, a schedule IV controlled substance.

{¶ 8} Appellant pled guilty to Count 2 of the indictment. As noted at both his plea hearing and his sentencing hearing, the conviction carried a presumption that a prison term “is necessary in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code.” *State v. Sandoval*, 6th Dist. Lucas Nos. L-04-1014, L-04-1015, 2004-Ohio-4923, ¶ 9, quoting R.C. 2929.13(D); *see also* R.C. 2925.02(C)(2)(a). With possible prison terms ranging from 2 to 8 years for the offense, the trial court sentenced appellant to a prison term of 2 years, the lowest provided term, and within the statutory range for the presumptive prison term.

{¶ 9} Appellant argues the trial court erred in failing to apply the purposes and principles of felony sentencing under R.C. 2929.11, because he “did not have a substantial criminal history and, given the nature of the offense, it was not necessary that [he] be imprisoned to protect the public from future crime[.]” Furthermore, appellant argues, the trial court failed to consider the factors under R.C. 2929.12, which would have demonstrated appellant’s conduct was not as serious a violation as similar offenses, and that a community control sanction was more appropriate.

{¶ 10} Contrary to appellant’s argument, the trial court had no obligation to articulate its findings in this instance. “For a second degree felony, the presumption is that a prison term is necessary to comply with the purposes and principles of sentencing as articulated in R.C. 2929.11.” *Knight*, 2014-Ohio-2222 at ¶ 17, citing R.C. 2929.13(D)(1). Accordingly, the trial court had no obligation to articulate findings or give reasons for imposing a prison sentence based on the purposes and principles of

sentencing, or based on the seriousness of the offense. *Id.*, citing R.C. 2929.13(D)(2); *Sandoval* at ¶ 9, quoting *State v. Veres*, 6th Dist. No. S-03-030, 2004-Ohio-4141, ¶ 13.

{¶ 11} The trial court did, nevertheless, indicate that it reviewed the presentence investigation report, the record, and the various statements proffered at hearing. The trial court also articulated, in the sentencing entry, that it considered the principles and purposes of sentencing and balanced the seriousness and recidivism factors in determining the sentence. Appellant cites to nothing in the record that disputes the trial court’s assertion. Consequently, the record supports the trial court’s findings and sentence, and appellant’s assignment of error is found not well-taken.

III. Conclusion

{¶ 12} For the foregoing reasons, the judgment of the trial court is affirmed. Appellant is assessed the cost 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

Christine E. Mayle, P.J.

JUDGE

Gene A. Zmuda, J.
CONCUR.

JUDGE

<p>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.supremecourt.ohio.gov/ROD/docs/.</p>
