[Cite as *State v. Human-Wiggins*, 2014-Ohio-1149.]

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

State of Ohio

Appellee

v.

Princess Lee Human-Wiggins

Appellant

Court of Appeals Nos. OT-13-015
OT-13-016
OT-13-023

Trial Court Nos. 12-CR-062
12-CR-069
11-CR-100

DECISION AND JUDGMENT

Decided: March 21, 2014

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
Andrew M. Bigler, Assistant Prosecuting Attorney, for appellee.

Erik Longton, for appellant.

* * * * *

YARBROUGH, J.

I. Facts and Procedural Background

{¶ 1} Appellant, Princess Lee Human-Wiggins, appeals the judgment of the Ottawa County Court of Common Pleas, ordering her to serve a 24-month prison

sentence following a determination of guilt on one count of possession of drugs and two counts of failure to appear. We affirm.

{¶ 2} This is a consolidated appeal, arising out of three separate cases in which appellant is a defendant. In the first case, No. 11-CR-100, appellant was indicted on one count of trafficking in drugs in violation of R.C. 2925.03(A)(2), one count of possession of drugs in violation of R.C. 2925.11(A), one count of tampering with evidence in violation of R.C. 2921.12(A)(1), and one count of child endangering in violation of R.C. 2919.22(A). The charges stem from a traffic stop that occurred in Ottawa County, at which it was discovered that appellant was in possession of a large amount of cocaine. At her arraignment on October 27, 2011, appellant entered a plea of not guilty. She was released on bond and ordered to submit to drug testing at the direction of the court's adult probation department. She subsequently violated the terms of her bond by testing positive on several drug tests. Consequently, a bond revocation hearing was held on March 19, 2012, and appellant was ordered to report directly to the probation department. She was immediately subjected to another drug test, which she failed. Thereafter, appellant failed to report to the probation department for mandatory drug testing on April 25, 2012. As a result, a bench warrant was issued for her arrest on April 30, 2012. She failed to appear at court on May 16, 2012. Due to her failure to appear, appellant was charged in case No. 12-CR-062 with failure to appear in violation of R.C. 2937.29 and 2937.99. She subsequently failed to appear on May 22, 2012, and was charged in

case No. 12-CR-069 with another count of failure to appear in violation of R.C. 2937.29 and 2937.99.

{¶ 3} Upon reaching a plea agreement with the state, appellant pleaded guilty to two counts of failure to appear. Additionally, she entered an *Alford* plea to one count of possession of drugs. All counts are felonies of the fourth degree. Pursuant to the plea agreement, the remaining counts in case No. 11-CR-100 were dismissed.

{¶ 4} On May 13, 2013, a sentencing hearing was held at which the state, as part of the plea agreement, recommended that a community control sentence be imposed in lieu of a prison sentence. Despite the state's recommendation, the trial court imposed an eight-month prison sentence for each of the three counts, and ordered the sentences to run consecutively. The court did not address the dismissal of two of the three counts from case No. 11-CR-100. Further, the court's initial judgment entry was silent on the dismissal of those counts. However, the court later corrected its apparent oversight and entered an amended judgment entry reflecting the dismissal of all of the remaining counts in case No. 11-CR-100. Appellant's timely appeal followed.

II. Analysis

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

> THE TRIAL COURT ABUSED ITS DISCRETION IN SENTENCING.

{¶ 6} We note at the outset that abuse of discretion is no longer the applicable standard of review for appeals of felony sentences. *See State v. Tammerine*, 6th Dist.

Lucas No. L-13-1081, 2014-Ohio-425; *see also* R.C. 2953.08(G)(2) ("The appellate court's standard for review is not whether the sentencing court abused its discretion."). Rather, we review felony sentences under the two-prong approach set forth in R.C. 2953.08(G)(2). R.C. 2953.08(G)(2), which was reenacted by the Ohio legislature effective March 22, 2013, provides that an appellate court may increase, reduce, modify, or vacate and remand a dispute 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(B) or (D), 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.

{¶ 7} While the abuse of discretion standard set forth in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124 is no longer controlling in our review of felony sentences, *Kalish* is still useful in determining whether a sentence is clearly and convincingly contrary to law. In that regard, the Supreme Court of Ohio held that a sentence was not clearly and convincingly contrary to law where the trial court considered the purposes and principles of sentencing under R.C. 2929.11 along with the seriousness and recidivism factors under R.C. 2929.12, properly applied postrelease control, and imposed a sentence within the statutory range. *Id.* at ¶ 18.

{¶ 8} Here, appellant argues that the trial court erred in failing to dismiss Counts 3 and 4 in case No. 11-CR-100 at the time of sentencing. Further, she contends that the trial court erred when it declined to follow the state's recommendation for community control in lieu of prison time. We disagree.

{¶ 9} Concerning appellant's contention that the trial court erred in failing to address, through its judgment entry, Counts 3 and 4 in case No. 11-CR-100, the Ohio Supreme Court has stated that an "imperfect sentencing entry can be corrected through a nunc pro tunc entry." *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 13; *see also* Crim.R. 36 ("Clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time."); *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, ¶ 18-19 (courts possess the authority to correct an error in a judgment entry so that the record speaks the truth). Thus, we find no error in the trial court's correction of its entry. Even if we were to find that the trial court erred, appellant offers no evidence to persuade us that such error prejudiced her in any way. Without such evidence, we must disregard the error. Crim.R. 52(A).

{¶ 10} We now turn to appellant's assertion that the trial court erred by disregarding the state's recommended sentence and imposing a prison sentence. Notably, we have previously stated that "where a court forewarns a defendant that it is not bound by any recommendation made by the state in sentencing the defendant, a court does not abuse its discretion by failing to follow that recommendation." *State v. Warith*, 6th Dist.

Lucas No. L-02-1240, 2003-Ohio-6367, ¶ 8, citing *State v. Darmour*, 38 Ohio App.3d 160, 161, 529 N.E.2d 208 (8th Dist.1987). In the present case, the trial court warned appellant that it was not bound to follow the state's sentencing recommendation before accepting the plea. Indeed, during the plea hearing, the trial court engaged in the following colloquy:

> [The Court]. All right. Has anyone promised you what your sentence in this matter might be?
>
> [Appellant]. No, Your Honor.
>
> [The Court]. Okay. Now the prosecutor and your attorney have agreed to make a recommendation for probation. You understand that, right?
>
> [Appellant]. Yes, Your Honor.
>
> [The Court]. You understand that I do what I do, and the decision about sentencing ultimately is mine, do you understand that?
>
> [Appellant]. Yes, Your Honor.

{¶ 11} Later on in the hearing, the court reiterated its warning to appellant concerning the state's recommendation, stating the following: "I have overall two directions I can go when it comes to sentencing you. I will mention this again. I acknowledge that the State and your attorney have suggested that the appropriate sentence is probation, but you understand that I am not bound by their suggestion, and I can sentence as I need to, right?" Appellant responded in the affirmative.

{¶ 12} Based on the foregoing, it is clear that appellant was forewarned that the trial court was not bound by the state's sentencing recommendation. Therefore, appellant's argument concerning the trial court's disregard of the state's recommendation is without merit. Having reviewed the record in its entirety, we conclude that the trial court did not err by imposing the 24-month prison sentence.

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

III. Conclusion

{¶ 14} For the foregoing reasons, the judgment of the Ottawa 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

Stephen A. Yarbrough, P.J. ____________________ JUDGE

CONCUR.

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