

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-1092 (C.P.C. No. 10CR-02-1209)
Terrell L. Woodfork,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on June 11, 2013

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*Ron O'Brien*, Prosecuting Attorney, and *Laura R. Swisher*,  
for appellee.

*Kirk A. McVay*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas.

T. BRYANT, J.

{¶ 1} Defendant-appellant, Terrell L. Woodfork, appeals from a judgment entry of conviction and sentence entered by the Franklin County Court of Common Pleas that sentenced appellant to a mandatory ten-year term of imprisonment following his guilty plea to one count of involuntary manslaughter. For the following reasons, we reverse and remand this matter for resentencing.

**I. Factual and Procedural Background**

{¶ 2} On February 24, 2010, a Franklin County Grand Jury indicted appellant for two counts of aggravated murder, two counts of murder, one count of aggravated burglary, and one count of aggravated robbery. All six counts carried firearm

specifications. Following a mistrial, appellant, on October 10, 2012, entered a guilty plea to one count of involuntary manslaughter, in violation of R.C. 2903.04(A), without specification, a felony of the first degree. Upon application of the prosecution, a nolle prosequi was entered on the remaining counts and specifications. The trial court accepted appellant's guilty plea, found him guilty, and set the matter for sentencing.

{¶ 3} At the November 29, 2012 sentencing hearing, the trial court sentenced appellant to a mandatory ten-year term of imprisonment. In its December 3, 2012 judgment entry, the trial court reiterated the mandatory nature of the prison term, stating, "[t]he Court further finds that a prison term *is* mandatory pursuant to R.C. 2929.13(F)." (Emphasis sic.)

## II. Assignment of Error

{¶ 4} In a timely appeal, appellant sets forth one assignment of error for our consideration:

THE TRIAL COURT ERRED, DENYING DEFENDANT-APPELLANT HIS RIGHTS TO DUE PROCESS OF LAW UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I SECTION 10 OF THE OHIO CONSTITUTION WHEN IT IMPOSED A "MANDATORY" PRISON TERM CONTRARY TO LAW AND WHEN IT SENTENCED DEFENDANT-APPELLANT TO THE MAXIMUM PERIOD OF INCARCERATION PERMITTED UNDER THE STATUTE WITHOUT CONSIDERING AND PROPERLY APPLYING THE STATUTORY GUIDELINES FOUND IN R.C. §§2929.11 AND 2929.12.

## III. Discussion

{¶ 5} Preliminarily, we note that appellant failed to object to the imposition of a mandatory sentence at the sentencing hearing and, therefore, has forfeited all but plain error. *See* Crim.R. 52(B); *State v. Worth*, 10th Dist. No. 10AP-1125, 2012-Ohio-666, ¶ 84. Under Crim.R. 52(B), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." For an error to be "plain" within the meaning of Crim.R. 52(B), it " 'must be an "obvious" defect in the trial proceedings.' " *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, ¶ 16, quoting *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002). A reviewing court notices plain error " 'with the

utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.' " *Barnes* at 27, quoting *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus. "The burden of demonstrating plain error is on the party asserting it." *Payne* at ¶ 17.

{¶ 6} This court reviews a trial court's sentence to determine if it is clearly and convincingly contrary to law. *State v. Burton*, 10th Dist. No. 06AP-690, 2007-Ohio-1941, ¶ 19 (standard of review is clearly and convincingly contrary to law); R.C. 2953.08(G). In applying this standard, we look to the record to determine whether the sentencing court considered and properly applied the (non-excised) statutory guidelines and whether the sentence is otherwise contrary to law. *State v. Carse*, 10th Dist. No. 09AP-932, 2010-Ohio-4513, ¶ 60; *Burton*. However, in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, the Supreme Court of Ohio held in a plurality opinion that an appellate court must apply a two-step approach when reviewing a trial court's sentence: (1) determine whether the trial court adhered to all applicable rules and statutes in imposing the sentence, and (2) determine whether a sentence within the permissible statutory range constitutes an abuse of discretion. As resolution of this case involves an issue of law regarding the trial court's imposition of a mandatory prison term, we determine if the trial court's decision was clearly and convincingly contrary to law.

{¶ 7} Appellant claims that the trial court erred in ordering a "mandatory" ten-year sentence for his involuntary manslaughter conviction. R.C. 2903.04(A) provides that "[n]o person shall cause the death of another \* \* \* as a proximate result of the offender's committing or attempting to commit a felony." Involuntary manslaughter, pursuant to R.C. 2903.04(A), is a first-degree felony. R.C. 2903.04(C). The version of R.C. 2929.14(A)(1) applicable to the present case allowed a trial court to impose a prison term of three, four, five, six, seven, eight, nine or ten years for a first-degree felony. Pursuant to R.C. 2929.13(D)(1), there is a presumption in favor of a prison term for offenders convicted of first- and second-degree felonies.

{¶ 8} Under certain circumstances, a prison term is mandatory for offenders convicted of involuntary manslaughter in violation of R.C. 2903.04(A). For example, R.C. 2929.13(F)(4) requires a mandatory sentence for "[a] felony violation of [R.C.] 2903.04 \* \* \* if the section requires the imposition of a prison term." R.C. 2903.04(D) requires a

mandatory prison term "if the felony \* \* \* that the offender committed or attempted to commit, that proximately resulted in the death of the other person \* \* \* and that is the basis of the offender's violation of division (A) \* \* \* of this section was a violation of division (A) or (B) of section 4511.19 of the Revised Code or of a substantially equivalent municipal ordinance." The underlying felony in this case is not R.C. 4511.19 or a substantially equivalent municipal ordinance. Additionally, R.C. 2929.13(F)(6) requires a mandatory prison term for an offender convicted of a first- or second-degree felony when he or she previously was convicted of or pleaded guilty to aggravated murder, murder, or any first- or second-degree felony. In this case, the pre-sentence investigation report reveals that appellant has no prior aggravated murder, murder or first- or second-degree felony convictions.

{¶ 9} We further note that while R.C. 2929.13(D)(1) establishes a presumption in favor of a prison term for appellant's involuntary manslaughter conviction, there is no mandatory prison term statutorily required. Accordingly, the trial court erred in stating both at the sentencing hearing and in its judgment entry that a prison term is mandatory for appellant's involuntary manslaughter conviction. The state concedes error in this regard. Because the trial court's sentence is clearly and convincingly contrary to law, appellant is entitled to a new sentencing hearing.

#### **IV. Disposition**

{¶ 10} For the foregoing reasons, appellant's single assignment of error is sustained, and this case is hereby remanded to the Franklin County Court of Common Pleas for a new sentencing hearing in accordance with law and consistent with this decision.

*Judgment reversed;  
cause remanded for a new sentencing hearing.*

KLATT, P.J., and TYACK, J., concur.

T. BRYANT, J., retired, formerly of the Third Appellate District, assigned to active duty under authority of the Ohio Constitution, Article IV, Section 6(C).

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