

[Cite as *State v. Williams*, 2010-Ohio-4519.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellant,	:	
v.	:	No. 10AP-55
	:	(C.P.C. No. 07CR08-6374)
Larry B. Williams,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on September 23, 2010

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

Yeura R. Venters, Public Defender, and *Allen V. Adair*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Plaintiff-appellant, the state of Ohio, appeals from a judgment of the Franklin County Court of Common Pleas granting judicial release to defendant-appellee, Larry B. Williams. For the following reasons, we reverse that judgment and remand the matter for further proceedings.

{¶2} In 2007, Williams was indicted with a number of criminal charges resulting from an armed bank robbery. Ultimately, Williams pled guilty to one count of robbery, a felony of the second degree, and one count of having a weapon while under disability. The trial court sentenced Williams to four years in prison.

{¶3} Almost two years later, Williams filed a motion in the trial court seeking judicial release pursuant to R.C. 2929.20. The state opposed Williams' motion. After a hearing, the trial court granted Williams judicial release and placed him on community control for a period of three years.

{¶4} The state appeals the trial court's grant of judicial release and assigns the following errors:

FIRST ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN GRANTING JUDICIAL RELEASE WITHOUT ARTICULATING THE REQUISITE FINDINGS PURSUANT TO R.C. 2929.20(H).

SECOND ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT FAILED TO MAKE THE DEFENDANT'S INSTITUTIONAL SUMMARY REPORT PART OF THE RECORD OF THE JUDICIAL RELEASE HEARING, IN CONTRAVENTION OF R.C. 2929.20(E) AND (G).

THIRD ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT GRANTED JUDICIAL RELEASE WITHOUT FIRST ORDERING A PRESENTENCE INVESTIGATION.

{¶5} R.C. 2929.20 governs judicial release. In relevant part, the former version of that statute¹ provided that:

(H)(1) A court shall not grant a judicial release under this section to an eligible offender who is imprisoned for a felony of the first or second degree * * * unless the court, with reference to factors under section 2929.12 of the Revised Code, finds both of the following:

(a) That a sanction other than a prison term would adequately punish the offender and protect the public from future criminal

¹ Although R.C. 2929.20 was amended effective April 7, 2009, the preceding version of the statute in effect at Williams' sentencing applies to his motion for judicial release. *State v. Peoples*, 151 Ohio App.3d 446, 2003-Ohio-151, ¶22-24.

violations by the eligible offender because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism;

(b) That a sanction other than a prison term would not demean the seriousness of the offense because factors indicating that the eligible offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh factors indicating that the eligible offender's conduct was more serious than conduct normally constituting the offense.

(2) A court that grants a judicial release to an eligible offender under division (H)(1) of this section shall specify on the record both findings required in that division and also shall list all the factors described in that division that were presented at the hearing.

{¶6} At the judicial release hearing, the state argued against judicial release based on Williams' criminal record that dated back to 1981, the lack of an institutional adjustment report, and the prosecutor's belief that "this defendant is a risk to our community * * *." (Tr. 7). Williams argued that he had "done a lot of soul searching" since he was imprisoned and feels that he is now ready "to make a change." (Tr. 3). He also noted his participation in a class that taught him how to find new and better ways to deal with problems.

{¶7} In deciding to grant release, the trial court stated:

I do make findings under 2929.20(H)(1)(a) and (b), although this was two crimes, a weapons under disability and an F-2 robbery, I do note that Mr. Williams has done more than the minimum already, and that with CBCF [community based correction facility], he'll have another four to six months of incarceration or supervision plus intensive community control.

Notwithstanding his lengthy prison record, I frankly think that absent a CBCF program and holding some time over his head, that he's unlikely to be released from the prison system, prepared to function well in the community, and I think the best hope for him and the community is to successfully complete the CBCF program which will help him transition, get a job, avoid street drugs, and otherwise finally turn his life

around so that society has somebody who is productive rather than somebody who is eating government food and sleeping in government beds.

In that respect, I think that this is the best opportunity to protect the public from future crimes as well as the best opportunity to fairly punish Mr. Williams and to reduce the likelihood of recidivism from him.

In addition, I find that the sanction of prison that he's already served, plus CBCF, plus intensive community control taken collectively does not demean the seriousness of the crimes, and that the additional deterrence factor that he would get from more prison time as opposed to CBCF and trying to do this a little more constructively is not worth it and it's probably just dysfunctional and just counter-productive.

I note for the record that Mr. Williams has served beyond the minimum sentence, so in that respect the presumption for prison has already been satisfied.

(Tr. 12-13.)

{¶8} The trial court's judgment entry made no additional findings.

{¶9} The state, pursuant to R.C. 2953.08(B)(3), may appeal as a matter of right a decision to grant judicial release to an offender sentenced for a felony of the first or second degree, such as Williams. This court's standard of review determines whether the record clearly and convincingly supports the trial court's findings made pursuant to R.C. 2929.20(H) or whether the decision is otherwise contrary to law. R.C. 2953.08(G)(2). See also *State v. Costlow*, 8th Dist. No. 89501, 2008-Ohio-1097, ¶9-13.

{¶10} The state contends in its first assignment of error that the trial court's decision is contrary to law because it did not comply with R.C. 2929.20(H) when it failed to mention the factors listed in R.C. 2929.12 and how they factored into its decision to grant judicial release. We agree.

{¶11} Although the trial court did articulate the necessary R.C. 2929.20(H)(1) and (2) findings, R.C. 2929.20(H) requires the trial court to make those findings "with

reference to factors under [R.C.] 2929.12." This statute obligates the trial court to justify its findings with an analysis of the relevant R.C. 2929.12 factors. Here, the trial court failed to provide any analysis of the applicable factors in R.C. 2929.12 regarding Williams' likelihood of recidivism or the seriousness of his conduct. *State v. Day*, 10th Dist. No. 09AP-40, 2010-Ohio-125, ¶¶12-13. See also *State v. Hunt*, 10th Dist. No. 04AP-1177, 2005-Ohio-3144, ¶13 (reversing grant of judicial release for trial court's failure to address any of the R.C. 2929.12 factors). Additionally, the trial court also failed to list the R.C. 2929.12 factors that were presented at the judicial release hearing as required by R.C. 2929.20(H)(2). See *State v. Weiss*, 180 Ohio App.3d 509, 2009-Ohio-78, ¶17; *State v. Sherman* (June 20, 2001), 5th Dist. No. 01 CA 3.

{¶12} Because the trial court failed to comply with R.C. 2929.20(H), its decision to grant judicial release is contrary to law. Accordingly, the state's first assignment of error is sustained.

{¶13} We sustain the state's first assignment of error. This disposition renders the state's second and third assignments of error moot. App.R. 12(A)(1)(c). Accordingly, we reverse the judgment of the Franklin County Court of Common Pleas and remand the matter for further proceedings.

Judgment reversed and cause remanded.

SADLER and McGRATH, JJ., concur.
