

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2009-07-184
 :
 - vs - : OPINION
 : 3/22/2010
 :
 FREDDIE JOE HUNT, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2008-11-1944

Robin N. Piper III, Butler County Prosecuting Attorney, Michael A. Oster, Jr., Government Services Center, 315 High Street, 11th Fl., Hamilton, Ohio 45011, for plaintiff-appellee

Robert L. Raper, The Gateway Center, 300 Madison Avenue, Suite 200, Covington, KY 41011, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Freddie Joe Hunt, entered a guilty plea to two counts of nonsupport of dependents in violation of R.C. 2919.21(A)(2), a felony of the fifth degree. The trial court sentenced appellant to a prison term of one year on each count, to be served concurrently. Appellant appeals his sentence, raising a single assignment of error:

{¶2} "THE TRIAL COURT ABUSED ITS DISCRETION BY RELYING ON

FALSE INFORMATION CONTAINED IN HUNT'S PRESENTENCE INVESTIGATION REPORT IN SENTENCING HUNT TO THE OHIO DEPARTMENT OF CORRECTIONS."

{¶3} In his sole assignment of error, appellant argues his sentencing in this case was improper because the trial court relied upon false information included in the presentence investigation.

{¶4} During the sentencing hearing, the trial court stated, "[h]e's been to prison before for not paying child support." Appellant's trial counsel objected, indicating that appellant never previously served time in prison. The trial court replied, "[w]ell the presentence report indicates that on September 6, 2001, he had his flagrant nonsupport felony probation violated in Boone County, Kentucky, Case No. 98CR00153. They imposed a five-year prison term in the Kentucky Department of Corrections, okay." Appellant's trial counsel lodged no further objection and the court continued with the sentencing. Appellate review of felony sentencing is controlled by the two-step procedure outlined by the Ohio Supreme Court in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912. Under *Kalish*, this court must first examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law, then review the sentencing court's decision for an abuse of discretion. *Id.* at ¶4.

{¶5} Appellant concedes that his sentence is not clearly and convincingly contrary to law since it was within the statutory limits. However, appellant argues that he has never served prison time and, as a result, the trial court abused its discretion in sentencing appellant based upon the false information. Appellant submits a copy of his resident record card from the Kentucky Department of Corrections reflecting that a five-year prison sentence was imposed, but rather than serving prison time, appellant was

placed on pre-release probation.

{¶16} An abuse of discretion is more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶17} In sentencing appellant, the trial court in this case mentioned that the appellant had "been to prison before for not paying child support." Following appellant's objection noting that he had not actually served prison time, the trial court correctly relayed that "a five year prison term in the Kentucky Department of Corrections" had been imposed against appellant based upon a previous conviction for Flagrant Non-Support. The trial court's corrected statement following appellant's objection was neither false nor inaccurate.

{¶18} After review of the record, we find no abuse of discretion by the trial court. The trial court gave careful and substantial deliberation to the relevant statutory considerations. The court considered that, at the time of the offense, appellant was on probation for not paying child support. Further, the court found that appellant was not amenable to community control and considered all requirements under the Ohio Revised Code, including the purposes and principles of sentencing laws and the seriousness and recidivism factors. The court also listed further findings justifying appellant's sentence. Specifically, the court stated that appellant "has fathered nine children with eight different women" and his "history indicates that he hasn't worked, even though he's got significant child support issues pending." There is nothing in the record to suggest that the court relied upon incorrect information or that the decision was unreasonable, arbitrary, or unconscionable. *Kalish* at ¶20.

{¶19} Additionally, in his reply brief, appellant argues that R.C. 2929.14 requires a trial court to make judicial findings in order to impose a prison sentence against

someone who has never been to prison and the trial court in this case failed to make the requisite findings. As we have discussed on multiple occasions, "[i]n *State v. Foster*, 109 Ohio St. 1, 2006-Ohio-856, the Ohio Supreme Court severed unconstitutional provisions of Ohio's felony sentencing statutes and held that 'trial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences.'" *State v. Plummer*, Butler App. Nos. CA2009-06-148, -151, -152, -153, -154, 2010-Ohio-849, ¶8.

{¶10} Appellant's sole assignment of error is overruled.

{¶11} Judgment affirmed.

YOUNG, P.J., and POWELL, J., concur.