

[Cite as *State v. Coomer*, 2010-Ohio-3474.]

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NOS. CA2009-09-016 CA2009-09-017
- vs -	:	<u>OPINION</u> 7/26/2010
LARRY W. COOMER,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM CLINTON COUNTY COURT OF COMMON PLEAS
Case Nos. CRI2009-5054 and CRI2009-5166

Richard W. Moyer, Clinton County Prosecutor, Andrew McCoy, 103 East Main Street,
Wilmington, Ohio 45177, for plaintiff-appellee

Tyler P. Webb, 5374 Cox-Smith Road, Suite A, Mason, Ohio 45040, for defendant-
appellant

YOUNG, P.J.

{¶1} In this consolidated appeal, defendant-appellant, Larry Wayne Coomer, appeals his sentence for felonious assault and violation of a protection order, after pleading guilty to both offenses in the Clinton County Court of Common Pleas.¹ We

1. Case Nos. CA2009-09-016 and CA2009-09-017 were consolidated by this court via an entry on October 14, 2009.

affirm the trial court's decision.

{¶2} In Case No. CA2009-09-017, appellant was indicted for attempted murder, a violation of R.C. 2923.02(A), a first-degree felony; felonious assault, a violation of R.C. 2903.11(A)(2), a second-degree felony; and domestic violence, a violation of R.C. 2919.25(A), a third-degree felony. This indictment stemmed from appellant's February 6, 2009 attack on his wife, wherein he assaulted her, cut her with a knife, and indicated his intent to end her life.

{¶3} In Case No. CA2009-09-016, appellant was indicted for witness intimidation, a violation of R.C. 2921.04(B) and violating a protective order, a violation of R.C. 2919.27(A)(1), both of which are third-degree felonies. This indictment was based on appellant's May 3, 2009 attempt to contact his wife via a third-party in violation of a February 25, 2009 civil protection order, and threatening to cause harm to his wife and daughter.

{¶4} Appellant agreed to plead guilty to felonious assault and violating a protection order, while the remaining counts were dismissed. The trial court sentenced appellant to seven years for the felonious assault and three years for violating the protective order, to be served consecutively for a total of ten years. Appellant filed an appeal arguing a single assignment of error.²

{¶5} "THE TRIAL COURT ERRED WHEN SENTENCING THE APPELLANT BY FAILING TO REMAIN IMPARTIAL AT THE APPELLANT'S SENTENCING HEARING."

2. We note that the state has failed to file a brief in this case. "Under App.R. 18(C), this court 'may accept the appellant's statement of the facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain such action.'" *State v. Myers* (1997), 119 Ohio App.3d 642, 645, citing *George v. Fannin* (1990), 67 Ohio App.3d 703, 706.

{¶16} In his sole assignment of error, appellant argues his sentence is unfair, and was based on partiality, bias and/or prejudice by the trial court. We do not agree.

{¶17} At the sentencing hearing, the trial court stated that it considered: all of the statements made by counsel, the victim, the victim's daughter and appellant; all of the letters it had received as well as the victim impact statement; the presentence report and all of the purposes and principles of felony sentencing; the seriousness of appellant's conduct; the recidivism factors relevant to the offense; and the need to deter, incapacitate, rehabilitate and restore. After finding community control would be inconsistent with the principles and purposes of sentencing and noting there was a presumption of prison for a second-degree felonious assault the trial court stated:

{¶18} "While certainly also in a felonious assault, one looks at the degree of physical injury that one might suffer, I don't think there's any doubt that the victim in this crime suffered a significant and harmful emotional distress.

{¶19} "Defendant has previously served an approximate term of 13 years in prison for attempted aggravated murder in an incident that involved the victim of the incident assault.

{¶110} "After being released from prison, the presentence report indicates that Defendant has had multiple encounters with the criminal justice system, including offenses of violence with respect to the victims of the incident assault as well as other individuals.

{¶111} "The Court finds there was an assault charge in 2008 involving folks unrelated to this case * * *. There are three civil protection orders currently of record

involving multiple petitioners.

{¶12} "I had to look up a word, Mr. Coomer, because it came to mind as I also read the numerous letters of support. Some of them indicate you are an honest, hard-working, law-abiding – well, good guy. And the word that came to mind when I read those letters and the disparity between your criminal history and these folks who may not be aware of your criminal history is the word psychopath.

{¶13} "A psychopath is defined in the dictionary as a person with a personality disorder, especially one manifested in an aggressively antisocial behavior. That's what I see here, aggressive antisocial behavior.

{¶14} "And the presentence investigation report indicates that you've never been examined or treated by a mental health provider. I find that troubling and inexplicable given the history that I've seen and given the opportunity you had to get help while in prison."

{¶15} The trial court then stated that to protect the victims and the general public, and to punish the offender, it had decided to impose a prison sentence. After reiterating that it weighed all of the factors, the trial court sentenced appellant to seven years for the felonious assault. For these same reasons, including the fact appellant attempted to contact his wife in violation of a protection order while in prison for attacking her, the trial court sentenced appellant to three years for violating the protection order. The trial court also ran the sentences consecutively based on protecting the public, punishing appellant, the seriousness of the two offenses, and his conduct.

{¶16} Citing to Canon 2 and Rules 2.2, 2.3(A) and (B) of the Code of Judicial

Conduct, appellant contends the trial court lost the ability to remain impartial, and/or evidenced bias and/or prejudice when it labeled appellant a "psychopath." Because of this partiality, bias and/or prejudice, appellant maintains his sentence was incorrectly imposed. Specifically, appellant "argues that the length and terms of his sentence are a direct result of Judge Ruddock's [sic.] preconceived bias – that Mr. Coomer was a 'psychopath.'" Appellant asks this court to remand this case to the trial court for a new sentencing hearing, before another trial court judge.

{¶17} This court lacks jurisdiction to consider allegations of judicial misconduct instituted pursuant to the Code of Judicial Conduct, as those matters are properly brought before the Disciplinary Counsel. *Szerlip v. Spencer*, Knox App. No. 01CA30, 2002-Ohio-1281, ¶8; *State v. Wright*, Franklin App. No. 03AP-470, 2004-Ohio-677, ¶10; *Hangen v. McCaleb*, Greene App. No. 2005 CA 54, 2006-Ohio-776, ¶4; *Wilburn v. Wilburn*, 169 Ohio App. 3d 415, 2006-Ohio-5820, ¶10. See, also, Gov.Bar R. V(2).

{¶18} Insofar as appellant's assignment of error relates to sentencing, we find appellant's sentence is not "clearly and convincingly contrary to law." *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶4. The trial court properly considered R.C. 2929.11 and 2929.12, properly applied postrelease control, and sentenced appellant within the permissible range. *Id.* at ¶18. In addition, we find there was no abuse of discretion in the trial court's decision, as the trial court gave "careful and substantial deliberation to the relevant statutory considerations." *Id.* at ¶4. While we believe the trial court's use of the word "psychopath," may have been ill advised, there is nothing in the statement that indicates the court did not properly consider and apply the

proper sentencing criteria. Appellant's sole assignment of error is overruled.

{¶19} Judgment affirmed.

POWELL and HENDRICKSON, JJ., concur.

This opinion or 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.sconet.state.oh.us/ROD/documents/>. Final versions of decisions are also available on the Twelfth District's web site at: <http://www.twelfth.courts.state.oh.us/search.asp>