

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

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2014-05-013
 :
 - vs - : OPINION
 : 3/23/2015
 :
 HEIDI E. SMITH, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
Case No. 13CRI00289

Jess C. Weade, Fayette County Prosecuting Attorney, 110 East Court Street, Washington Court House, Ohio 43160, for plaintiff-appellee

Oldham & Deitering, LLC, Robert L. Scott, 8801 North Main Street, Suite 200, Dayton, Ohio 45415-1380, for defendant-appellant

PIPER, P.J.

{¶ 1} Defendant-appellant, Heidi Smith, appeals her conviction and sentence in the Fayette County Court of Common Pleas for illegal manufacture of drugs.

{¶ 2} Smith and her husband, Dennis Smith, were convicted in 2012 of domestic violence upon each other. As part of their sentence, each was ordered to serve community control. Ohio's statute on supervision of probationers permits the probation department to

perform searches of probationers and their residences when there are reasonable grounds to believe that the probationer is violating the terms of his or her community control or is involved in criminal activity. Smith's probation officer received information that Smith was possibly involved in the manufacture of methamphetamine, and asked the sheriff's department for assistance in conducting a search of the Smiths' residence.

{¶ 3} During the search of the Smiths' home, police located a unit used for manufacturing methamphetamine in a toolbox in the Smiths' 1,100 square foot mobile home. Police also located several tools and ingredients used for the manufacture of methamphetamine, including lithium batteries, muriatic acid, pseudoephedrine pills, coffee filters, and digital scales.

{¶ 4} Smith and her husband were arrested, and Smith was charged with aggravated drug possession, illegal manufacture of drugs, and illegal assembly or possession of chemicals for the manufacturing of drugs. Smith pled not guilty, but did not file a motion to suppress the evidence seized during the probation-based search. Smith moved the court to join her case with her husband's, but the trial court denied the request.

{¶ 5} The matter proceeded to a jury trial, and the jury found Smith guilty of each count. The trial court found the charges to be allied offenses of similar import, and the state elected to proceed on the illegal manufacture of drugs charge. The trial court sentenced Smith on the same day she was convicted, and without ordering a presentence investigation report. The court ordered Smith to serve a four-year mandatory sentence. Smith now appeals her conviction and sentence, raising the following assignments of error. For ease of discussion, we will address Smith's assignments of error out of order.

{¶ 6} Assignment of Error No. 4:

{¶ 7} HEIDI SMITH'S CONVICTIONS WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 8} Smith argues in her fourth assignment of error that her conviction is against the manifest weight of the evidence.

{¶ 9} A manifest weight challenge examines the inclination of the greater amount of credible evidence, offered at a trial, to support one side of the issue rather than the other.

State v. Wilson, 12th Dist. Warren No. CA2006-01-007, 2007-Ohio-2298.

In determining whether a conviction is against the manifest weight of the evidence, the court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of the witnesses and determines whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.

State v. Cummings, 12th Dist. Butler No. CA2006-09-224, 2007-Ohio-4970, ¶ 12.

{¶ 10} While appellate review includes the responsibility to consider the credibility of witnesses and the weight given to the evidence, "these issues are primarily matters for the trier of fact to decide since the trier of fact is in the best position to judge the credibility of the witnesses and the weight to be given the evidence." *State v. Walker*, 12th Dist. Butler No. CA2006-04-085, 2007-Ohio-911, ¶ 26. Therefore, an appellate court will overturn a conviction due to the manifest weight of the evidence only in extraordinary circumstances to correct a manifest miscarriage of justice, and only when the evidence presented at trial weighs heavily in favor of acquittal. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997).

{¶ 11} Smith was convicted of illegal manufacture of drugs in violation of R.C. 2925.04(A), which provides, "no person shall knowingly cultivate marihuana or knowingly manufacture or otherwise engage in any part of the production of a controlled substance." "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." R.C. 2901.22(B).

{¶ 12} During Smith's trial, the state presented evidence that she engaged in illegal manufacturing of drugs. Smith's probation officer, Gene Ivers, testified that as he and other police officials were executing the search of Smith's home, they found a unit used for the manufacturing of methamphetamine in a backroom of Smith's home. Ivers testified that they found a clear plastic bottle with a white substance at the bottom and black speckled items floating in the fluid within the bottle, indicating that methamphetamine was being manufactured.¹

{¶ 13} Ivers also testified that several items were found during the search that were ingredients necessary for the manufacture of methamphetamine, including cold compress packs, Draino crystals, damp rid, Coleman camp fluid, and Sudafed pills. Ivers testified on cross-examination that these items were found throughout the house, and were not grouped in a single location.

{¶ 14} Corporal Charles Kyle of the Fayette County Sheriff's Office testified next, and stated that he is familiar with the process of manufacturing methamphetamine from training he has received as part of his job. Corporal Kyle testified that some of the ingredients necessary for the manufacture of methamphetamine include different types of chemicals, drain cleaner, pseudoephedrine, damp rid, cold compress packs, lithium batteries, and muriatic acid.

{¶ 15} Corporal Kyle also testified that pseudoephedrine is a main ingredient in the manufacturing process, and as such, the federal government has started to track the sale of pseudoephedrine through a database called NPLEX. Those who purchase pseudoephedrine are required to show identification and sign for the purchase, thus allowing the purchase to

1. Agent Dwight Aspacher later testified that the black specks were lithium metal, taken from batteries, which reacts with the other chemicals in the manufacturing process to turn pure/extracted pseudoephedrine into methamphetamine.

be tracked in NPLEX. Each person is limited to purchasing up to nine grams of pseudoephedrine in a month, and any purchase attempted beyond the nine grams will be denied.

{¶ 16} Corporal Kyle testified that he is responsible for monitoring NPLEX as part of his job responsibilities, and that he had tracked Smith and her husband's purchases through NPLEX due to the fact that they purchased large amounts of pseudoephedrine each month. The state offered the NPLEX report as an exhibit, which detailed the multiple purchases made by Smith, as well as the many failed purchase attempts once she had already reached her monthly maximum allowance.

{¶ 17} Corporal Kyle testified that he also assisted the probation department in searching Smith's home, and that executing officers found several ingredients necessary for the manufacture of methamphetamine in addition to what Ivers testified to, including coffee filters, lithium batteries, and muriatic acid. Officers also found small digital scales in the home.

{¶ 18} On cross-examination, Corporal Kyle testified that the methamphetamine manufacturing unit was found in a back room of the Smith's mobile home and that the room contained several tools and other boxes with Dennis Smith's name on them. Corporal Kyle testified that the room seemed to have been used for storage, and that it did not appear as if anyone lived in or slept in the room, including Smith.

{¶ 19} Agent Dwight Aspacher of the Ohio Attorney General's Office, Bureau of Criminal Investigation, testified that he had been assigned to the clandestine lab and marijuana suppression unit for approximately six years and that his job responsibilities included investigating clandestine drug laboratories such as methamphetamine manufacturing sites and indoor marijuana grow operations. Agent Aspacher testified that he had observed and neutralized approximately 1,000 methamphetamine labs in his experience.

{¶ 20} Agent Aspacher explained to the jury the one-pot method of manufacturing methamphetamine in which all ingredients are added to a bottle and the chemicals react to create methamphetamine. Agent Aspacher testified to the ingredients necessary for the manufacture process, all of which were found in Smith's home. Agent Aspacher also testified that the methamphetamine manufacturing unit found in Smith's home was operable, contained all ingredients necessary for the manufacturing process, and required neutralization. Agent Aspacher testified that the unit had been used to previously manufacture methamphetamine, and that the manner in which the unit was found on the night of the search indicated that it was a "second run" of manufacturing.

{¶ 21} Agent Aspacher also testified that the manufacturing process results in a strong odor, and that while it is possible that an odor would not be given off if the bottle was kept sealed throughout the process, opening the bottle to release pressure is part of most manufacturing processes.

{¶ 22} Jennifer Guthrie, a pharmacist, testified that the pills taken from Smith's home were pseudoephedrine. Guthrie testified that the pills were the generic form of Sudafed, but contained the same chemical makeup as Sudafed and that their composition was that of pseudoephedrine. Guthrie testified on cross-examination that the pills taken from Smith's home were of such a dosage that their medicinal effect would last approximately 12 hours, and that people are permitted to purchase up to 60 pills per month pursuant to a dosage of two 12-hour pills per day. Guthrie also testified that pseudoephedrine is a nasal decongestant that does not require a prescription.

{¶ 23} In her defense, Smith called her husband to testify. Dennis testified that he had manufactured methamphetamine in the past with the help of an unnamed accomplice, and that the unit found during the probation search was his. Dennis further testified that Smith had no knowledge of his manufacturing and that he had been keeping his manufacturing a

secret from her. Dennis also stated that he never manufactured methamphetamine in their home, and that he used the items seized from the home for his personal use.

{¶ 24} Dennis explained that he used the cold compresses for a herniated disk, Coleman fuel for camping, muriatic acid for cleaning bricks, damp rid to remove moisture from the mobile home, and drain cleaner to remove clogs from the sinks and toilets in the mobile home. When asked about the large amount of batteries found, Dennis explained that he is a "hoarder." Dennis also testified that the room in which the manufacturing unit was found is his "man cave" and that Smith did not make use of it.

{¶ 25} Dennis also testified that approximately two years before the probation search occurred, Smith had sustained an injury to her eye that required surgery. Dennis testified that doctors placed a stint through Smith's nose to repair the damaged eye and that as a result of going through the nasal cavity, Smith took Sudafed to treat the irritation. Smith also offered as an exhibit her medical records to further explain the injury she suffered, and to explain why she took so much Sudafed, or its generic equivalent. Dennis testified that he often took Smith's Sudafed to make methamphetamine, and that Smith did not have knowledge as to why he was using her pills.

{¶ 26} While Smith argues that the state failed to show that she had knowledge of the manufacturing, the manifest weight of the evidence demonstrates otherwise. The jury heard evidence that the methamphetamine unit was found in a back room of Smith's mobile home and that the ingredients necessary for the manufacturing process were found throughout the home, including the kitchen and bathroom that Smith used frequently. The manufacturing process would emit a chemical odor, which could be smelled within the Smiths' 1,100 square foot home. Smith also purchased large amounts of pseudoephedrine. While Smith suggested that she used the pseudoephedrine because of her injury, the jury did not find that assertion credible.

{¶ 27} Nor did the jury find Dennis Smith's testimony credible that Smith did not have knowledge of the manufacturing process. The jury was in the best position to judge the credibility of Dennis Smith, and we will not disturb its credibility determination on appeal.

{¶ 28} After reviewing the record, we find that that the jury did not clearly lose its way or create such a manifest miscarriage of justice that Smith's conviction must be reversed and a new trial ordered. Having found that Smith's conviction was not against the manifest weight of the evidence, her fourth assignment of error is overruled.

{¶ 29} Assignment of Error No. 1:

{¶ 30} HEIDI SMITH WAS PREJUDICED IN SENTENCING DUE TO THE TRIAL COURT NOT ORDERING A PRESENTENCE INVESTIGATION BEFORE SENTENCING HER ON THE SAMEDAY [SIC] AS HER CONVICTION.

{¶ 31} Smith argues in her first assignment of error that the trial court should not have sentenced her without first considering a presentence investigation report.

{¶ 32} According to R.C. 2947.06(A)(1), "the court on its own motion *may* direct the department of probation of the county in which the defendant resides, or its own regular probation officer, to make any inquiries and presentence investigation reports that the court requires concerning the defendant." (Emphasis added.) The language of R.C. 2947.06(A)(1) is discretionary, and does not require a trial court to order or consider a presentence investigation report before sentencing the defendant.

{¶ 33} Despite the discretionary nature of the statute, Smith argues that she was prejudiced by the trial court not ordering a presentence investigation because without one, she could not have been sentenced to community control rather than prison. According to R.C. 2951.03(A)(1), a trial court cannot sentence a defendant to community control rather than prison until the court has considered the defendant's presentence investigation report. However, the Ohio Supreme Court has noted that the statute only requires a trial court to

consider a presentence investigation before ordering community control, but the presentence investigation is not required when community control is not a sentencing option. *State v. Cyrus*, 63 Ohio St.3d 164 (1992).

{¶ 34} The record indicates that Smith was convicted of illegal manufacture of drugs in violation of R.C. 2925.04(A), a felony of the second degree. According to R.C. 2929.13(F)(5), Smith's conviction carried with it a mandatory prison sentence of at least three years, and community control was not an option for sentencing. As such, the trial court was not required to consider a presentence investigation report.

{¶ 35} Even so, Smith argues that she was prejudiced because without the presentence investigation, the trial court was unaware of information that would serve as mitigation, such as a history of domestic violence committed against her during the time of the methamphetamine manufacturing. However, the record indicates that the trial court was aware of Smith's history regarding domestic violence and the circumstances of Smith's home life, as those issues were the basis for the probation search.

{¶ 36} Moreover, and as will be discussed within Smith's fifth assignment of error, the trial court properly considered all issues regarding sentencing, and ordered Smith to serve the second-most lenient sentence possible. Prior to imposing sentence, the trial court heard mitigation evidence from Smith's counsel and her own allocution. Even so, the trial court also heard evidence that Smith had a prior drug-related felony conviction, showed little remorse for her actions, and placed others in danger through the use of a methamphetamine lab that had to be neutralized by law enforcement. There is no indication in the record that a presentence investigation would have caused the trial court to order the minimum sentence of three years, or caused the trial court to change its sentence based on information a

presentence investigation may have uncovered.²

{¶ 37} After reviewing the record we find that the trial court was within its discretion to not request a presentence investigation before sentencing Smith. As such, Smith's first assignment of error is overruled.

{¶ 38} Assignment of Error No. 2:

{¶ 39} HEIDI SMITH RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO FILE A MOTION TO SUPPRESS, SUPOENA [SIC] WITNESSES, OBJECT TO SENTENCE DUE TO NO PRESENTENCE INVESTIGATION, FAILURE OF TRIAL STRATEGY.

{¶ 40} Smith argues in her second assignment of error that she received ineffective assistance of counsel for several reasons.

{¶ 41} The United States Supreme Court established a two-part test in regard to ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). That test requires an appellant to establish that first, "his trial counsel's performance was deficient; and second, that the deficient performance prejudiced the defense to the point of depriving the appellant of a fair trial." *State v. Myers*, 12th Dist. Fayette No. CA2005-12-035, 2007-Ohio-915, ¶ 33.

{¶ 42} Regarding the first prong, an appellant must show that his counsel's representation "fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688. The second prong requires the appellant to show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A strong presumption exists that a licensed attorney is competent and that the

2. As this court has previously noted, a defendant cannot be assured that a presentence investigation will uncover positive information to serve as mitigation. *State v. Simon*, 12th Dist. Butler No. CA2014-06-138, 2015-Ohio-970. Just as easily, the probation department's investigation may have reported unfavorable information to the court, which could have resulted in the trial court's issuing a harsher sentence.

challenged action is the product of sound trial strategy, thus falling within the wide range of professional assistance. *Id.* at 689.

{¶ 43} Smith asserts that she received ineffective assistance of counsel because her attorney failed to file a motion to suppress, failed to call and subpoena key witnesses, and failed to provide sound trial strategy. Smith also argues that her attorney was ineffective for failing to move the trial court to order a presentence investigation. However, and given our disposition of Smith's first assignment of error, we find no deficient or prejudicial representation where the trial court was within its discretion to not order the presentence investigation.

{¶ 44} Regarding the motion to suppress, Ohio law is clear that failure to file a motion to suppress does not constitute per se ineffective assistance of counsel. *State v. Madrigal*, 87 Ohio St.3d 378, 389 (2000). Instead, "to establish ineffective assistance of counsel for failure to file a motion to suppress, a defendant must prove that there was a basis to suppress the evidence in question." *State v. Brown*, 115 Ohio St.3d 55, 2007-Ohio-4837, ¶ 65.

{¶ 45} Smith argues that the basis for suppression was that the probation search was illegal and that she did not give consent for officers to search her home.

{¶ 46} R.C. 2951.02 provides for the supervision of community control, and states that law enforcement may search the probationer or the probationer's residence without a warrant "if the probation officers have reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the conditions" of the offender's community control.³

3. R.C. 2951.02(A) also requires the court that places a defendant on community control to inform the probationer in writing that the search can occur with or without a warrant. While Smith argues that she did not give consent for the search, she does not assert that she never received notice of the possibility of probation searches.

{¶ 47} The United States Supreme Court has upheld probation searches conducted pursuant to a condition of probation, provided that a "reasonable suspicion" exists that evidence of criminal activity can be found in a probationer's home. *United States v. Knights*, 534 U.S. 112, 120-121, 122 S.Ct. 587 (2001). The court also explained,

although the Fourth Amendment ordinarily requires the degree of probability embodied in the term 'probable cause,' a lesser degree satisfies the Constitution when the balance of governmental and private interests makes such a standard reasonable. * * * Those interests warrant a lesser than probable-cause standard here. When an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable.

Id. at 121.

{¶ 48} The United States Supreme Court, in a different case, further explained that a probation system is a "special need" of the state, which permits a degree of "impingement upon privacy that would not be constitutional if applied to the public at large." *Griffin v. Wisconsin*, 483 U.S. 868, 878, 107 S.Ct. 3164 (1987). As such, the warrant requirement normally attached to non-probation searches becomes "impracticable" so that all that is required to justify the search is "reasonable grounds." *Id.* at 876. Specifically, the court stated,

in some cases-especially those involving drugs or illegal weapons-the probation agency must be able to act based upon a lesser degree of certainty than the Fourth Amendment would otherwise require in order to intervene before a probationer does damage to himself or society. The agency, moreover, must be able to proceed on the basis of its entire experience with the probationer, and to assess probabilities in the light of its knowledge of his life, character, and circumstances.

Id. at 879.

{¶ 49} Accordingly, in order to establish "reasonable grounds," an officer need not

possess the same level of certainty that is necessary to establish probable cause, only a "likelihood" that contraband will be found in a probationer's home. *Id.*

{¶ 50} The record demonstrates that Smith's probation officer had reasonable grounds to proceed with the warrantless search because there was a likelihood that contraband would be found in Smith's home. The record indicates that police received reports that methamphetamine manufacturing was occurring at Smith's residence. Smith's probation officer, Gene Ivers, also received information that the Smiths were buying large amounts of pseudoephedrine, the main ingredient in the manufacturing of methamphetamine. Based on the likelihood that methamphetamine manufacturing was occurring, Ivers requested assistance from the sheriff's department to conduct the probation search. As such, there were reasonable grounds for the search, and any motion to suppress would have been overruled. Smith has therefore failed to show that her counsel was ineffective for failing to file a motion to suppress.

{¶ 51} Smith also argues that her counsel was ineffective for failing to call and subpoena a key witness. Smith argues that her trial counsel should have called an expert witness to explain that her medical issue required her to take pseudoephedrine. However, we cannot say that calling an expert to testify to Smith's need to take pseudoephedrine would have resulted in a different result where the jury already heard evidence of Smith's injury, was presented with Smith's medical records regarding the injury, and was presented with testimony that Smith took pseudoephedrine to combat the symptoms of her injury.

{¶ 52} Moreover, the record indicates that the public defender's office refused to pay for an expert witness and that Smith's counsel looked for, but could not find, an expert willing to become involved in Smith's case. As such, Smith was not denied effective assistance of counsel for not calling an expert witness.

{¶ 53} Smith also argues that her trial counsel failed to provide sound trial strategy.

Smith essentially argues that the defense strategy was deficient because it did not result in her acquittal. Smith asserts that her trial counsel's performance was deficient by arguing to the jury that she did not have knowledge that her husband was making methamphetamine because counsel only called Smith's husband to testify to her not having knowledge of his manufacturing. Smith argues that her counsel should have called more witnesses in her defense, or had her testify on her own behalf, and that if the jury would have heard from other witnesses, it would have heard facts as Smith "knew them" to be.

{¶ 54} However, Smith does not state what witnesses could have been called, other than herself, or what any witness would have testified to in order to establish the facts as Smith knew them. In fact, Smith does not indicate what the facts are, what facts were not presented at trial, or how the facts presented at trial were different than she knew them to be. Smith has therefore failed to demonstrate any prejudice. Nor has Smith demonstrated that the results of the trial would have been different had the jury heard from her as a witness, or heard from any other witness. The fact that the jury did not believe that Smith had no knowledge of her husband's manufacturing does not make the trial strategy deficient, it simply indicates the jury's belief that the state proved Smith's guilt beyond a reasonable doubt.

{¶ 55} After reviewing the record we find that Smith received effective assistance of counsel. As such, Smith's second assignment of error is overruled.

{¶ 56} Assignment of Error No. 3:

{¶ 57} TRIAL COURT ERRED BY NOT GRANTING HEIDI SMITH'S MOTION FOR JOINDER OF HER TRIAL WITH THAT OF HER HUSBANDS [SIC].

{¶ 58} Smith argues in her third assignment of error that the trial court erred in denying her joinder motion.

{¶ 59} According to Crim.R. 8(B), "two or more defendants may be charged in the

same indictment * * * if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses, or in the same course of criminal conduct." A trial court's decision on joinder is reviewed for an abuse of discretion. *State v. Freeze*, 12th Dist. Butler No. CA2011-11-209, 2012-Ohio-5840, ¶ 30. An abuse of discretion implies that the court's decision was unreasonable, arbitrary, or unconscionable, and not merely an error of law or judgment. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶ 130.

{¶ 60} Joinder was not required in Smith's case for multiple reasons. First, the language of the rule is permissive, and does not require joinder. Smith has not presented any facts or arguments to support her claim that her motion for joinder should have been granted. More importantly, Smith's husband pled guilty to the charges against him, and therefore did not have a trial to which Smith could have joined. As such, the trial court did not abuse its discretion in denying Smith's motion to join, and her fourth assignment of error is overruled.

{¶ 61} Assignment of Error No. 5:

{¶ 62} THE TRIAL COURT ERRED, CONTRARY TO LAW, WHEN IT SENTENCED HEIDI SMITH TO FOUR YEARS.

{¶ 63} Smith argues in her final assignment of error that the trial court erred in sentencing her.

{¶ 64} The standard of review set forth in R.C. 2953.08(G)(2) shall govern all felony sentences. *State v. Crawford*, 12th Dist. Clermont No. CA2012-12-088, 2013-Ohio-3315, ¶ 6. Pursuant to R.C. 2953.08(G)(2), when hearing an appeal of a trial court's felony sentencing decision, "the appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing." However, as explicitly stated in R.C.

2953.08(G)(2), "[t]he appellate court's standard for review is not whether the sentencing court abused its discretion."

{¶ 65} Instead, an appellate court may only take action authorized by R.C. 2953.08(G)(2) if the court "clearly and convincingly finds" that the sentence is contrary to law. A sentence is not clearly and convincingly contrary to law where the trial court considers the purposes and principles of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, and sentences appellant within the permissible statutory range. *Crawford* at ¶ 9; *State v. Elliott*, 12th Dist. Clermont No. CA2009-03-020, 2009-Ohio-5926, ¶ 10.

{¶ 66} After reviewing the record, the trial court's sentence is not contrary to law. The trial court stated at the sentencing hearing that it had considered the requisite statutory factors, and also expressly stated in its entry that it had considered the purposes and principles of sentencing according to R.C. 2929.11 as well as the seriousness and recidivism factors within R.C. 2929.12. As previously stated, the court sentenced Smith to a four-year mandatory sentence, which was within the permissible range of three to eight years set forth in R.C. 2925.04(C)(3)(a) and R.C. 2929.14(A)(2). As such, Smith's sentence was not contrary to law, and her fifth assignment of error is overruled.

{¶ 67} Judgment affirmed.

RINGLAND and M. POWELL, JJ., concur.