**[Cite as *State v. Brinegar*, 2015-Ohio-825.]**

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

| | | |
|---|---|---|
| STATE OF OHIO, | : | |
| Plaintiff-Appellee, | : | CASE NO. CA2014-06-041 |
| | : | O P I N I O N |
| - vs - | | 3/9/2015 |
| | : | |
| KENNETH WAYNE BRINEGAR, JR., | : | |
| Defendant-Appellant. | : | |

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2013 CR 00741

D. Vincent Faris, Clermont County Prosecuting Attorney, Nicholas Horton, 76 South Riverside Drive, 2nd Floor, Batavia, Ohio 45103, for plaintiff-appellee

R. Daniel Hannon, Clermont County Public Defender, Robert F. Benintendi, 302 East Main Street, Batavia, Ohio 45103, for defendant-appellant

**HENDRICKSON, J.**

**{¶ 1}** Defendant-appellant, Kenneth Wayne Brinegar, Jr., appeals from his sentence in the Clermont County Court of Common Pleas for failing to give notice of a change of address. For the reasons set forth below, we affirm.

**{¶ 2}** In January 2011, appellant pleaded guilty to unlawful sexual conduct with a minor in violation of R.C. 2907.04(A), a felony of the third degree, in Clermont County Court

of Common Pleas Case No. 2010 CR 00824. He was sentenced to one year in prison and was classified as a Tier II sex offender, which requires appellant to register his address with local law enforcement in the jurisdiction in which he resides. Appellant complied with the registration requirement for a period of time upon his release from prison. However, on November 6, 2013, appellant moved from the registered address of 5751 Bucktown Road, Lot B, Williamsburg, Ohio 45176. Appellant did not provide notice to the Clermont County Sheriff's Office of his departure for 16 days. On November 22, 2013, appellant registered with the sheriff's office his new address at Stonelick Park, a campground located at 2895 Lake Drive, Pleasant Plain, Ohio 45162. In the period of time between his departure from the Bucktown Road residence and his registration of the Stonelick Park address, appellant had been in contact with his parole officer.

**{¶ 3}** On November 21, 2013, the day before he registered his Stonelick Park address with the Clermont County Sheriff's Office, appellant was indicted on one count of failure to give notice of a change of address in violation of R.C. 2950.05(F)(1), a felony of the third degree. Appellant pleaded guilty to the charge in April 2014, and was sentenced to 24 months in prison.

**{¶ 4}** Appellant timely appealed his sentence, raising the following assignment of error:

**{¶ 5}** THE TRIAL COURT ERRED IN SENTENCING APPELLANT TO A TWENTY-FOUR MONTH TERM OF IMPRISONMENT.

**{¶ 6}** In his sole assignment of error, appellant argues the 24-month prison term imposed by the trial court is excessive, not commensurate with the seriousness of his conduct, and fails to archive the overriding purposes of felony sentencing.

**{¶ 7}** We review the imposed sentence under the standard of review set forth in R.C. 2953.08(G)(2), which governs all felony sentences. *State v. Crawford*, 12th Dist. Clermont

No. CA2012-12-088, 2013-Ohio-3315, ¶ 6. "When considering an appeal of a trial court's felony sentencing decision under R.C. 2953.08(G)(2), '[t]he 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.'" *Id.* at ¶ 7, quoting R.C. 2953.08(G)(2). However, an appellate court's review of an imposed sentence is not whether the sentencing court abused its discretion. *Id.*; *State v. Warren*, 12th Dist. Clermont No. CA2012-12-087, 2013-Ohio-3483, ¶ 6. Rather, an appellate court may take any action authorized by R.C. 2953.08(G)(2) only if the court "clearly and convincingly finds" that either: (1) "the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;" or (2) "[t]hat the sentence is otherwise contrary to law." R.C. 2953.08(G)(2)(a)-(b). An appellate court will not find a sentence 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, properly applies postrelease control, and sentences appellant within the permissible statutory range. *Warren* at ¶ 7; *State v. Hubbard*, 12th Dist. Butler No. CA2014-03-063, 2015-Ohio-646, ¶ 55.

**{¶ 8}** Appellant does not dispute that the trial court sentenced him within the statutory range for a third-degree felony; nor does he dispute that the trial court properly applied postrelease control. Rather, appellant challenges the trial court's consideration of the factors set forth in R.C. 2929.11 and 2929.12. Specifically, appellant argues that his conduct in failing to give notice of a change of address is "less serious" than conduct normally constituting the offense and that consideration of the factors set forth in R.C. 2929.12(B) and (C) demonstrate that a "low range" sentence would have been more in line with the purposes and principles of sentencing.

**{¶ 9}** "When sentencing a defendant, a trial court is not required to consider each sentencing factor, 'but rather to exercise its discretion in determining whether the sentence satisfies the overriding purpose of Ohio's sentencing structure.'" *State v. Stamper*, 12th Dist. Butler No. CA2012-08-166, 2013-Ohio-5669, ¶ 11, quoting *State v. Oldiges*, 12th Dist. Clermont No. CA2011-10-073, 2012-Ohio-3535, ¶ 17. The factors set forth in R.C. 2929.12 are nonexclusive, and R.C. 2929.12 explicitly allows a trial court to consider any relevant factors in imposing a sentence. *Id.*; *State v. Birt*, 12th Dist. Butler No. CA2012-02-031, 2013-Ohio-1379, ¶ 64.

**{¶ 10}** The record reflects that the trial court considered the necessary sentencing provisions before imposing appellant's sentence. The sentencing entry specifically states that

> [t]he court has considered the record, any information presented pursuant to R.C. 2929.15(A), oral statements, victim impact statement, and pre-sentence report, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors under Ohio Revised Code Section 2929.12.

**{¶ 11}** In regards to the factors set forth in R.C. 2929.12(B) and (C), the court found that appellant's conduct in failing to give notice of his change of address was "neither more serious nor less serious than conduct normally constituting the offense." In reaching this determination, the trial court stated the following:

> THE COURT: Okay. My finding is that the offense is not more serious or less serious than conduct normally constituting the offense. It's a failure to register. Either you do or you don't, and he has plead [sic] guilty to failing to register a change of address. And it wasn't like this was the first time he got out of prison and didn't know what to do. He knew what he was supposed to do.

Although appellant contends that his offense was less serious than conduct normally constituting the offense because only 16 days passed before he notified the sheriff's office of his change of address and he maintained contact with his parole officer during that time, we

are not compelled to hold that the trial court erred in finding the offense "not more or less serious" than conduct normally constituting the offense. The court considered appellant's statements that he knew he had to register, that he had, in fact, registered as "homeless" in the past when he lost a fixed residence, and that he did not do so in this instance because he feared that he would be "lock[ed] up and put * * * back in a halfway house." Given appellant's statements at the sentencing hearing and the information contained within the presentence investigation report and appellant's sex offender residence verification records from March 2013 through November 2013, we find no error in the trial court's determination that appellant's offense was neither more serious or less serious than conduct normally constituting the offense of failure to give notice of a change of address.

**{¶ 12}** We further find that additional R.C. 2929.11 and R.C. 2929.12 considerations support the imposed 24-month prison sentence. The trial court found that appellant is "more likely rather than less likely to commit future crimes" and that a prison sentence, rather than community control sanctions, was the appropriate sentence in this case. In reaching these determinations, the trial court considered appellant's lengthy criminal history, which included juvenile adjudications for trespassing, criminal damaging, domestic violence, and felonious assault as well as criminal convictions for domestic violence, underage consumption of alcohol, operating a motor vehicle without a license, disorderly conduct, possession of marijuana, felonious assault, unlawful sexual conduct with a minor, and illegal assembly or possession of chemicals for the manufacture of drugs. The court also considered appellant's numerous parole violations and his inability to successfully complete the Turtle Creek treatment program in determining that community control was inappropriate.

**{¶ 13}** In light of the foregoing considerations by the trial court, and the language utilized by the court in its sentencing entry, we find that the trial court did not err in sentencing appellant to a 24-month prison term for failing to give notice of his change of address. The

trial court clearly considered the purposes and principles of sentencing under R.C. 2929.11 and the seriousness and recidivism factors set forth in R.C. 2929.12 prior to imposing appellant's sentence. The imposed sentence is not clearly and convincingly contrary to law.

**{¶ 14}** Appellant's sole assignment of error is, therefore, overruled.

**{¶ 15}** Judgment affirmed.

PIPER, P.J., and M. POWELL, J., concur.