

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

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2011-02-012
 :
 - vs - : OPINION
 : 11/7/2011
 :
 JOSHUA L. MCCLANAHAN, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2010 CR 0502

Donald W. White, Clermont County Prosecuting Attorney, David H. Hoffmann, 123 North Third Street, Batavia, Ohio 45103, for plaintiff-appellee

R. Daniel Hannon, Clermont County Public Defender, Robert F. Benintendi, 10 South Third Street, Batavia, Ohio 45103, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Joshua L. McClanahan, appeals the sentence he received from the Clermont County Court of Common Pleas following his conviction for one count of felonious assault. For the reasons outlined below, we affirm.

{¶2} On June 23, 2010, appellant was indicted for one count of felonious assault in violation of R.C. 2903.11(A)(1) and one count of child endangering in violation of R.C. 2919.22(B)(1), both second-degree felonies, after he admitted to "wrestling," "pushing," and

"jerking" his then live-in girlfriend's 15-month-old son, C.D., causing him to suffer significant brain damage. On January 24, 2011, upon entering into a plea agreement, appellant pled guilty to one count of felonious assault and was sentenced to serve the maximum eight-year prison term. Appellant now appeals from his sentence, raising one assignment of error for review.

{¶3} "THE TRIAL COURT ABUSED ITS DISCRETION IN SENTENCING APPELLANT, A FIRST TIME OFFENDER, TO THE MAXIMUM TERM OF IMPRISONMENT."

{¶4} In his single assignment of error, appellant argues that the trial court abused its discretion by sentencing him to the maximum eight-year prison term. We disagree.

{¶5} "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. Clay*, Madison App. No. CA2011-02-004, 2011-Ohio-5086, ¶8, quoting *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, ¶100. When an appellate court reviews a trial court's sentence, it 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." *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶4. If the sentence is not clearly and convincingly contrary to law, then "the trial court's decision shall be reviewed under an abuse-of-discretion standard." *State v. Miller*, Butler App. No. CA2010-12-336, 2011-Ohio-3909, ¶10; *Kalish* at ¶17.

{¶6} In his brief, appellant concedes that "the court's sentence is not contrary to law in that the sentence imposed was within the statutory range, and the court considered the factors set forth in R.C. 2929.11 and 2929.12." In turn, because appellant concedes that his sentence is not clearly and convincingly contrary to law, we will forego addressing that issue

here and focus our decision solely on whether the trial court's sentencing decision amounts to an abuse of discretion.

{¶7} As this court has stated previously, "[a]n 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. Kirchoff*, Clermont App. Nos. CA2010-12-104, CA2010-12-105, 2011-Ohio-4718, ¶11, citing *Kalish* at ¶19; *State v. Jackson*, 107 Ohio St.3d 53, 2005-Ohio-5981, ¶181. A trial court does not abuse its discretion in rendering a sentence so long as it gives careful and substantial deliberation to the relevant statutory considerations. *State v. Barnes*, Brown App. No. CA2010-06-009, 2011-Ohio-5226, ¶107, citing *Kalish* at ¶20.

{¶8} After a thorough review of the record, we find the trial court did not abuse its discretion in ordering appellant to serve the maximum eight-year prison term following his felonious assault conviction. While appellant claims otherwise, the record clearly indicates that the trial court gave careful and deliberate consideration to the relevant statutory considerations outlined in R.C. 2929.11 and R.C. 2929.12. This included, among other things, consideration of appellant's prior criminal record, appellant's close relationship with the victim, and the serious nature of the victim's injuries resulting from appellant's nonsensical acts of "wrestling," "pushing," and "jerking" the 15-month-old child after "using or snorting unprescribed medications."¹ See *State v. Humes*, Clermont App. No. CA2009-10-057, 2010-Ohio-2173, ¶20; see, also, *State v. Morales-Gomez*, Franklin App. No. 08AP-336, 2008-Ohio-6513, ¶20. In fact, besides noting that "in the court's eyes this [was] the worst form of the offense," the trial court explicitly stated that it had "consider[ed] these statutes" in

1. Appellant misconstrues the record by claiming he was a "first-time offender" who has led a "law-abiding life." While it may be true appellant had never faced charges allowing for such a significant prison sentence, the record still clearly indicates he was convicted of, among other things, underage consumption, disorderly conduct, several charges for driving while under suspension, a probation violation, and various additional findings as a juvenile.

fashioning its sentence. See *State v. Gray*, Clermont App. Nos. CA2010-01-006, CA2010-04-024, ¶37. Therefore, because there is simply nothing in the record to indicate the trial court's decision to sentence appellant to the maximum eight-year prison term was unreasonable, arbitrary, or unconscionable, appellant's sole assignment of error is overruled.

{¶9} Judgment affirmed.

HENDRICKSON, P.J., and PIPER, J., concur.