

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-06-012
- vs -	:	<u>OPINION</u>
	:	10/18/2010
MICHAEL S. SCOTT,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM MADISON COUNTY COURT OF COMMON PLEAS  
Case No. CRI20090102

Stephen J. Pronai, Madison County Prosecuting Attorney, Eamon P. Costello, 59 North Main Street, London, Ohio 43140, for plaintiff-appellee

George W. Leach, 153 East Main Street, Suite 210, Columbus, Ohio 43215, for defendant-appellant

**RINGLAND, J.**

{¶1} Defendant-appellant, Michael S. Scott, appeals his sentence from the Madison County Court of Common Pleas following convictions for involuntary manslaughter, aggravated burglary, and kidnapping. We affirm the decision of the trial court.

{¶2} On the evening of August 18, 2009, appellant and Steven Howard were drinking at a bar in London, Ohio. According to appellant, Howard suggested that they rob a man named Blayne Petit for money and cocaine. The men drove toward Petit's residence,

an apartment located at 183 North Madison Road, London, Ohio. They traveled to the vicinity of the apartment, parked their vehicle on a different street, and walked to the apartment. Petit's apartment was occupied at the time by Petit, his fiancée Loren Anderson, his sister Brandy Petit, James Crawford, and four children aged five or younger.

{¶13} When Blayne Petit answered the front door, Howard shot him. Petit immediately fled toward the back of the apartment with blood spurting from the gunshot wound in his neck. Brandy Petit, who had accompanied Blayne to the door, identified "Steven" at the door with a shorter black male, appellant. Howard placed a black ski mask over his head as he entered the apartment. Appellant and Howard pursued Petit through the apartment. Loren Anderson, who was watching television in the back of the apartment, began to run out of the apartment with Petit as he exited the back door. As Anderson began to step out of the back door, she was pulled back into the residence. Appellant pushed Anderson onto the couch and Howard proceeded to point a gun at her and stick it in her mouth. The men demanded for her to tell them where the money and drugs were located. Howard and appellant rummaged through several cabinets while threatening Anderson. As the men fled the scene, an additional gunshot was fired upon exiting the apartment.

{¶14} Blayne Petit died as a result of the gunshot wound. Brandy Petit identified Steven Howard as the gunman to police responding on the scene. Howard's photo was sent to various media outlets, which resulted in Howard turning himself into the police. During Howard's subsequent interviews with the police, he identified appellant as his accomplice and provided appellant's cell phone number to the police. The police contacted appellant on his cell phone and, he similarly turned himself in to the police. Appellant admitted to the police that the pair had planned the robbery and both had guns, but he did not intend for anyone to be hurt.

{¶15} Appellant was charged with aggravated murder, aggravated robbery,

aggravated burglary, and kidnapping. Counsel was appointed to represent appellant. A plea agreement was reached between the prosecution and appellant. The state agreed to dismiss the charge of aggravated robbery and reduce the charge of aggravated murder to involuntary manslaughter in exchange for appellant's testimony against Howard. Appellant entered a guilty plea to involuntary manslaughter, aggravated burglary, and kidnapping. The trial court postponed sentencing until after the scheduled trial for Howard. Due to appellant's planned testimony, Howard entered a guilty plea and was sentenced to a term of 30 years to life in prison. Appellant was sentenced to ten years for each offense, with two terms to be served concurrently and the remaining term to be served consecutively, for a total sentence of 20 years. Appellant filed the instant appeal challenging his sentence.

{¶6} Assignment of Error No. 1:

{¶7} "DEFENDANT/APPELLANT WAS PROVIDED WITH INEFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL FAILED TO PRESENT EVIDENCE AND INFORMATION IN MITIGATION AND FAILED TO ARGUE FOR A SHORTER PRISON SENTENCE."

{¶8} In his first assignment of error, appellant argues his trial counsel was ineffective during the sentencing hearing. Appellant claims that his trial counsel told him that in accepting the plea bargain he would be sentenced to a total of ten years in prison. At sentencing, the prosecution recommended a prison sentence of 20 years. Appellant complains that his trial counsel "failed to make even the weakest argument for a sentence of ten years rather than twenty." Appellant suggests that his trial counsel should have offered evidence in mitigation to the trial court to support a shorter sentence.

{¶9} In an ineffective assistance of counsel claim, a defendant must (1) demonstrate that his counsel's performance fell below an objective standard of reasonable representation, and if so (2) show that he was prejudiced by such deficient performance, i.e., that there was

a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington* (1984), 466 U.S. 668, 687-694, 104 S.Ct. 2052; *State v. Raleigh*, Clermont App. Nos. CA2009-08-046, CA2009-08-047, 2010-Ohio-2966, ¶13. A strong presumption exists that licensed attorneys are competent and that the challenged action is the product of a sound trial strategy and falls within the wide range of professional assistance. *State v. Bradley* (1989), 42 Ohio St.3d 136, 143, certiorari denied (1990), 497 U.S. 1011, 110 S.Ct. 3258.

{¶10} Due to his involvement with Steven Howard, appellant was indicted for aggravated murder, an unclassified felony, along with three first-degree felonies. Appellant faced a potential sentence of life without parole, 20 years to life, 25 years to life, or 30 years to life for the aggravated murder charge. Through negotiation, appellant's trial counsel managed to have the aggravated murder charge reduced to involuntary manslaughter, a first-degree felony, with a maximum sentence of ten years. Counsel also negotiated dismissal of the aggravated robbery charge. The state indicated it would recommend an aggregate sentence of 20 years in prison if appellant cooperated in the prosecution of Steven Howard.

{¶11} Contrary to appellant's argument, his trial counsel did advocate for a lesser sentence and presented mitigating factors in support. Specifically, counsel argued that due to appellant's age, the absence of any significant criminal record, and appellant's remorse, the court should impose a sentence around 15 years. We find no evidence that trial counsel's representation fell below an objective standard of reasonable representation. Counsel secured a favorable plea agreement for appellant, mentioned the mitigating factors at sentencing, and requested a reduced sentence.

{¶12} Appellant's first assignment of error is overruled.

{¶13} Assignment of Error No. 2:

{¶14} "THE TRIAL COURT ERRED IN IMPOSING TWO MAXIMUM SENTENCES

TO BE SERVED CONSECUTIVELY RATHER THAN TO HAVE ALL THREE TO BE SERVED CONCURRENTLY."

{¶15} In his second assignment of error, appellant argues the sentence imposed by the trial court is improper. Appellant argues that he is entitled to a shorter sentence because "he was only 19 years of age, and had no prior felony convictions," and cooperated with law enforcement and the prosecution. Further, appellant claims that he was a "relatively inactive, passive participant" during the incident and did not intend for Blayne Petit to be killed. Appellant argues that the trial court erred by failing to follow the advisory sentencing guidelines, sentencing him to the maximum term for each count, and running counts consecutive.

{¶16} 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 (1) 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, and (2) review the sentencing court's decision for an abuse of discretion. *Id.* at ¶4.

{¶17} 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. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, ¶100. "In addition, the sentencing court must be guided by statutes that are specific to the case itself." *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, ¶38. In reviewing whether a sentence is clearly and convincingly contrary to law, "the appellate court must ensure that the trial court has adhered to all applicable rules and statutes in imposing the sentence." *Kalish* at ¶15.

{¶18} The sentence imposed by the trial court in this case was within the range

permitted by statute. The trial court stated, "[m]atters that we're required to consider before imposition of sentence involve the seriousness of the offense and the likelihood of you re-offending. The offense is more serious than that normally constituting the offense obviously because it resulted in death. In addition, a firearm was used in the commission of the offense and Lauren Anderson was subjected to serious psychological harm." Since the record indicates that the trial court followed all of the applicable rules and statutes, appellant's sentence is not clearly and convincingly contrary to law. *Kalish* at ¶18.

{¶19} In reviewing the trial court's imposition of sentence for an abuse of discretion, we find that the court gave careful consideration to the relevant statutory considerations. *Id.* at ¶20. The court noted the seriousness of the offenses committed by appellant and appellant's limited criminal history. Nothing in the record indicates that the trial court abused its discretion by acting unreasonably, arbitrarily, or unconscionably in sentencing appellant. *Id.*

{¶20} Appellant's second assignment of error is overruled.

{¶21} Judgment affirmed.

YOUNG, P.J., and HENDRICKSON, J., concur.

[Cite as *State v. Scott*, 2010-Ohio-5065.]