

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-10-1334

Appellee

Trial Court No. CR0200801762

v.

Wayne L. Williamson

**DECISION AND JUDGMENT**

Appellant

Decided: March 30, 2012

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Bruce J. Sorg, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

\* \* \* \* \*

**PIETRYKOWSKI, J.**

{¶ 1} Appellant, Wayne Williamson, appeals his sentence by the Lucas County Court of Common Pleas for the offense of attempt to commit felonious assault, a violation of R.C. 2923.02 and 2903.11(A)(1), a third degree felony. Appellant raises two assignments of error on appeal:

## Assignments of Error

1.) The trial court did not properly advise Appellant of the mandatory term of post release control he was subject to.

2.) The trial court abused its discretion in sentencing Appellant to a consecutive prison term.

{¶ 2} Appellant pled guilty to the offense at a plea hearing on May 29, 2008. At the hearing the trial court discussed the fact that his sentence would include three years of mandatory postrelease control. The court also discussed the sanctions that could be imposed upon violation of postrelease control. The written plea agreement, signed by appellant, also included the details concerning the mandatory three-year postrelease control and available sanctions for violation of postrelease control.

{¶ 3} Sentencing proceeded at a hearing conducted on June 5, 2008. At the sentencing hearing the trial court spoke of postrelease control:

And after prison release I believe you will have three years of mandatory post-release control. And if you violate the conditions of your post-release control, the parole board may impose a more restrictive or longer condition, return the defendant to prison for up to nine months for each violation, up to a maximum of 50 percent of originally stated term imposed. And if the violation is a new felony, the defendant may be returned to prison for the greater of one year or the time remaining on the

post-release control, in addition to prison upon conviction for the new felony. (Emphasis added.)

{¶ 4} With respect to postrelease control, the sentencing judgment entry provided: “Defendant given notice of appellate rights under R.C. 2953.08 and post release control notice under R.C. 2929.19(B)(3) and R.C. 2967.28.”

{¶ 5} Under the first assignment of error appellant argues that the notice of postrelease control provided at sentencing was deficient because he never received a clear notice of the mandatory nature of postrelease control. Appellant claims that the court’s use of the words “I believe” in its notice of postrelease control at sentencing made the notice uncertain and insufficient. Appellant also contends that the cryptic notice of postrelease control in the sentencing judgment entry failed to remove the uncertainty.

{¶ 6} The state responds that there was no uncertainty as to postrelease control, noting that appellant was provided written notice of mandatory postrelease control in a written plea agreement that appellant reviewed with counsel and signed at the plea hearing.

{¶ 7} Our review of the record leads us to conclude that there is no basis to conclude that appellant labored under any uncertainty at sentencing as to the meaning of the trial court’s notice of postrelease control, the fact that his sentence was subject to a mandatory three-year period of postrelease control, or the nature of available sanctions should appellant violate postrelease control. The trial court provided oral notice of postrelease control at both the plea hearing and at sentencing. Appellant stated that he

understood the trial court's summary as to postrelease control at the plea hearing. The written plea agreement, reviewed by appellant with his attorney, and signed by appellant included a written notice of postrelease control. The oral statements and written summary of postrelease control were all consistent and correct.

{¶ 8} With respect to incorporation of the notice of postrelease control in the judgment entry, in *State v. Williams*, 6th Dist. Nos. L-10-1144, L-10-1145, and L-10-1146, 2011-Ohio-804, this court considered a sentencing judgment entry stating “[d]efendant given notice of post release control under R.C. 2919.19(B)(2) and R.C. 2967.28.” We held that judgment entry met the requirement to incorporate notice of postrelease control into the sentencing judgment entry as discussed in *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864. *Williams* at ¶ 4, 16. The judgment entry employed here was of similar wording with an updated statutory citation.

{¶ 9} We find appellant's Assignment of Error No. 1 is not well-taken.

{¶ 10} Under Assignment of Error No. 2, appellant contends that the trial court abused its discretion by sentencing appellant to serve a consecutive prison term. In this case, the trial court sentenced appellant on his conviction of attempted felonious assault and ordered that he serve a three-year prison term, with the sentence to run consecutive to appellant's sentence in another criminal case. The other case is Lucas County Court of Common Pleas case No. CR0200801181.

{¶ 11} In trial court case No. CR0200801181, the court sentence appellant to incarceration for 11 months on a conviction of possession of marijuana, a fifth degree

felony. The court also sentenced appellant to imprisonment for three years on a conviction of having a weapon while under disability, a violation of R.C. 2923.13(A)(3) and a third degree felony. In CR0200801181, the trial court ordered that the sentences for both offenses run concurrent to each other, but consecutive to the sentence in this case.

{¶ 12} In *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 26, the Ohio Supreme Court set forth the standard of review on appeal of felony sentencing. Appellate courts “must 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. If this first prong is satisfied, the trial court's decision in imposing the term of imprisonment is reviewed under the abuse-of-discretion standard.” *Id.*

{¶ 13} Appellant does not claim his sentence was contrary to law. He claims abuse of discretion. An abuse of discretion “implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 14} After the Ohio Supreme Court’s decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, trial courts remain required to carefully consider the statutes that apply to every felony case. Those include R.C. 2929.11, which specifies the purposes of sentencing, and R.C. 2929.12, which provides guidance in considering factors relating to the

seriousness of the offense and recidivism of the offender. 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, 846 N.E.2d 1, ¶ 38.

{¶ 15} Appellant argues that the trial court abused its discretion by failing to consider that appellant was employed full time at the Anderson's at the time of the offense and was treating with a clinical psychologist. He was attending Lourdes College. Appellant claims that given mitigating circumstances the sentence is unreasonable.

{¶ 16} Both appellant and Anna Miller, the victim of the attempted felonious assault, spoke at the sentencing hearing. On the night of the incident, appellant and Miller had gone out to celebrate appellant's birthday. According to Ms. Miller, appellant became belligerent and was kicked out of a bar. She left, dropped others who were with them off, and returned home.

{¶ 17} Ms. Miller stated that she was at home lying on a couch asleep when appellant repeatedly struck her, in the face, 10 to 15 times. Ms. Miller further stated that she ran from the residence, but that appellant chased after her and pulled her down in the street. She stated that appellant let her go and went to his vehicle after she started yelling for help.

{¶ 18} The trial court indicated that it was struck by the number of prior arrests and weapon convictions, the latest for having a weapon under disability. The court stated that appellant had a propensity for possessing weapons and propensity for violence and

that “[t]hose two things together is a combination for disaster.” The court also stated that the offense was a “very serious offense of violence, a beating.”

{¶ 19} In our view, the record demonstrates that the trial court considered the overriding purposes of felony sentencing under R.C. 2929.11 and considered factors under R.C. 2929.12 in determining sentence. The court considered the seriousness of appellant’s conduct and the harm suffered by the victim. The court considered risks of recidivism presented by appellant’s propensity to violence coupled with his propensity for possessing weapons, particularly in view of a record of prior weapon convictions. We find no abuse of discretion in imposing a sentence of imprisonment for three years, consecutive to the sentences in trial court case No. CR0200801181.

{¶ 20} We find Assignment of Error No. 2 is not well-taken.

{¶ 21} For the reasons stated, we affirm the judgment of the Lucas County Court of Common Pleas. We order appellant to pay the costs of this appeal, pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

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JUDGE

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