

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

State of Ohio

Court of Appeals No. WD-14-061

Appellee

Trial Court No. 2013CR0195

v.

Ian Craig

DECISION AND JUDGMENT

Appellant

Decided: April 17, 2015

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
David T. Harold, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This is an appeal from the judgment of the Wood County Court of Common Pleas, sentencing appellant, Ian Craig, to 11 months in prison following his plea of guilty to one count of attempted gross sexual imposition.

A. Facts and Procedural Background

{¶ 2} On October 14, 2013, the victim in this case, B.N., filed a report with the Bowling Green State University Police Department, indicating that she was sexually assaulted by appellant on October 3, 2014. In her report, B.N. indicated that she was impaired at the time of the incident, which took place following a late-night after-party in Bowling Green. Upon receiving B.N.'s report, the police interviewed appellant and several other witnesses. Police also obtained DNA samples from B.N. and appellant. After analyzing the samples at the Bureau of Criminal Identification and Investigation, police learned that appellant's DNA and semen were found on B.N.'s underwear.

{¶ 3} In light of the foregoing, appellant was indicted on April 18, 2013, on one count of rape in violation of R.C. 2907.02(A)(1), a felony of the first degree. Appellant entered a plea of not guilty, and the case proceeded through several pretrial hearings. A subsequent plea hearing was held on April 8, 2014, at which time appellant entered a plea of guilty to the lesser offense of attempted gross sexual imposition in violation of R.C. 2923.02 and 2907.05(A)(1), a felony of the fifth degree. The trial court then continued the matter for sentencing and ordered the preparation of a presentence investigation report.

{¶ 4} At sentencing, the trial court explained that appellant would be classified as a tier I sexual offender. The court went on to provide appellant with a form notifying him of his registration requirements as a tier I sexual offender. The court verbally recited those requirements, after which time appellant signed the form.

{¶ 5} Next, the court turned its attention to the imposition of sentence. In arriving at its sentence, the court stated: “Obviously this victim was impaired and the defendant has received a huge benefit by the reduction that the prosecutor and the defense have agreed to. I think, in view of that, the appropriate sentence in this case is eleven months in the Ohio Department of Rehabilitation and Corrections.” The court further ordered appellant to pay \$650 in restitution. Appellant’s timely appeal followed.

B. Assignment of Error

{¶ 6} On appeal, appellant states the following as his sole assignment of error:

Appellant’s sentence is contrary to law.

II. Analysis

{¶ 7} In his assignment of error, appellant argues that his sentence is contrary to law.

{¶ 8} We review felony sentences under the two-prong approach set forth in R.C. 2953.08(G)(2). R.C. 2953.08(G)(2) provides that an appellate court may increase, reduce, modify, or vacate and remand a disputed sentence if it clearly and convincingly finds either of the following:

(a) That 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;

(b) That the sentence is otherwise contrary to law.

{¶ 9} While the abuse of discretion standard set forth in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, is no longer controlling in our review of felony sentences, *Kalish* is still useful in determining whether a sentence is clearly and convincingly contrary to law. In that regard, the Supreme Court of Ohio has held that a sentence was not clearly and convincingly contrary to law where the trial court considered the purposes and principles of sentencing under R.C. 2929.11 along with the seriousness and recidivism factors under R.C. 2929.12, properly applied postrelease control, and imposed a sentence within the statutory range. *Id.* at ¶ 18.

{¶ 10} R.C. 2929.11(A) provides, in relevant part: “The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes * * *.” In order to comply with the mandates of R.C. 2929.11, a trial court must impose a sentence that is “reasonably calculated to achieve the two overriding purposes of felony sentencing * * * commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.” R.C. 2929.11(B). In carrying out its obligations to impose a sentence that is consistent with the purposes and principles of sentencing under R.C. 2929.11, the trial court must weigh the factors indicating that the offender’s conduct is more serious than conduct normally constituting the offense under R.C. 2929.12(B) against those factors indicating that the offender’s conduct is less serious than conduct normally constituting

the offense under R.C. 2929.12(C). Further, the court must weigh the factors contained in R.C. 2929.12(D) indicating the likelihood that the offender will commit future crimes against the factors contained in R.C. 2929.12(E) indicating that the offender is not likely to commit future crimes.

{¶ 11} With regard to its consideration of the relevant sentencing statutes in this case, the court indicated the following in its sentencing entry:

In determining a sentence the record, all oral statements, the presentence investigation report, the victim impact statement if one was received, the purposes and principles of sentencing set forth in Ohio Revised Code Section 2929.11 and the factors in Ohio Revised Code Section 2929.12 were taken into consideration prior to imposing sentence. The trial court found that a prison term was consistent with the purposes and principles under Ohio Revised Code Section 2929.11.

Further, the Court finds that the victim in this case was impaired and that the Defendant has received a huge benefit in the reduction of the charge which the prosecutor and defense have agreed to.

{¶ 12} In his appellate brief, appellant argues that the trial court failed to comply with R.C. 2929.11 and 2929.12 by noting the large reduction in potential prison time that appellant received as a result of his plea agreement with the state. Appellant reasons that such a consideration is improper because “there are many reasons a prosecutor may decide to reduce a charge so drastically.” Appellant posits that the reduction in the

charge could just as reasonably have been based upon the weakness of the prosecution's case. We find appellant's argument to be purely speculative and not supported by the record.

{¶ 13} At the outset, we note that appellant's 11-month prison sentence is within the permissible statutory sentencing range for a fifth degree felony. *See* R.C. 2929.14(A)(2). In addition, the trial court indicated its consideration of the entirety of R.C. 2929.11 and 2929.12 in its sentencing entry. Thus, appellant's sentence is not contrary to law. *See State v. Hildebrand*, 6th Dist. Lucas No. L-14-1049, 2015-Ohio-918, ¶ 9 (concluding that a sentence that falls within the acceptable range under R.C. 2929.14 is not contrary to law where the trial court's sentencing entry indicates that the court considered the principles and purposes of sentencing under R.C. 2929.11 and the factors under R.C. 2929.12).

{¶ 14} Furthermore, the court did not err when it considered the reduction of the charge pursuant to the plea agreement. *See State v. Degens*, 6th Dist. Lucas No. L-11-1112, 2012-Ohio-2421, ¶ 19, citing *State v. Robbins*, 6th Dist. Williams No. WM-10-018, 2011-Ohio-4141, ¶ 9 ("Ohio recognizes that sentencing courts may consider at sentencing charges that were reduced or dismissed under a plea agreement."); *see also State v. Banks*, 10th Dist. Franklin Nos. AP-1065, 10AP-1066, and 10AP-1067, 2011-Ohio-2749, ¶ 24; *State v. Johnson*, 7th Dist. Mahoning No. 10 MA 32, 2010-Ohio-6387, ¶ 26.

{¶ 15} In light of the foregoing, we find that the trial court's imposition of sentence was not contrary to law. Accordingly, appellant's assignment of error is not well-taken.

III. Conclusion

{¶ 16} The judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered 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.

Arlene Singer, J.

Stephen A. Yarbrough, P.J.

James D. Jensen, J.
CONCUR.

JUDGE

JUDGE

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
