

IN THE
SUPREME COURT OF OHIO

STATE OF OHIO, : NO. 2007-1703
Plaintiff-Appellee, : On Appeal from the Lake County Court
vs. : of Appeals, Eleventh Appellate District
LAURA ANN KALISH, : Court of Appeals
Defendant-Appellant. : Case Number 2006-L-093

**BRIEF OF AMICUS CURIAE,
THE OHIO PROSECUTING ATTORNEYS ASSOCIATION,
IN SUPPORT OF APPELLEE, THE STATE OF OHIO**

Charles E. Coulson (0008667)
Prosecuting Attorney, Lake County Ohio

Alana A. Rezaee (0077942)
Assistant Prosecuting Attorney

Administration Building
105 Main Street, P.O. Box 490
Painesville, Ohio 44077
(440) 350-2683

COUNSEL FOR APPELLEE, STATE OF
OHIO

Joseph T. Deters (0012084P)
Prosecuting Attorney, Hamilton County Ohio

Scott M. Heenan (0075734P)
Assistant Prosecuting Attorney

230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3227
Fax No. (513) 946-3021

COUNSEL FOR AMICUS CURIAE, THE
OHIO PROSECUTING ATTORNEYS
ASSOCIATION

Richard Perez (0010216)
4230 State Rt. 306, Suite 240
Willoughby, Ohio 44094
(440) 953-1310, ext. 13

Jesse M. Schmidt (0077320)
55 Public Square, Suite 1414
Cleveland, Ohio 44113
(216) 771-1414

COUNSEL FOR DEFENDANT-
APPELLANT, LAURA ANN KALISH

Kelly K. Curtis (0079285)
Assistant State Public Defender
Office of the Ohio Public Defender
8 East Long Street, 11th Floor
Columbus, Ohio 43215
(614) 466-5394

COUNSEL FOR AMICUS CURIAE,
OHIO PUBLIC DEFENDER

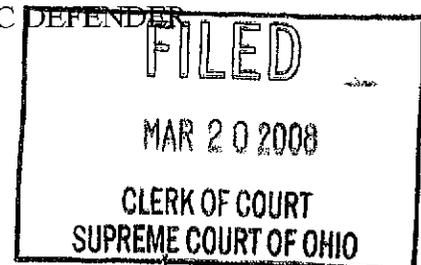


Table of Contents

Table of Authorities	iii.
Interest of Amicus Curiae	1.
Statement of the Case and Facts	2.
<u>First Proposition of Law</u> : 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. The proper way to review that exercise of discretion on appeal is by using an abuse of discretion standard of review	3.
I. <i>State v. Foster</i> gave trial courts the discretion to impose sentences they felt were proper without requiring them to make numerous factual findings	3.
II. The proper way to review a trial court’s exercise of discretion is to look for an abuse of discretion	4.
III. Reviewing sentences for an abuse of discretion provides meaningful appellate review	6.
Conclusion	8.
Certificate of Service	8.
Appendix	A-1.

Table of Authorities

Ohio Revised Code

R.C. 2929.11.	3, 6.
R.C. 2929.12.	3, 6.
R.C. 2953.08(G)	4-6.

Ohio Criminal Rules

Crim. R. 32.2.	3.
---------------------	----

Ohio Supreme Court

<i>Celmer v. Rodger</i> , 114 Ohio St. 3d 221, 2007-Ohio-3697, 871 N.E.2d 557	5.
<i>Portage Cty. Bd. of Commrs. v. Akron</i> , 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478	5.
<i>State v. Calhous</i> (1999), 86 Ohio St. 3d 279, 714 N.E.2d 905	5.
<i>State v. Foster</i> , 109 Ohio St. 3d 1, 2006-Ohio-856, 845 N.E.2d 740.	3-4.
<i>State v. Gondor</i> , 112 Ohio St. 3d 377, 2006-Ohio-6679, 860 N.E.2d 77	5.
<i>State ex rel. Van Dyke v. Pub. Emps. Retirement Bd.</i> , 99 Ohio St.3d 430, 2003-Ohio-4123, 793 N.E.2d 438	4.

Ohio Appellate Courts

<i>State v. Firouzmandi</i> , 5 th Dist. No. 2006-CA-41, 2006-Ohio-5823	7.
--	----

IN THE
SUPREME COURT OF OHIO

STATE OF OHIO	:	NO. 2007-1703
Plaintiff-Appellee	:	
vs.	:	
LAURA ANN KALISH	:	<u>MERIT BRIEF OF PLAINTIFF-</u> <u>APPELLEE</u>
Defendant-Appellant	:	

Interest of Amicus Curiae

The Ohio Prosecuting Attorneys Association is a private non-profit membership organization that was founded for the benefit of the 88 elected county prosecutors. The founding attorneys developed the original mission statement, which is still adhered to, and reads: “To increase the efficiency of its members in the pursuit of their profession; to broaden their interest in government; to provide cooperation and concerted action on policies which affect the office of Prosecuting Attorney, and to aid in the furtherance of justice. Further, the association promotes the study of law, the diffusion of knowledge, and the continuing education of its members.”

It is the OPAA’s belief that this Court gave trial courts discretion to impose sentences on those found guilty of felonies and that the exercise of that discretion should be reviewed under an abuse of discretion standard. Therefore, it urges this Court to affirm the Eleventh District’s decision in this matter.

Statement of the Case and Facts

Amicus adopts by reference the statement of the case and facts contained in the State of Ohio's merit brief.

Argument

First Proposition of Law: 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. The proper way to review that exercise of discretion on appeal is by using an abuse of discretion standard of review.

In *State v. Foster*, this Court removed the need for mandatory factual findings and gave trial courts discretion to impose felony sentences that they felt were appropriate. The trial court exercised that discretion when it sentenced Kalish. The Eleventh District found that the exercise of that discretion was proper. Did the Eleventh District properly apply an abuse of discretion standard of review?

I. *State v. Foster* gave trial courts the discretion to impose sentences they felt were proper without requiring them to make numerous factual findings.

But for *State v. Foster*,¹ this case would not be before this Court. But *Foster* changed how sentencing in Ohio takes place. It gave judges discretion to impose whatever sentence that they felt was proper without having to make numerous factual findings. That discretion, though, is not unlimited. Judges still must comply with the principles and purposes of felony sentencing² and must also consider seriousness and recidivism factors when handing down sentences.³ (There are, of course, other things that judges must do when imposing sentences, such as ordering presentence investigation reports before placing someone on community

¹*State v. Foster*, 109 Ohio St. 3d 1, 2006-Ohio-856, 845 N.E.2d 740.

²R.C. 2929.11.

³R.C. 2929.12.

control,⁴ but those issues are not before the Court in this appeal.)

The pivotal point of this case is this Court's ruling that "[t]rial 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."⁵

II. The proper way to review a trial court's exercise of discretion is to look for an abuse of discretion.

Having granted trial courts full discretion to impose sentences, it follows that appellate courts should review a challenged sentence for an abuse of discretion. Kalish, however, argues that R.C. 2953.08(G)(2)(b) requires appellate courts to apply a clear and convincing standard of review. That section of the code states: "The 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. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds . . . [t]hat the sentence is otherwise contrary to law." ⁶ This, Kalish argues, means that all sentences must be reviewed to see if they are clearly and convincingly contrary to law. Not so.

⁴See Crim. R. 32.2.

⁵*State v. Foster*, 109 Ohio St. 3d 1, 2006-Ohio-856, 845 N.E.2d 740, paragraph seven of the syllabus (emphasis added.)

⁶R.C. 2953.08(G)(2)(b).

"A court's preeminent concern in construing a statute is the legislative intent in enacting a statute."⁷ A court shall apply an unambiguous statute in a manner consistent with the plain meaning of the statutory language and may not add or delete words.⁸

Prior to *Foster*, R.C. 2953.08 required appellate courts to review each aspect of felony sentences under a clear and convincing standard. But that statute's clear and convincing standard was directed towards the various findings that sentencing courts formerly had to make. Since trial courts now have discretion to impose sentences they feel are proper, the clear and convincing standard no longer applies. Instead, appellate courts should check for an abuse of the discretion this Court granted the trial courts.

Using an abuse of discretion standard when trial courts are given discretion to do something makes sense. For example, because trial courts have discretion to determine if a witness is competent to testify as an expert, a trial court's decision will not be reversed absent an abuse of discretion.⁹ Trial courts have discretion when ruling on post-conviction petitions and, once again, will only be reversed if it abused its discretion in making its findings.¹⁰ Along the same lines, trial courts have discretion to decide whether to even hold an evidentiary hearing on petitions for post-conviction relief; a decision that will only be reversed they are found to have abused that discretion.¹¹ Amicus is not aware of any case

⁷*State ex rel. Van Dyke v. Pub. Emps. Retirement Bd.*, 99 Ohio St.3d 430, 2003-Ohio-4123, 793 N.E.2d 438, ¶27.

⁸*Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478, ¶ 52.

⁹*Celmer v. Rodger*, 114 Ohio St. 3d 221, 2007-Ohio-3697, 871 N.E.2d 557, ¶19.

¹⁰See *State v. Gondor*, 112 Ohio St. 3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶58.

¹¹See *State v. Calhous* (1999), 86 Ohio St. 3d 279, 714 N.E.2d 905, paragraph two of the syllabus.

where a trial court's exercise of discretion is reviewed for anything but an abuse of that discretion.

Prior to *Foster*, it made sense to review a trial court's sentencing findings to see if they were clearly and convincingly supported by the record. The trial courts weren't exercising their discretion when imposing sentences, they were making findings to support their sentences. But now that trial courts are exercising their discretion it makes sense for appellate courts to review that exercise of discretion for an abuse of discretion, just as they would any other exercise of discretion.

Kalish would have this Court craft some new method of reviewing a court's exercise of discretion by creating some bizarre hybrid where discretion would be checked to see if it was clearly and convincingly properly exercised. Such an approach is not supported by existing law nor is there a need for it.

III. Reviewing sentences for an abuse of discretion provides meaningful appellate review.

Kalish argues that not using a new clear and convincing standard would strike a fatal blow to the remaining portions of Senate Bill 2 sentencing law. In making this argument she overlooks the things that will still be reviewed under a clear and convincing standard, such as whether the trial court properly applied R.C. 2929.11 and 12. For example, trial courts are not given discretion about whether they consider a defendant's race, ethnicity, gender,

or religion.¹² They are forbidden from doing so. And if the record clearly and convincingly shows that a trial court did consider any of those taboos in crafting its sentence then a reviewing court would be required to reverse that sentence.¹³

Reviewing for an abuse of the discretion granted to trial courts in *Foster* does not eviscerate a defendant's ability to have their sentence reviewed. As the Fifth District recently explained, the abuse of discretion standard allows for meaningful review of whether a trial court considered statutory sentencing factors, imposed an excessive sentence, or used a mechanical or some other predetermined means for sentencing.¹⁴ And "by no means is [this] an exhaustive or exclusive list of the circumstances under which an appellate court may find that the trial court abused its discretion in the imposition of sentence in a particular case these examples demonstrate that appellant's right to a meaningful appellate review [has] not been impeded by the decision in *Foster*."¹⁵

¹²R.C. 2929.11(C).

¹³R.C. 2953.08(G).

¹⁴*State v. Firouzmandi*, 5th Dist. No. 2006-CA-41, 2006-Ohio-5823, ¶ 56.

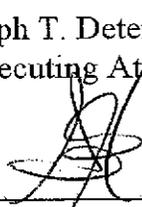
¹⁵*Id.*

Conclusion

In post-*Foster* Ohio, appellate courts should review sentences to see whether the trial courts have abused the discretion that this Court granted them. There will be times that R.C. 2953.08(G)'s clear and convincing standard will still be the proper standard of review. But this case is not one of them. Therefore, this Court should affirm the Eleventh District's use of the abuse of discretion standard in this matter.

Respectfully,

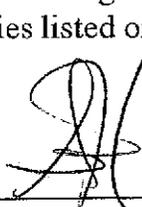
Joseph T. Deters, 0012084P
Prosecuting Attorney



Scott M. Heenan, 0075734P
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: 946-3227
Attorneys for Amicus Curiae, the Ohio
Prosecuting Attorneys Association

Certificate of Service

I hereby certify that I have sent a copy of the foregoing Brief of Amicus Curiae, by United States mail, addressed to all interested parties listed on the cover page, this 20th day of March, 2008.



Scott M. Heenan, 0075734P
Assistant Prosecuting Attorney

Appendix

Ohio Revised Code

R.C. 2929.11.	A-2.
R.C. 2929.12.	A-2.
R.C. 2953.08	A-4.

Ohio Criminal Rules

Crim. R. 32.2.	A-9.
---------------------	------

Ohio Rev. Code 2929.11

(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, 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.

(C) A court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

Ohio Rev. Code 2929.12

(A) Unless otherwise required by section 2929.13 or 2929.14 of the Revised Code, a court that imposes a sentence under this chapter upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code. In exercising that discretion, the court shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct and the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.

(B) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is more serious than conduct normally constituting the offense:

(1) The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim.

(2) The victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense.

(3) The offender held a public office or position of trust in the community, and the offense related to that office or position.

(4) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.

(5) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.

(6) The offender's relationship with the victim facilitated the offense.

(7) The offender committed the offense for hire or as a part of an organized criminal activity.

(8) In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.

(9) If the offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.

(C) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is less serious than conduct normally constituting the offense:

(1) The victim induced or facilitated the offense.

(2) In committing the offense, the offender acted under strong provocation.

(3) In committing the offense, the offender did not cause or expect to cause physical harm to any person or property.

(4) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

(D) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is likely to commit future crimes:

(1) At the time of committing the offense, the offender was under release from confinement before trial or sentencing, under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or under post-release control pursuant to section 2967.28 or any other provision of the Revised Code for an earlier offense or had been unfavorably terminated from post-release control for a prior offense pursuant to division (B) of section 2967.16 or section 2929.141 of the Revised Code.

(2) The offender previously was adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has a history of criminal convictions.

(3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has not responded favorably to sanctions previously imposed for criminal convictions.

(4) The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse.

(5) The offender shows no genuine remorse for the offense.

(E) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is not likely to commit future crimes:

(1) Prior to committing the offense, the offender had not been adjudicated a delinquent child.

(2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense.

(3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years.

(4) The offense was committed under circumstances not likely to recur.

(5) The offender shows genuine remorse for the offense.

Ohio Rev. Code 2953.08

(A) In addition to any other right to appeal and except as provided in division (D) of this section, a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed upon the defendant on one of the following grounds:

(1) The sentence consisted of or included the maximum prison term allowed for the offense by division (A) of section 2929.14 or section 2929.142 of the Revised Code, the sentence was not imposed pursuant to division (D)(3)(b) of section 2929.14 of the Revised Code, the maximum prison term was not required for the offense pursuant to Chapter 2925. or any other provision of the Revised Code, and the court imposed the sentence under one of the following circumstances:

(a) The sentence was imposed for only one offense.

(b) The sentence was imposed for two or more offenses arising out of a single incident, and the court imposed the maximum prison term for the offense of the highest degree.

(2) The sentence consisted of or included a prison term, the offense for which it was imposed is a felony of the fourth or fifth degree or is a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to division (B) of section 2929.13 of the Revised Code for purposes of sentencing, and the court did not specify at sentencing that it found one or more factors specified in divisions (B)(1)(a) to (i) of section 2929.13 of the Revised Code to apply relative to the defendant. If the court specifies that it found one or more of those factors to apply relative to the defendant, the defendant is not entitled under this division to appeal as a matter of right the sentence imposed upon the offender.

(3) The person was convicted of or pleaded guilty to a violent sex offense or a designated homicide, assault, or kidnapping offense, was adjudicated a sexually violent predator in relation to that offense, and was sentenced pursuant to division (A)(3) of section 2971.03 of the Revised Code, if the minimum term of the indefinite term imposed pursuant to division (A)(3) of section 2971.03 of the Revised Code is the longest term available for the offense from among the range of terms listed in section 2929.14 of the Revised Code. As used in this division, "designated homicide, assault, or kidnapping offense" and "violent sex offense" have the same meanings as in section 2971.01 of the Revised Code. As used in this division, "adjudicated a sexually violent predator" has the same meaning as in section 2929.01 of the Revised Code, and a person is "adjudicated a sexually violent predator" in the same manner and the same circumstances as are described in that section.

(4) The sentence is contrary to law.

(5) The sentence consisted of an additional prison term of ten years imposed pursuant to division (D)(2)(a) of section 2929.14 of the Revised Code.

(6) The sentence consisted of an additional prison term of ten years imposed pursuant to division (D)(3)(b) of section 2929.14 of the Revised Code.

(B) In addition to any other right to appeal and except as provided in division (D) of this section, a prosecuting attorney, a city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general, if one of those persons prosecuted the case, may appeal as a matter of right a sentence imposed upon a defendant who is convicted of or pleads guilty to a felony or, in the circumstances described in division (B)(3) of this section the modification of a sentence imposed upon such a defendant, on any of the following grounds:

(1) The sentence did not include a prison term despite a presumption favoring a prison term for the offense for which it was imposed, as set forth in section 2929.13 or Chapter 2925. of the Revised Code.

(2) The sentence is contrary to law.

(3) The sentence is a modification under section 2929.20 of the Revised Code of a sentence that was imposed for a felony of the first or second degree.

(C)(1) In addition to the right to appeal a sentence granted under division (A) or (B) of this section, a defendant who is convicted of or pleads guilty to a felony may seek leave to appeal a sentence imposed upon the defendant on the basis that the sentencing judge has imposed consecutive sentences under division (E)(3) or (4) of section 2929.14 of the Revised Code and that the consecutive sentences exceed the maximum prison term allowed by division (A) of that section for the most serious offense of which the defendant was convicted. Upon the filing of a motion under this division, the court of appeals may grant leave to appeal the sentence if the court determines that the allegation included as the basis of the motion is true.

(2) A defendant may seek leave to appeal an additional sentence imposed upon the defendant pursuant to division (D)(2)(a) or (b) of section 2929.14 of the Revised Code if the additional sentence is for a definite prison term that is longer than five years.

(D)(1) A sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge.

(2) Except as provided in division (C)(2) of this section, a sentence imposed upon a defendant is not subject to review under this section if the sentence is imposed pursuant to division (D)(2)(b) of section 2929.14 of the Revised Code. Except as otherwise provided in this division, a defendant retains all rights to appeal as provided under this chapter or any other provision of the Revised Code. A defendant has the right to appeal under this chapter or any other provision of the Revised Code the court's application of division (D)(2)(c) of section 2929.14 of the Revised Code.

(3) A sentence imposed for aggravated murder or murder pursuant to sections 2929.02 to 2929.06 of the Revised Code is not subject to review under this section.

(E) A defendant, prosecuting attorney, city director of law, village solicitor, or chief municipal legal officer shall file an appeal of a sentence under this section to a court of appeals within the time limits specified in Rule 4(B) of the Rules of Appellate Procedure, provided that if the appeal is pursuant to division (B)(3) of this section, the time limits specified in that rule shall not commence running until the court grants the motion that makes the sentence modification in question. A sentence appeal under this section shall be consolidated with any other appeal in the case. If no other appeal is filed, the court of appeals may review only the portions of the trial record that pertain to sentencing.

(F) On the appeal of a sentence under this section, the record to be reviewed shall include all of the following, as applicable:

(1) Any presentence, psychiatric, or other investigative report that was submitted to the court in writing before the sentence was imposed. An appellate court that reviews a presentence investigation report prepared pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2 in connection with the appeal of a sentence under this section shall comply with division (D)(3) of section 2951.03 of the Revised Code when the appellate court is not using the presentence investigation report, and the appellate court's use of a presentence investigation report of that nature

in connection with the appeal of a sentence under this section does not affect the otherwise confidential character of the contents of that report as described in division (D)(1) of section 2951.03 of the Revised Code and does not cause that report to become a public record, as defined in section 149.43 of the Revised Code, following the appellate court's use of the report.

(2) The trial record in the case in which the sentence was imposed;

(3) Any oral or written statements made to or by the court at the sentencing hearing at which the sentence was imposed;

(4) Any written findings that the court was required to make in connection with the modification of the sentence pursuant to a judicial release under division (H) of section 2929.20 of the Revised Code.

(G)(1) If the sentencing court was required to make the findings required by division (B) or (D) of section 2929.13, division (D)(2)(e) or (E)(4) of section 2929.14, or division (H) of section 2929.20 of the Revised Code relative to the imposition or modification of the sentence, and if the sentencing court failed to state the required findings on the record, the court hearing an appeal under division (A), (B), or (C) of this section shall remand the case to the sentencing court and instruct the sentencing court to state, on the record, the required findings.

(2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

The 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. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division 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 (D)(2)(e) or (E)(4) of section 2929.14, or division (H) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

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

(H) A judgment or final order of a court of appeals under this section may be appealed, by leave of court, to the supreme court.

(I)(1) There is hereby established the felony sentence appeal cost oversight committee, consisting of eight members. One member shall be the chief justice of the supreme court or a representative of the court designated by the chief justice, one member shall be a member of the senate appointed by the president of the senate, one member shall be a member of the house of representatives appointed by the speaker of the house of representatives, one member shall be the director of budget and management or a representative of the office of budget and management designated by the

director, one member shall be a judge of a court of appeals, court of common pleas, municipal court, or county court appointed by the chief justice of the supreme court, one member shall be the state public defender or a representative of the office of the state public defender designated by the state public defender, one member shall be a prosecuting attorney appointed by the Ohio prosecuting attorneys association, and one member shall be a county commissioner appointed by the county commissioners association of Ohio. No more than three of the appointed members of the committee may be members of the same political party.

The president of the senate, the speaker of the house of representatives, the chief justice of the supreme court, the Ohio prosecuting attorneys association, and the county commissioners association of Ohio shall make the initial appointments to the committee of the appointed members no later than ninety days after July 1, 1996. Of those initial appointments to the committee, the members appointed by the speaker of the house of representatives and the Ohio prosecuting attorneys association shall serve a term ending two years after July 1, 1996, the member appointed by the chief justice of the supreme court shall serve a term ending three years after July 1, 1996, and the members appointed by the president of the senate and the county commissioners association of Ohio shall serve terms ending four years after July 1, 1996. Thereafter, terms of office of the appointed members shall be for four years, with each term ending on the same day of the same month as did the term that it succeeds. Members may be reappointed. Vacancies shall be filled in the same manner provided for original appointments. A member appointed to fill a vacancy occurring prior to the expiration of the term for which that member's predecessor was appointed shall hold office as a member for the remainder of the predecessor's term. An appointed member shall continue in office subsequent to the expiration date of that member's term until that member's successor takes office or until a period of sixty days has elapsed, whichever occurs first.

If the chief justice of the supreme court, the director of the office of budget and management, or the state public defender serves as a member of the committee, that person's term of office as a member shall continue for as long as that person holds office as chief justice, director of the office of budget and management, or state public defender. If the chief justice of the supreme court designates a representative of the court to serve as a member, the director of budget and management designates a representative of the office of budget and management to serve as a member, or the state public defender designates a representative of the office of the state public defender to serve as a member, the person so designated shall serve as a member of the commission for as long as the official who made the designation holds office as chief justice, director of the office of budget and management, or state public defender or until that official revokes the designation.

The chief justice of the supreme court or the representative of the supreme court appointed by the chief justice shall serve as chairperson of the committee. The committee shall meet within two weeks after all appointed members have been appointed and shall organize as necessary. Thereafter, the committee shall meet at least once every six months or more often upon the call of the chairperson or the written request of three or more members, provided that the committee shall not meet unless moneys have been appropriated to the judiciary budget administered by the supreme court specifically for the purpose of providing financial assistance to counties under division (I)(2) of this section and the moneys so appropriated then are available for that purpose.

The members of the committee shall serve without compensation, but, if moneys have been appropriated to the judiciary budget administered by the supreme court specifically for the purpose of providing financial assistance to counties under division (I)(2) of this section, each member shall be reimbursed out of the moneys so appropriated that then are available for actual and necessary expenses incurred in the performance of official duties as a committee member.

(2) The state criminal sentencing commission periodically shall provide to the felony sentence appeal cost oversight committee all data the commission collects pursuant to division (A)(5) of section 181.25 of the Revised Code. Upon receipt of the data from the state criminal sentencing commission, the felony sentence appeal cost oversight committee periodically shall review the data; determine whether any money has been appropriated to the judiciary budget administered by the supreme court specifically for the purpose of providing state financial assistance to counties in accordance with this division for the increase in expenses the counties experience as a result of the felony sentence appeal provisions set forth in this section or as a result of a postconviction relief proceeding brought under division (A)(2) of section 2953.21 of the Revised Code or an appeal of a judgment in that proceeding; if it determines that any money has been so appropriated, determine the total amount of moneys that have been so appropriated specifically for that purpose and that then are available for that purpose; and develop a recommended method of distributing those moneys to the counties. The committee shall send a copy of its recommendation to the supreme court. Upon receipt of the committee's recommendation, the supreme court shall distribute to the counties, based upon that recommendation, the moneys that have been so appropriated specifically for the purpose of providing state financial assistance to counties under this division and that then are available for that purpose.

Ohio Crim. R. 32.2

In felony cases the court shall, and in misdemeanor cases the court may, order a presentence investigation and report before imposing community control sanctions or granting probation.