IN THE SUPREME COURT OF OHIO

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| Demetreus Logan,<br><br>Appellant,<br><br>v.<br><br>State of Ohio,<br><br>Appellee. | : | 09-0998<br><br>On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District<br><br>Court of Appeals No. 91323 |

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MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT DEMETREUS LOGAN

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## EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case should be considered by the Ohio Supreme Court because Appellant was unreasonably sentenced to maximum and consecutive sentences without justification.

The record is replete with support showing that the sentence given to the Appellant is grossly excessive and inconsistent with other sentences handed down by the same court for even more serious offenses. The Court of Appeals, in turn, failed to conduct a meaningful review of Appellant's consistency and proportionality arguments by merely adopting the reasoning employed by the trial court in weighing the seriousness and recidivist factors. The Eighth District applied a standard that has not yet been ruled on by this Court and is inconsistent with the statutory mandate that requires the trial court to sentence defendants "consistent with sentences imposed for similar crimes committed by similar offenders." R.C. 2929.11(B). The lack of direction from this Court and lack of a unified approach has led to inconsistency both in how the statue is applied among the appellate districts and, as a result, a violation of the statute itself because of the resulting lack of consistency in how sentences are dispensed with great disparity seemingly blessed by this Court under *Foster*. *State v. Foster*, 109 Ohio St.3d 1, 845 N.E.2d 470, 2006-Ohio-856.

There is little to no direction to indicate at what point, if any, trial counsel is required to object to a sentence on these grounds to preserve the issue for review, since a typical sentencing hearing fails to provide trial counsel with adequate time to compare and contrast the prior sentences of the court with the present sentence. This results in lack of direction as to what extent appellate counsel can argue the inconsistency and proportionality issues with the presentation of additional examples of cases of similar import and their discrepancies when the appellate court erroneously clings to an abuse of discretion standard of review rather than the appropriate *de novo* review. The disparate treatment of

similar defendants in sentencing represents a great public concern, as the failure to provide a consistent framework for sentence leads to inconsistent sentencs, violative of the statutory mandate.

The proportionality and consistency issues have been percolating throughout the courts of appeal with little or no direction as to how to analyze the issue or what standard of review to give the analysis. The default position is for the appellate courts to do as they have done here, apply a overly simplistic view that the review of the proportionality and consistency of a sentence should be limited to abuse of discretion and the framework by which a sentence would be considered to be inconsistent or disproportionate would only exist if the sentence was outside of the statutory sentence time range. Therefore, by this rationale, there can be no disproportionate or inconsistent sentence as long as a sentence falls within the statutorily sanctioned range. This is not what the legislature intended, especially when the sentencing statutes, including those provisions struck by *Foster*, are read as a whole.

The Eighth District was constrained by *Foster*, as it allows for gross miscarriages of justice to occur in cases such as this when the Court imposes a less-than-consistent framework by which the appeals court can review a defendant's sentencing. *Id.* In *Foster*, the Court struck down parts of Ohio's sentencing scheme and held 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." *Id.* at paragraph seven of the syllabus. However, the aftermath of *Foster* gives the trial court full range to act without impunity as to sentencing, including dispensing a sentence to the Appellant that was clearly not intended by the legislature. Because *Foster* does not provide a set of standards or clear direction by which the trial court can determine appropriate sentences and removed important presumptions, the Appellant asserts that the imposition of maximum and consecutive sentences is statutorily invalid as a violation of his right to due process where, regardless of *Foster*, the legislature clearly required an overriding rationale to be employed for an upward departure that was not present here.

*Foster* also brings forth an unresolved paradox which is created by the gross usurpation of the legislative powers by judicial fiat. The purpose of the sentencing commission and the resulting changes in the sentencing statute were meant to provide consistency and direction to the courts for imposing the sentences created by the legislature. While *Foster* gutted the sentencing statutes by eliminating fact finding, it went even further and threw the baby out with the bath water. The

legislature was clear that it did not intend maximum or consecutive sentences handed down by the courts for first-time offenders like the Appellant, unless of course there are overriding principles which would rebut that presumption. *Foster* threw out the requirement that the trial court make findings for a departure and threw out the underlying presumptions altogether since they could not be rebutted without fact finding, creating a virtually standardless system where anything within the sentence range is fair game, but completely subversive of the legislative intent evinced by the statute and in violation of the separation of powers doctrine.

Additionally, the whole point of *Foster*, which came about as a result of the similar federal cases of import (i.e., *U.S. v. Booker*, 543 U.S. 220, 125 S.Ct. 738, and its progeny) essentially used a scalpel on the sentencing guidelines in order to avoid any unlawful and unconstitutional fact-finding which was being done by common pleas judges at the time of sentencing, especially when no trial on the merits of individual claims of facts had been held. However, in swinging the pendulum too far in the other direction, this Court essentially now allows, post-Foster, anything whatsoever to be taken into account at the time of sentencing, so long as the sentence is within the sentencing guidelines. This has removed practically any serious review of an errant court's determinations by higher courts, thus leading to sentences that are all over the map on virtually similar cases and where clearly unreasonable and uncorroborated and unsubstantiated allegations are creeping into the decision-making process and causing decisions to be made that give defendants grossly excessive sentences based upon such erroneous facts and allegations, such as is the case here.

For these reasons, it is asserted by the Appellant that a miscarriage of justice will occur if the Court does not address these issues and vacate the sentence.

## STATEMENT OF THE CASE AND FACTS

Appellant, Demetreas Logan, was arrested on August 17, 2007. On October 23, 2007, the Cuyahoga Grand Jury returned a six-count indictment in case number CR 502302 for failure to comply, three counts of drug possession, drug trafficking, and possession of criminal tools. Appellant was arraigned on October 26, 20097 and his case was assigned to the courtroom of Common Pleas Judge David T. Matia.

Appellant was later indicted on November 13, 2007 in case CR 503399 for three drug law violations alleged to have taken place two years prior on or about November 17, 2005.

On December 19, 2007, a plea agreement was entered into wherein the Appellant entered pleas of guilty before Judge Michael J. Russo as follows:

In CR 502302:

count one, failure to comply, in violation of R.C. § 2921.331(B), a third degree felony;

count five, drug trafficking, in violation of R.C. § 2929.03(A)(2), a fifth degree felony; and

count six, possession of criminal tools, in violation of R.C. § 2923.24(A), a fifth degree felony.

In CR 503399:

count three, drug possession, in violation of 2929.11(A), a fourth degree felony.

On January 29, 2008, Appellant appeared before Judge Matia for sentencing. In CR 502302, the court imposed the maximum five-year term of incarceration for the failure to comply conviction, to run consecutively to concurrent one-year terms on the other two counts. Each sentence was the maximum sentence allowed for each charge. Additionally, in CR 503399, the court imposed a one-year term of incarceration to run concurrently with the other offenses; however, this term was also to run consecutive to the five-year term for failure to comply conviction. The Appellant's aggregate sentence is six (6) years.

During the sentencing hearing, Appellant, a black male, age 27, did not seek to minimize his responsibility for his actions. On the contrary, he took responsibility for the commission of the offenses to which he pleaded guilty. Furthermore, he had been referred for a TASC drug evaluation. He admitted that he had a serious substance abuse problem which was the overriding factor in the events which led to his charges. The TASC evaluation state that drug treatment was recommended for either an in-patient or out-patient basis and the Appellant was motivated to obtain the treatment.

Although Appellant had two prior felony convictions and several misdemeanor offenses, his criminal history and other comments presented during the hearing were the subject of considerable exaggeration to the point where the Appellant was cast in a false light and the distorted image of the Appellant was the basis for the sentence administered to him. Furthermore, the court was subjected to inappropriate, highly prejudicial anecdotal information and recommendations on sentencing by a law enforcement officer; the officer was not a named "victim" in any of these offenses and was not subject to cross-examination. Indeed, the court found it unusual that this officer was appearing at the sentencing. The Appellant currently has filed with the U.S. District Court for the Norther District of

Ohio, Eastern Division a civil rights complaint against the officer and officers from other jurisdictions who apprehended the Appellant and beat him during the process.

At the sentencing hearing, the officer was introduced by the prosecutor to make a statement. The officer proceeded to tell the court his version of the chase that resulted in the charge of failure to comply. The following was said by the patrolman during the sentencing hearing: "In 2007 I had 20 pursuits. The number of pursuits tend to rise. Some judges believe one year in prison is sufficient, and I believe that's the reason why they're climbing. A few months ago one of our best judges sentenced one of my cases to six years. In this case that wouldn't apply, but I'm looking towards the full amount on sentencing." (See Trial Transcript pages 25 – 26.)

The trial court then went on to address the Appellant stating: "You have got about 207 arrests for misdemeanors . . . it's like there's not a day that goes by without you getting stopped for something or another." (See Trial Transcript page 32.) The trial court went on to comment that a message needed to be sent "in this community that failure to comply with the order or signal of a peace officer is a crime that is not going to go without significant punishment. . . . This must be have been a 30 mile chase. Probably had to stop and refill for gas two or three times along the way, this chase was so long. (See Trial Transcript at pages 32 – 33.)

Although the trial court acknowledged that nobody was hurt during the chase, the court proceeded to sentence the Appellant on count one of CR 502302 by stating that the Appellant was "getting the full benefit of a five year prison sentence, which by operation of law has to run consecutive to all other time you receive. One of the wisest moves the legislature in this state has ever moved - - made." (See Trial Transcript at page 33.)

Appellant is presently serving his six-year sentence at Belmont Correctional Institution located in St. Clairsville, Ohio.

Appellant took notice of appeal to the Court of Appeals for the Eighth District, which sustained his sentence in an opinion which was released on April 9, 2009 and journalized on April 20, 2009. Appellant now submits his case for review to the Ohio Supreme Court.

## ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

**Proposition of Law No. I:** Whether the trial court erred in sentencing the Appellant to

the maximum sentence after considering improper matters and without consideration of R.C. § 2929.11.

Pursuant to R.C. § 2929.14, the range of prison terms for a conviction of a third degree felony is from a minimum of one year to a maximum of five years. Appellant was convicted of a third degree felony when he entered his plea to count one of case CR 502302, Failure to Comply, in violation of R.C. § 2921.331(B).f

The overriding purpose of felony sentencing laws in Ohio is to "protect the public from future crime by the offender . . . and to punish the offender." R.C. § 2929.11(A). Moreover, the sentence not only must be reasonably calculated to achieve the overriding purpose but also must be "commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and **consistent with similar crimes committed by similar offenders**. R.C. § 2929.11(B) (Emphasis added).

Althought a court need not make specific findings on the record in regard to the foregoing, it is required to engage in the analysis set forth by R.C. § 2929.11(B) in order "to ensure the consistency of the sentences." *State v. Bengal*, Lake App. No. 2006-L-123, 2007-Ohio-2691, p. 17. Trial courts, therefore, have not been relieved of the obligations to consider statutory mandates set forth in R.C. § 2929.11, R.C. § 2929.12, and R.C. § 2929.13 when imposing sentence in a case. *State v. Hairston*, 118 Ohio St. 3d 289, 2008-Ohio-2338, p. 25.

In this case, the trial court conducted no proportionality analysis between Appellant and sentences imposed upon similar offenders who have committed similar crimes, contrary to its duty to insure that it has some information in this regard. *State v. Lyons*, Cuyahoga App. No. 80220, 2002-Ohio-3424. The record reflects the trial court, instead, relied upon improper matters and upon exaggeration in choosing to impose the maximum term upon the Appellant for his conviction for failure to comply. Oddly enough, the only mention of proportionality was in the highly inappropriate testimony of the patrolman who said, "[s]ome judges believe one year in prison is sufficient . . . ." (See Trial Transcript page 25.)

At the outset of the hearing, the court permitted the patrolman to describe the circumsstances under which the crime had occurred, completely without corroboration, without providing the testimony under oath, and without the chance for the Appellant to cross-examine his claims or present rebuttal testimony to refute the patrolman's point of view. While the patrolman was one of the officers

involved the case of the Appellant, he was not a "victim" of Appellant's crime. However, the officer did not limit himself to comments relevant to the Appellant's offense, but was permitted to describe his experiences with the sentencing habits of other judges in "pursuit" cases. He further stated that "one of our best judges," which presumably means ones most preferred by police officers, consistently imposed the maximum term for such offenses. (See Trial Transcript pages 25-26.) These comments were so poisonous against the Appellant, the court disregarded any attempt to present mitigatory information. (See Trial Transcript pages 30-31.)

The trial court challenged the Appellant, engaged in exaggeration in addressing him, and failed to indicate it considered its statutory duties prior to imposing sentence for this offense. The trial court indicated that Appellant had accrued "about 207 arrests for misdemeanors." The number was an overstatement by grand proportions, and as a finding of fact upon which the court based its determination was wholly and completely inaccurate. Notably, the court failed to indicate how many of the Defendant's arrests led to actual convictions.

The trial court embellished upon what it believed may have occurred during Appellant's chase, rather than limiting itself to the facts of what actually occurred. The trial court commented in this portion of the hearing that, even though now one was injured, Appellant's case should serve as an example in order to send a message to "this community that failure to comply with the order or signal of a peace officer in a crime that is not going to go without significant punishment." The trial court further sarcastically remarked that Appellant's chase was so lengthy that he "probably had to stop and refill for gas two or three times along the way . . . ."

It is clear from a review of the hearing transcript that the trial court clearly considered improper matters when determining the Appellant's sentence. Additionally, the trial court failed to consider whether sentencing the Appellant to the maximum term was consistent with sentences imposed upon other offenders for similar crimes. *State v. Acevedo*, Cuyahoga App. No. 90098, 2008-Ohio-2814, p. 13. For instance, in State v. Ganaway, Cuyahoga App. No. 897722, 2008-Ohio-1629, the offender received a maximum sentence, but such was based upon the facts that during the police chase that the offender did not only crash his own van, but cased a police cruiser to be struck by another vehicle. *Id.*, at page 9. This, of course, was unlike the Appellant, who caused no injury or property destruction as the result of his pursuit.

Most other offenders convicted of R.C. § 2921.331(B) have not received the maximum term for the offense. For numerous reported examples see: *State v. Eggleton*, Cuyahoga App. No. 88400, 2007-Ohio-2506 (three-year term for conviction for failure to comply, no facts set forth); *State v. Colvin*, Cuyahoga App. No. 85208, 2005-Ohio-1985 (two-year sentence for failure to comply, no facts set forth); *State v. Whitfield*, Cuyahoga App. No. 90245, 2008-Ohio-3145 (minimum term for failure to comply, court made no mention of R.C. § 2921.331(C)(5) factors in choosing one-year sentence; *State v. Trice*, Cuyahoga App. No. 89933, 2008-Ohio-2930 (co-defendant received six-month total prison sentence for several convictions, including third-degree failure to comply, less than the statutory minimum).

Therefore, based upon the trial court's consideration of improper matters and "failure to comply" with its duty under R.C. § 2929.11, the Appellants' sentenced must be reversed and remanded for a new sentencing hearing.

**Proposition of Law No. II:** The State prosecutor committed misconduct when she commented on the Defendant's failure to testify in closing argument.

If there is a genuine issue as to whether there is a claim of ineffective assistance of counsel on appeal, the two-prong test developed in *Strickland v. Washington* (1984), 466 U.S. 668, and *State v. Bradley* (1989), 42 Ohio St.3d 136, for determining whether counsel rendered ineffective assistance of counsel, is also the standard for determining whether an appellant has presented a genuine issue of a colorable claim of ineffective assistance of appellate counsel that would mandate reopening his appeal. *State v. Smith*, 95 Ohio St.3d 127. Therefore, it must first be determined whether appellate counsel's performance was deficient and then determined whether that deficiency prejudiced the outcome of the appeal. *State v. Reed* (1996), 74 Ohio St.3d 534, 535. An appellant can demonstrate prejudice by demonstrating that had his claims been properly presented, there was a reasonable probability that they would have been successful. *State v. Goff*, 98 Ohio St.3d 327, 328.

Appellate counsel's failure to raise the issue that the conviction was not supported by the sufficiency of the evidence was deficient on the part of the appellant counsel and had the claim been presented, it is reasonably likely that it would have been successful.

Failure to argue the ineffective assistance of trial counsel on appeal is then in itself ineffective

assistance of appellate counsel and proof that the Appellant was denied a fair sentencing hearing.

The question boils down to whether there were things which the trial counsel should have done at the sentencing hearing that it did not do that both fell below the standard of what is reasonably expected be done by the trial counsel but was not done and whether what action omitted by the trial counsel was so significant that it caused the Appellant undue harm.

The two major issues presented hereinabove regarding sentencing would have required the trial counsel to object to the imposition of a maximum sentence, object to the imposition of consecutive sentences, and object that the sentence was disproportionate, thusly violating R.C. § 2911. Furthermore, it is incumbent upon the trial counsel to have researched and have at the ready other case results showing that most cases defendants are not sentenced to the maximum term on these charges unless there are extenuating circumstances that are far more egregious than the Appellant's circumstances. The trial counsel failed to make the relevant objections or provide the trial court with any comparative information concerning the disproportionate nature of applying the maximum sentence. Such objections are required at the time of sentencing in order to preserve the Appellant's rights and without having been made by the trial counsel, has subjected the Appellant to undue harm.

## CONCLUSION

For the foregoing reasons, the Appellant respectfully requests this Court to reverse his convictions and/or remand this case for a new trial.

Respectfully submitted,

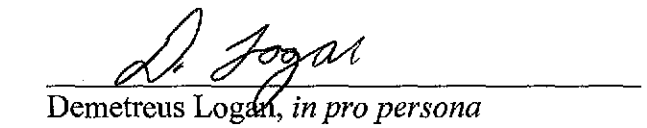
Demetreus Logan, *in pro persona*
Inmate No. 542-396
Belmont Correctional Institution
P.O. Box 540
St. Clairsville, OH 43950

## Certificate of Service

I certify that a copy of this **Memorandum in Support of Jurisdiction** was sent by ordinary U.S. mail to:

William D. Mason, Prosecutor
Kevin R. Filiatraut, Assistant Prosecutor
Cuyahoga County Prosecutor's Office
8th Floor, Justice Center
Cleveland, OH 44113

on this 13th day of May, 2009.



Demetreus Logan, *in pro persona*
APPELLANT

APR 20 2009 A

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION
**No. 91323**

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## STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

## DEMETREUS LOGAN

DEFENDANT-APPELLANT

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## JUDGMENT:
## AFFIRMED

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Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-502302 and CR-503399

**BEFORE:** Cooney, A.J., Blackmon, J., and Boyle, J.

**RELEASED:** April 9, 2009

**JOURNALIZED:** APR 20 2009

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FILED AND JOURNALIZED
PER APP. R. 22(E)

APR 20 2009

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED

APR 9 - 2009

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

CA08091323 56889340

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

COLLEEN CONWAY COONEY, A.J.:

Defendant-appellant, Demetreus Logan ("Logan"), appeals his five-year sentence on his failure-to-comply conviction. Finding no merit to the appeal, we affirm.

In October 2007, Logan was charged with failure to comply with a police officer's order, drug trafficking, possession of criminal tools, and three counts of drug possession.[1] Logan pled guilty to the first three offenses and one count of drug possession. The remaining charges were nolled. The trial court sentenced him to a total of six years in prison.

Logan appeals, raising one assignment of error in which he argues that the trial court erred in imposing the maximum sentence for failure to comply. He claims that the trial court failed to consider R.C. 2929.11 and imposed a disproportionate sentence.

## Standard of Review

In *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, the Ohio Supreme Court recently addressed our standard of review for felony sentences. The *Kalish* court, in a split decision, declared that in applying *State*

[1]Each of these charges carried forfeiture specifications.

*v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, to the existing statutes, appellate courts "must apply a two-step approach." *Kalish* at ¶4.[2]

Appellate courts 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." Id. at ¶4. If this first prong is satisfied, then we review the trial court's decision under an abuse-of-discretion standard. Id. at ¶4, 19.

Step One-Is the Sentence Contrary to Law?

In the first step of our analysis, we review whether the sentence is contrary to law as required by R.C. 2953.08(G). Id. at ¶14.

As the *Kalish* court noted, post-*Foster*, "trial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings and give reasons for imposing maximum, consecutive or more than the minimum sentence." Id. at ¶11; *Foster*, paragraph seven of the syllabus; *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1, paragraph three of the syllabus. See, also, *State v. Redding*, Cuyahoga App. No. 90864, 2008-Ohio-5739; *State v. Ali*, Cuyahoga App. No. 90301, 2008-Ohio-4449;

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[2]We recognize *Kalish* is merely persuasive and not necessarily controlling because it has no majority. The Supreme Court split over whether we review sentences under an abuse-of-discretion standard in some instances.

*State v. McCarroll*, Cuyahoga App. No. 89280, 2007-Ohio-6322; *State v. Sharp*, Cuyahoga App. No. 89295, 2007-Ohio-6324. The *Kalish* court declared that although *Foster* eliminated mandatory judicial fact-finding, it left R.C. 2929.11 and 2929.12 intact. *Kalish* at ¶13. As a result, the trial court must still consider these statutes when imposing a sentence. Id., citing *Mathis* at ¶38.

R.C. 2929.11 (A) provides that:

> "[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."

R.C. 2929.12 provides a nonexhaustive list of factors a trial court must consider when determining the seriousness of the offense and the likelihood that the offender will commit future offenses.

The *Kalish* court also noted that R.C. 2929.11 and 2929.12 are not fact-finding statutes like R.C. 2929.14. *Kalish* at ¶17. Rather, they "serve as an overarching guide for trial judges to consider in fashioning an appropriate sentence." Id. Thus, "[i]n considering these statutes in light of *Foster*, the trial court has full discretion to determine whether the sentence satisfies the overriding purposes of Ohio's sentencing structure." Id.

Logan argues that the trial court failed to properly consider the factors in R.C. 2929.11 when imposing his sentence and considered "improper matters." We disagree.

In the instant case, the trial court expressly stated that it considered the purposes of R.C. 2929.11 and all factors required by law. Furthermore, Logan's sentence is within the permissible statutory range of one to five years. Thus, we find that his sentence is not contrary to law.

Step Two–Abuse of Discretion

Having satisfied step one, we next consider whether the trial court abused its discretion. *Kalish* at ¶4, 19. An abuse of discretion is "more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." Id. at ¶19, citing *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d.

A review of the record reveals that the trial court considered the statutory factors under R.C. 2929.11. Here, the trial court learned that Logan had led Cleveland police on a lengthy and dangerous high-speed chase during rush hour.[3] The trial court also recounted Logan's criminal history and noted that he displayed a high degree of recidivism. We find nothing in the record to suggest

[3]Logan argues that the court relied upon improper matters by permitting a police officer to describe the circumstances under which the crime occurred.

that the trial court's decision was unreasonable, arbitrary, or unconscionable. We also find no abuse of the court's discretion in allowing the officer to describe the chase rather than merely reviewing a presentence report. Accordingly, the trial court did not abuse its discretion in imposing the maximum five-year sentence.

Sentence Proportionality

Logan also argues that his sentence is contrary to law because the trial court failed to consider the issue of consistency and proportionality of his sentence to those imposed on similar offenders, thereby violating R.C. 2929.11(B).

However, this court has previously held that in order to support a claim that a "sentence is disproportionate to sentences imposed upon other offenders, a defendant must raise this issue before the trial court and present some evidence, however minimal, in order to provide a starting point for analysis and to preserve the issue for appeal." *State v. Edwards*, Cuyahoga App. No. 89191, 2007-Ohio-6068. See, also, *Redding*.

In the instant case, Logan did not raise the issue of proportionality before the trial court. Accordingly, he has not preserved the issue for appeal. Thus, we decline to address this argument for the first time on appeal.

Therefore, the sole assignment of error is overruled.

Accordingly, judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Colleen Conway Cooney

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

PATRICIA A. BLACKMON, J., AND
MARY J. BOYLE, J., CONCUR