

IN THE SUPREME COURT OF OHIO

09-2017

STATE OF OHIO,
Appellee

: Case No. C-070639
: Trial Nos. B-0807641 & B-0901116

vs.

LOUIS PRIMOUS,
Appellant

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:
:
:

APPEAL FROM THE COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

MEMORANDUM OF APPELLANT
IN SUPPORT OF JURISDICTION

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SUPREME COURT OF OHIO

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The trial court erred to the prejudice of Appellant by imposing a sentence that is contrary to law because it was excessive.

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ISSUES OF THIS CASE ARE OF GREAT PUBLIC INTEREST

This matter raises questions of great public interest concerning sentencing.

STATEMENT OF THE CASE AND PROCEDURAL POSTURE

In Case No. B-0807641, during August and September 2008, in Hamilton County, Ohio, Louis Primous forged several checks; in Case No. B-0901116, on January 2, 2009 in Hamilton County, Ohio, he forged a check.

Mr. Primous was indicted for 5 counts of forgery and 1 count of theft in Case No. B-0807641 on October 14, 2008; and 1 count of receiving stolen property and 1 count of forgery in Case No. B-0901116 on February 26, 2009. On February 17, 2009 in Case No. B-0807641, Mr. Primous pled guilty to 4 counts of forgery, the other 2 counts being dismissed by the State; in Case No. B-0901116, he also pled guilty on April 21, 2009 to 1 count of forgery, with the receiving charge being dismissed by the State. Mr. Primous was sentenced to sentenced to 6 months on each count in both cases, consecutive, for a total sentence of 2½ years. An appeal was filed with the First District Court of Appeals on April 27, 2009. A Decision affirming the judgment of the trial court was entered on October 14, 2009 by the First District Court of Appeals; it is from that Decision which Appellant appeals.

FIRST ASSIGNMENT OF ERROR AND PROPOSITION OF LAW

The trial court erred to the prejudice of Appellant by imposing a sentence that is contrary to law because it was excessive.

Sentences in Ohio courts are controlled by R.C. Sections 2929.11 through 2929.14.

Under Section 2929.12, a trial court initially considers the seriousness of the crime and the likelihood of recidivism. The court then considers and is guided by the degree of the felony in determining whether to impose a prison term under Section 2929.13. Under Section 2929.14, the

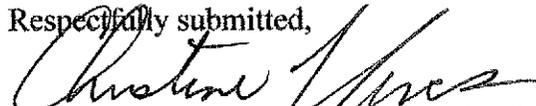
court is guided by the basic range of prison terms. Mr. Primous' convictions were for 5 felonies of the fifth degree, carrying 6-12 months on each charge. Finally, there is a preference for community control for felonies of the fourth or fifth degree.

In the case at bar, the trial court sentenced Mr. Primous to consecutive sentences, for a total of 2½ years; that was above the maximum sentence for the most serious of Mr. Primous' offenses, that being a felony of the fifth degree with a maximum sentence of 1 year. See R.C. Section 2953.08©. This sentence, although within the sentencing range and not contrary to law, was an abuse of the trial court's discretion, as it was erroneous and excessive. See State v. Kalish (Ohio 2008), 120 Ohio St.3d 23, ___ N.E.2d ___, 2008 Ohio 4912. The trial court erred in sentencing Mr. Primous. Therefore, Mr. Primous' sentence should be vacated or modified.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court take jurisdiction of this matter.

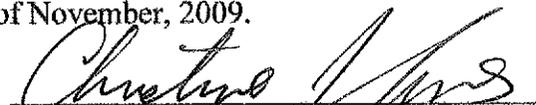
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was personally served upon Scott M. Heenan, Hamilton County Assistant Prosecutor, this 3rd day of November, 2009.



Christine Y. Jones #0055225
Attorney for Appellant

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

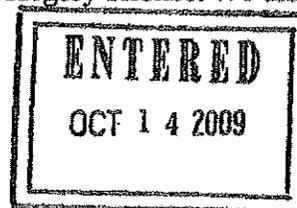
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| STATE OF OHIO, | : | APPEAL NO. C-090290 |
| Plaintiff-Appellee, | : | TRIAL NOS. B-0807641 |
| | : | B-0901116 |
| vs. | : | <i>JUDGMENT ENTRY.</i> |
| LOUIS PRIMOUS, | : | |
| Defendant-Appellant. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Louis Primous pleaded guilty to four counts of forgery in the case numbered B-0807641 and to one count of forgery in the case numbered B-0901116. In exchange for his guilty pleas, the state dismissed one count of forgery and one count of theft in the case numbered B-0807641, as well as one count of receiving stolen property in the case numbered B-0901116. The trial court sentenced Primous to six months in prison for each of the forgery offenses in the case numbered B-0807641 and to six months in prison for the forgery offense in the case numbered B-0901116 and ordered all the sentences to be served consecutively for a total of two and a half years in prison.

On appeal, Primous raises a sole assignment of error in which he argues that the two-and-a-half-year prison sentence imposed by the trial court was inappropriate because it exceeded the maximum sentence for a forgery offense. We disagree.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.



OHIO FIRST DISTRICT COURT OF APPEALS

Primous was found guilty of four counts of forgery under R.C. 2913.31(A)(3) in the case numbered B-0807641 and one count of forgery under R.C. 2913.31(A)(3) in the case numbered B-0901116. Following the Ohio Supreme Court's decision in *State v. Foster*, trial courts have full discretion to impose a sentence that is within the available statutory range and no longer need to make findings or provide reasons in support of such a sentence. In this case, Primous's sentences were within the available statutory ranges for the offenses.² The record, which includes Primous's extensive criminal history, also supports the trial court's imposition of two and a half years' imprisonment. At the time of sentencing, Primous's criminal record spanned 30 years. He had served 12 previous probationary periods under the supervision of the Hamilton County Municipal Court and at least one period of community control through the Hamilton County Common Pleas Court, all of which had been revoked or terminated because of Primous's inability to comply with the court-ordered terms. As a result, we cannot conclude that the trial court's imposition of a two-and-a-half-year prison sentence was excessive.³ We, therefore, overrule his sole assignment of error and affirm the judgment of the trial court.

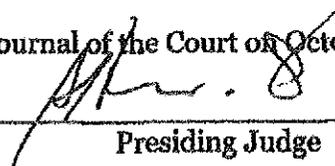
A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

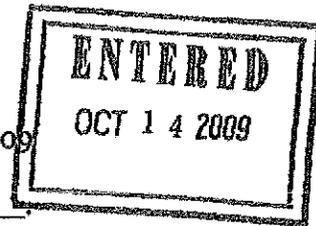
HILDEBRANDT, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 14, 2009

per order of the Court


Presiding Judge



² 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph seven of the syllabus.

³ See *State v. Johnson*, 174 Ohio App.3d 130, 2007-Ohio-6512, 881 N.E.2d 289, at ¶16-17.