

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	<b>O P I N I O N</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2009-L-144</b>
JEFFREY S. SMITH,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 09 CR 000379.

Judgment: Affirmed.

*Charles E. Coulson*, Lake County Prosecutor, and *Teri R. Daniel*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

*R. Paul LaPlante*, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Jeffrey S. Smith, appeals the Judgment Entry of Sentence of the Lake County Court of Common Pleas, sentencing him to an eight-year prison term for Felonious Assault. For the following reasons, we affirm the decision of the court below.

{¶2} On May 21, 2009, Smith (age 24) was arrested in connection with a disturbance at the River Isle Terrace Apartments, in Willoughby, Ohio. Smith and his brother, Brian C. Smith, were involved in a confrontation with several residents of the apartment complex, including the victim, Drew Woodruff. In the course of the confrontation, Smith threatened the residents with a folding pocket knife and stabbed Woodruff with the knife four times, puncturing his kidney.

{¶3} On August 5, 2009, Smith was charged, by way of an Information, in the Lake County Court of Common Pleas, with Aggravated Menacing, a misdemeanor of the first degree in violation of R.C. 2903.21, and Felonious Assault, a felony of the second degree in violation of R.C. 2903.11(A)(1).

{¶4} On August 27, 2009, Smith pled guilty to both Counts in the Information.

{¶5} On August 29, 2009, the trial court journalized Smith's Written Plea of Guilty.

{¶6} On September 25, 2009, a sentencing hearing was held pursuant to R.C. 2929.19. It was reported that, in 2003, Smith was sentenced to four years in prison following a Robbery conviction in Cleveland, Ohio. Smith was granted Transitional Control and released in 2006. In 2007, Smith was returned to prison for violation of Transitional Control. That same year, Smith was again released from prison and placed on Post Release Control. Again, Smith was returned to prison for violating Post Release Control.

{¶7} At the hearing, Smith addressed the trial court, in part, as follows:

{¶8} I know there ain't nothing I could say or do to justify what I did. I know what I did was wrong. But if you was being choked, and you was being punched by seven or eight people at one time -- I got scared. I panicked. Only thing I can do is apologize. \*\*\* And I wasn't really trying to go there to cause no problems. I really

wasn't. I was there to pick up a family member cause he called me and told me his sister threw him out and he didn't have no where to go. \*\*\* After I, you know, I did do time in prison before. And I got out and I've been trying to do the right thing and do good. I really have. And this was a mistake. Like I said, I regret it to the fullest. You know, I apologize to the victim and the family. He, it should have never \*\*\* escalated that far. But like I said, I was being choked. I was seeing blackness and I panicked. I apologize.

{¶9} At the close of the hearing, the trial court sentenced Smith to six months in prison for Aggravated Menacing and eight years in prison for Felonious Assault, and ordered the charges merged for an aggregate prison term of eight years.

{¶10} The trial court journalized Smith's sentence on September 25, 2009.

{¶11} On October 26, 2009, Smith filed his Notice of Appeal. On appeal, Smith raises the following assignment of error:

{¶12} "[1.] The trial court erred by sentencing the defendant-appellant to the maximum term of imprisonment."

{¶13} "[A]ppellate courts must apply a two-step approach when reviewing felony sentences. First, they 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." *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, at ¶26.

{¶14} The overriding purposes of felony sentencing in Ohio "are to protect the public from future crime by the offender \*\*\* and to punish the offender." R.C. 2929.11(A). A sentencing court "has discretion to determine the most effective way to comply with the purposes and principles of sentencing." R.C. 2929.12(A). "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." R.C. 2929.12(A).

{¶15} It is well-established that R.C. 2929.12(A) does not require a sentencing court to make specific findings regarding the seriousness and recidivism factors. *Kalish*, 2008-Ohio-4912, at ¶17 ("R.C. 2929.11 and 2929.12 \*\*\* are not fact-finding statutes"). Ohio's felony sentencing law only requires the trial court to "consider" the mitigating circumstances in the exercise of its discretion. *State v. Glenn*, 11th Dist. No. 2003-L-022, 2004-Ohio-2917, at ¶47 ("[a] trial court is only required to *consider* mitigating factors") (emphasis sic). Thus, the Ohio Supreme Court has characterized the mandate of R.C. 2929.12(A) as a "general judicial guide for every sentencing \*\*\* grant[ing] the sentencing judge discretion 'to determine the most effective way to comply with the purposes and principles of sentencing.'" *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, at ¶¶36-37 (citation omitted). "It is important to note that there is no mandate for judicial factfinding in the general guidance statutes. The court is merely to 'consider' the statutory factors." *Id.* at ¶42.

{¶16} Smith does not assert that his sentence was contrary to law. Rather, he argues the trial court failed to give "careful and substantial deliberation to the relevant statutory considerations." *Kalish*, 2008-Ohio-4912, at ¶20. Specifically, the court failed to give appropriate consideration to the following mitigating factors: Smith was in a choke-hold and on the point of blacking out when he acted to protect himself; Smith was

genuinely remorseful; Smith has obtained his GED; and Smith has available employment.

{¶17} We find no abuse of the discretion in the trial court's decision to impose the maximum sentence for a second-degree felony. The court recognized that Smith is a “violent person” based on his criminal history and the facts of the underlying case. The court noted that Smith has been to prison for a violent crime, yet violated Transitional Control and Post Release Control upon his release. Smith provoked the confrontation with the residents of River Isle Apartments, was carrying a knife, and used the knife to threaten others before stabbing the victim.

{¶18} Moreover, an eight-year sentence is not inconsistent with the mitigating factors urged by Smith. The demonstration of remorse, even genuine remorse, does not mandate a lesser sentence where the judge determines, in the sound exercise of his discretion, that the maximum sentence is necessary to achieve the purposes of felony sentencing, i.e., protecting the public from future crime by the offender and punishing the offender. *State v. Holin*, 174 Ohio App.3d 1, 2007-Ohio-6255, at ¶34 (“the trial court is not obligated, in the exercise of its discretion, to give any particular weight or consideration to any sentencing factor” ) (citations omitted); *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, at paragraph three of the syllabus (“[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”).

{¶19} The sole assignment of error is without merit.

{¶20} For the foregoing reasons, the judgment of the Lake County Court of Common Pleas, sentencing Smith to an eight-year prison term, is affirmed. Costs to be taxed against appellant.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.