

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

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| STATE OF OHIO, | : | OPINION |
| Plaintiff-Appellee, | : | |
| - vs - | : | CASE NO. 2010-T-0003 |
| BONNIE PATTINSON, | : | |
| Defendant-Appellant. | : | |

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 2009 CR 0638.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Anthony V. Consoldane, Ohio Public Defender's Office, 328 Mahoning Avenue, Warren, OH 44483 (For Defendant-Appellant).

Michael A. Partlow, Morganstern, MacAdams & DeVito Co., L.P.A., 623 West St. Clair Avenue, Cleveland, OH 44113 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Bonnie Pattinson, appeals the Judgment Entry of the Trumbull County Court of Common Pleas, in which the trial court sentenced her to a prison term of nine years for Involuntary Manslaughter in violation of R.C. 2903.04(A) and (C). For the following reasons, we affirm the decision of the trial court.

{¶2} Pattinson was indicted by the May 2009 Extended Term of the Grand Jury of Trumbull County on one count of Murder, in violation of R.C. 2903.02(B) and (D) and one count of Felonious Assault, in violation of R.C. 2903.11(A)(1) and (D)(1)(a). The Indictment stemmed from the death of Pattinson's foster child, T.S.B., dob June, 27, 2007.

{¶3} On October 29, 2009, pursuant to a plea agreement, Pattinson entered a plea of Guilty to an Amended Indictment for one count of Involuntary Manslaughter, in violation of R.C. 2903.04(A) and (C). The State filed a Nolle Prosequi on the second count in the Indictment.

{¶4} After a sentencing hearing, Pattinson was sentenced to a prison term of nine years, with a mandatory five years of post-release control. The Judgment Entry also stated that Pattinson was to pay the cost of prosecution; however, the amount on the entry was left blank. Pattinson subsequently filed a Motion to Suspend Court Costs, claiming that she was indigent and without funds to pay. The trial court initially overruled Pattinson's motion; however, the court later granted her motion on January 13, 2010.

{¶5} Pattinson timely appeals¹ and raises the following assignments of error:

{¶6} “[1.] The trial court abused its discretion by imposing court costs upon Appellant when the court had clear evidence before it of Appellant's indigence.

{¶7} “[2.] The trial court abused its discretion by permitting unrelated witnesses to testify at Appellant's sentencing, over the objections of defense counsel, and by considering said testimony when sentencing Appellant.

1. Pattinson's original appeal was dismissed April 5, 2010, after she failed to timely file her brief. The appeal was reinstated on May 10, 2010.

{¶8} “[3.] The trial court abused its discretion by failing to sentence Appellant to a minimum term of incarceration.”

{¶9} In her first assignment of error, Pattinson argues that the trial court abused its discretion by “failing to waive the court costs imposed upon [her].” The State argues that the trial court rendered a decision on January 12, 2010, granting Pattinson’s Motion to Suspend Court Costs. “Given the trial court’s decision to suspend court costs preceding the filing of the Notice of Appeal, this Assignment of Error is therefore rendered moot.” As our review is limited to actual cases in controversy, we do not have jurisdiction to consider moot issues. *State v. Downs*, 11th Dist. No. 2004-A-0029, 2005-Ohio-2520, at ¶6.

{¶10} The State further argues that the trial court’s decision to suspend the court costs was an abuse of discretion. The State does not designate its response as a “cross-appeal,” nor did it file a notice of cross-appeal with the court. App.R. 3(C) mandates that “[a] person who intends to defend a judgment or order against an appeal taken by an appellant and who also seeks to change the judgment or order *** shall file a notice of cross-appeal within the time allowed by App.R. 4.” However, “[b]ecause this attempted cross-appeal is not properly before this court, we will not address it.” *Automated Solutions Corp. v. Paragon Data Sys. Inc.*, 167 Ohio App.3d 685, 2006-Ohio-3492, at ¶63.

{¶11} Pattinson’s first assignment of error is without merit.

{¶12} In her next assignment of error, Pattinson argues that the trial court abused its discretion by permitting multiple individuals to present a victim impact statement during her sentencing hearing.

{¶13} At the hearing, T.S.B.'s aunt made a statement then read statements of T.S.B.'s uncle and grandmother. Additionally, T.S.B.'s father and Marsha Tiger, the director of Trumbull County Children's Services, who had placed T.S.B. with Pattinson, both made statements.

{¶14} Pattinson argues that "[b]y permitting and considering such testimony of Ms. Tiger, the trial court abused its discretion."

{¶15} "The Ohio statute governing sentencing hearings provides that 'the offender, the prosecuting attorney, the victim or the victim's representative in accordance with section 2930.14 of the Revised Code, and, with the approval of the court, *any other person* may present information relevant to the imposition of sentence in the case.' [R.C. 2929.19(A).] The court therefore has discretion 'to hear statements from *anyone* with information relevant to the imposition of a sentence in the case.'" *State v. Battigaglia*, 6th Dist. Nos. OT-09-009 and OT-09-010, 2010-Ohio-802, at ¶25, citing *State v. Hough*, 11th Dist. No. 2001-T-0009, 2002-Ohio-2942, at ¶15. (First emphasis added).

{¶16} "R.C. 2930.02(A) does not limit the trial court's discretion regarding the number of people who may speak at the sentencing hearing. R.C. 2929.19(A)(1) provides that the trial court has the discretion to permit any person with information relevant to the imposition of sentence to speak at the sentencing hearing." *State v. Harwell*, 149 Ohio App.3d 147, 2002-Ohio-4349, at ¶7. "[S]uch an allowance will not be reversed absent an abuse of discretion." *State v. Rose*, 3rd Dist. No. 5-06-32, 2007-Ohio-2863, at ¶10.

{¶17} Pattinson argues that Tiger was “a volunteer to a tragedy by [her] very vocation”; she was not a bystander or victim.

{¶18} In her statement, Tiger spoke about how the staff at Children’s Services watched T.S.B. “grow, take her first steps, learn[] to talk and so much more.” She further stated that T.S.B.’s foster family was “meant to protect her and love her” and Pattinson “failed the agency who trusted her to be [T.S.B.’s] protector.” Tiger is a person with “information relevant to the imposition of sentence in the case” as required by R.C. 2929.19(A).

{¶19} Pattinson has failed to demonstrate that the trial court abused its discretion when it allowed more than one family member and Tiger, the Children’s Services Director, to speak in this case.

{¶20} Pattinson’s second assignment of error is without merit.

{¶21} In her last assignment of error, Pattinson argues that the trial court “abused its discretion in sentencing [her] to an additional six years [more than the minimum], where application of the facts of this case to the factors set forth in R.C. 2929.12 reveal that her crimes are statutorily less, rather than more, serious, and that [Pattinson] is less likely, rather than more likely, to reoffend.” She argues that “[t]hree years would adequately protect the public and punish [her].”

{¶22} In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, the Supreme Court 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. In light of *Foster*, this court has held that the trial court

has full discretion to sentence within the statutory ranges. *State v. Weaver*, 11th Dist. No. 2006-L-113, 2007-Ohio-1644, at ¶33; *State v. Martin*, 11th Dist. No. 2006-L-191, 2007-Ohio-2579, at ¶19; *State v. Sanders*, 11th Dist. No. 2006-L-222, 2007-Ohio-3207, at ¶18.

{¶23} 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.” R.C. 2929.11(A). A court imposing a sentence for a felony “has discretion to determine the most effective way to comply with the purposes and principles of sentencing.” R.C. 2929.12(A). “In the exercise of this discretion, a court ‘shall consider’ the non-exclusive list of seriousness and recidivism factors set forth in R.C. 2929.12(B), (C), (D), and (E).” *Sanders*, 2007-Ohio-3207, at ¶15. There is no “mandate” for the sentencing court to engage in any factual finding under these statutes. Rather, “[t]he court is merely to ‘consider’ the statutory factors.” *Foster*, 2006-Ohio-856, at ¶42.

{¶24} The record before us demonstrates that the court complied with R.C. 2929.12 by considering the record, oral statements, and any victim impact statements, as well as the principles and purposes of sentencing under R.C. 2929.11. Finally, before rendering a decision, the trial court balanced the seriousness and recidivism factors under R.C. 2929.12. Most importantly, Pattinson’s sentence of nine years falls within the prescribed range for a felony of the first degree, which is between three and ten years. R.C. 2929.14(A)(1). Therefore, the trial court did not abuse its discretion in imposing the nine year sentence.

{¶25} Pattinson's third assignment or error is without merit.

{¶26} For the foregoing reasons, the Judgment Entry of the Trumbull County Court of Common Pleas, sentencing Pattinson to a prison term of nine years for Involuntary Manslaughter, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

TIMOTHY P. CANNON, J.,

concur.