

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

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2010-T-0087
MICHAEL A. AHLADIS,	:	8-12-11
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 2009 CR 00069.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Rhys Brendan Cartwright-Jones, 42 North Phelps Street, Youngstown, OH 44503-1130 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Appellant, Michael Ahladis, appeals from the sentence imposed by Trumbull County Court of Common Pleas after he pled guilty to complicity to involuntary manslaughter, complicity to aggravated burglary, and tampering with evidence. Mr. Ahladis argues a reversal and remand for resentencing are required because the trial court applied the wrong legal standard in determining his sentencing range and the judgment entry reflected a conviction for complicity to murder, not complicity to

involuntary manslaughter, as Mr. Ahladis pled. Because the trial court sentenced Mr. Ahladis to a term of incarceration consistent with the range contained within the plea agreement and the error in the judgment entry has been cured by an appropriate nunc pro tunc entry, we find Mr. Ahladis' two assignments of error to be without merit and affirm the judgment and sentence of the Trumbull County Court of Common Pleas.

{¶2} Substantive Facts and Procedural History

{¶3} Mr. Ahladis was indicted in March of 2009 on one count of complicity to murder, two counts of complicity to aggravated burglary, and one count of tampering with evidence. The charges stemmed from a December 23, 2008 home invasion and shooting death. Initially pleading not guilty, Mr. Ahladis and the state subsequently entered into a written plea agreement. Mr. Ahladis changed his plea and pled guilty to an amended indictment, specifically: one count of complicity to involuntary manslaughter with a firearm specification in violation of R.C. 2923.03(A), 2903.04(A) & (C), and 2941.125; one count of complicity to aggravated burglary with a firearm specification in violation of R.C. 2923.03(A)(1), 2911.11(A)(1) & (B), and 2941.125; and one count of tampering with evidence in violation of R.C. 2921.12(A)(1) & (B).

{¶4} Mr. Ahladis and the state also executed an addendum to the plea agreement, which was placed in a sealed envelope and included in the court file. The addendum, inter alia, stated that Mr. Ahladis and the state jointly recommended an aggregate sentence in the range of 13 to 21 years. Without this agreement, Mr. Ahladis would have been facing up to 28 years imprisonment.

{¶5} At the sentencing hearing, the trial court referenced the plea agreement. Both the trial court and defense counsel, however, mistakenly recited the jointly

recommended sentence as a range between 13 and 23 (not 21) years. The trial court imposed concurrent 10-year sentences on the involuntary manslaughter and aggravated burglary counts, merged the firearm specifications into a single, three-year term to be served consecutively, and imposed a one-year sentence on the evidence tampering count, to be served consecutively as well. Mr. Ahladis' total aggregate sentence was 14 years.

{¶6} Mr. Ahladis submitted a motion for delayed appeal pursuant to App.R. 5 and this court granted his motion on July 6, 2010. At the time Mr. Ahladis filed his brief, in December of 2010, certain irregularities existed within the trial record. These irregularities included: 1) the filing of the transcript after the filing of record, requiring a motion to supplement the record; 2) a failure to unseal the plea addendum despite the trial court's order to unseal it on November 6, 2009; and 3) an error in the sentencing entry, which stated that Mr. Ahladis had pled guilty to complicity to murder rather than complicity to involuntary manslaughter.

{¶7} This court remanded the case to the trial court, upon motion from the state, for the purpose of supplementing the trial record with the unsealed addendum to the plea agreement and correcting the clerical error in the sentencing entry. We instructed the trial court to first "determine whether or not the addendum to the plea agreement was before the trial court and relied upon in making its determination and whether it intended the addendum to be made part of the record ***." We also ordered the trial court to determine whether, in fact, a clerical error had been made on the sentencing entry, and, if so, to issue a nunc pro tunc judgment entry to accurately reflect the correct offense to which Mr. Ahladis pled guilty.

{¶8} In response to the remand, the trial court issued two entries. In the first entry, the trial court stated that “the addendum in question was not only before this Court, but bears this judge’s signature thereon approving same. Additionally, both the plea agreement and the transcript of the plea hearing reflect that the addendum was incorporated into the plea agreement.” The trial court further noted that it had relied on the addendum in accepting Mr. Ahladis’ guilty plea and determining his sentence. The second judgment entry issued by the trial court upon remand was a nunc pro tunc entry on sentence, now reflecting that Mr. Ahladis had pled guilty to complicity to involuntary manslaughter, *not* complicity to murder as had been indicated in error on the initial judgment entry.

{¶9} The record was re-filed with this court and the state then submitted its brief in response to Mr. Ahladis’ two assignments of error:

{¶10} “[1.] The trial court abused its discretion in sentencing Mr. Ahladis insofar as it applied the wrong legal standard in determining his sentencing range, finding such range to be an agreed-upon range of 13 to 23 years.

{¶11} “[2.] The judgment entry of conviction is contrary to law where the judgment entry reflects a conviction for Complicity to Murder and where Mr. Ahladis entered a plea to Complicity to Involuntary Manslaughter.”

{¶12} Sentencing Range and an Agreed-Upon Sentence

{¶13} In his first assignment of error, Mr. Ahladis contests the sentencing range the trial court considered. He contends that the trial court abused its discretion in applying the wrong legal standard in determining the sentencing range for his convictions.

{¶14} Pursuant to *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, appellate courts, post *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-806, must apply a two-step approach in reviewing a sentence. First, we 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. *Id.* at ¶4. The first prong of the analysis instructs that "the appellate court must ensure that the trial court has adhered to all applicable rules and statutes in imposing the sentence. As a purely legal question, this is subject to review only to determine whether it is clearly and convincingly contrary to law, the standard found in R.C. 2953.08(G)." *Id.* at ¶14.

{¶15} The court explained that the applicable statutes to be applied by a trial court include the felony sentencing statutes R.C. 2929.11 and R.C. 2929.12, which are not fact-finding statutes like R.C. 2929.14. *Id.* at ¶17. Therefore, as part of its analysis of whether the sentence is "clearly and convincingly contrary to law," an appellate court must ensure that the trial court considered the purposes and principles of R.C. 2929.11 and the factors listed in R.C. 2929.12. We presume a trial court considered the factors contained in R.C. 2929.12 when presented with a silent record. See *State v. Burkett*, 11th Dist. No. 2009-P-0069, 2010-Ohio-6250, ¶72. Furthermore, it has been held that "where a criminal sentence is within statutory limits, an appellate court should accord the trial court the presumption that it considered the statutory mitigating criteria in the absence of an affirmative showing that it failed to do so." *State v. Taylor* (1992), 76 Ohio App.3d 835, 839, citing *State v. Crouse* (1987), 39 Ohio App.3d 18.

{¶16} If the first prong is satisfied, that is, the sentence is not "clearly and convincingly contrary to law," the appellate court must then engage in the second prong

of the analysis, which requires determination as to whether the trial court abused its discretion in selecting a sentence within the permissible statutory range. *Kalish* at ¶17.

{¶17} A jointly recommended sentence, however, is not subject to appellate review. R.C. 2953.08(D)(1); *State v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, ¶9. Because both parties agree that the sentence is appropriate, the General Assembly intended jointly recommended sentences to be protected from review. *Porterfield* at ¶25. Once satisfied that there is indeed a stipulated sentence, the trial court “need not independently justify the sentence.” *Id.* “The theory behind the refusal to review agreed-upon sentences remains constant, even after *Foster*.” *State v. Kimble*, 11th Dist. No. 2005-T-0085, 2006-Ohio-6096, ¶28, citing *State v. Woods*, 2d Dist. No. 05CA0063, 2006-Ohio-2325. See, also, *State v. Covington*, 5th Dist. No. CT2005-0038, 2006-Ohio-2700; *State v. Hammond*, 8th Dist. No. 86192, 2006-Ohio-1570.

{¶18} Normally, a jointly recommended sentence is stated in terms of a specific number of years and not, as in this case, in terms of a broad range of years. In fact, there is little, if any, guidance from case law regarding review of the latter. For purposes of this case, we find the sentence to have been jointly agreed-upon, based on the totality of the circumstances.

{¶19} The record makes evident that the sentencing range of 13 to 21 years was agreed to by both the state and Mr. Ahladis in writing (even though both the trial court and counsel misspoke during the sentencing hearing, referring to 23 years as the “high end” of the recommendation). Furthermore, the range was also accepted by the trial judge. Not only did the plea addendum, which was fully incorporated into the record at the trial court’s direction and relied upon by the trial judge as indicated in his judgment

entry in response to our remand, clearly indicate the agreed-upon sentencing range of 13 to 21 years, but, the sentencing hearing transcript also unmistakably demonstrates that the parties had agreed to the 13 to 21 year range used by the trial court.

{¶20} Mr. Ahladis argues that the trial court erred in meeting the requirements of Crim.R. 11, when it failed to read the details of the plea agreement into the record. The trial court, however, incorporated the plea addendum into the record by reference rather than reading aloud the specific details. This was done exclusively for Mr. Ahladis' benefit and safety. During the plea hearing, the trial court stated "[a]nd you have signed an addendum to the plea agreement. You have done that voluntarily and knowingly, is that correct?" Mr. Ahladis responded, "[y]es sir." The trial court pressed further, inquiring "[y]ou understand what it is, is that correct?" Again, Mr. Ahladis responded "[y]es sir."

{¶21} At the conclusion of the plea hearing, the trial court noted for the record that "part of the agreement is the Defendant agrees to comply with the terms and conditions of the plea addendum to this plea agreement, which is incorporated herein." The trial court refrained from stating the terms of the addendum on the record because they included a promise by Mr. Ahladis to fully cooperate in the prosecution of any and all co-defendants. Had the terms of the addendum been read into the open record, Mr. Ahladis may have been put in considerable physical danger. Given that the trial court refrained from spelling out the plea deal on the record for Mr. Ahladis' sole benefit, he cannot now challenge the court's conduct.

{¶22} Mr. Ahladis' acceptance of the plea deal and sentencing range contained within the addendum is further supported by his statements during the sentencing

hearing. Counsel for Mr. Ahladis stated “we would ask the court to [sic] within the plea agreement that we worked out, the plea range was from 13 to 23 years ***.” The state also acknowledged that “[t]he agreement provided that the parties would jointly recommend that the Court come to a sentencing decision between 13 and 23 years.”

{¶23} The trial court, having affixed its signature to the plea addendum within which the jointly recommended 13 to 21 year sentencing range was documented, sentenced Mr. Ahladis to one year more than the jointly recommended *minimum*. As we noted earlier, Ohio case law is silent as to whether jointly recommended sentencing ranges, like jointly recommended sentences, are not reviewable. However, because this record amply supports that it was indeed a jointly recommended range falling within the permissible statutory range and Mr. Ahladis fails to demonstrate any prejudice resulting from either the misstatement of the “high end” of the jointly recommended range at 23 years rather than 21 years, or from the enforcement of this agreed-upon sentence, we decline to disturb his sentence. The first assignment of error is without merit.

{¶24} Judgment Entry Error

{¶25} In his second assignment of error, Mr. Ahladis contends that his case should be remanded for resentencing because of an error in the original judgment entry. This argument is not compelling and the assignment of error is in fact moot.

{¶26} Upon the state’s motion, we remanded this case to the trial court for two distinct purposes. The first related to the plea agreement addendum and the other to the judgment entry error. We issued an order requiring the trial court to consider whether the addendum to the plea agreement was before the court and relied upon at sentencing and whether the trial court intended to make the addendum a part of the

record. We also directed the court to review the sentencing entry to determine whether a “clerical error has occurred as to the precise offense stated in the trial court’s entry establishing appellant’s conviction.” If, indeed, a “clerical error” had occurred the trial court was instructed to correct the clerical error present in the original judgment entry via a nunc pro tunc judgment entry. The trial court did so on January 21, 2010. The record was then re-filed with this court. Therefore, any error in the judgment entry initially present at the time of Mr. Ahladis’ notice of appeal has since been cured and is moot.

{¶27} Mr. Ahladis argues that a nunc pro tunc entry was not the appropriate method to correct the error present in the original judgment entry. This argument is unpersuasive. Crim.R. 36 states that “[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time.” These nunc pro tunc entries “are limited in proper use to reflecting what the court actually decided, not what the court might or should have decided.” *State ex rel. Fogle v. Steiner* (1995), 74 Ohio St.3d 158, 164. We have held that where “the court rendered its true judgment during the sentencing hearing and the Judgment Entry inadvertently failed to reflect the true judgment,” a nunc pro tunc entry is the appropriate remedy. *State v. McAdams*, 11th Dist. No. 2010-L-012, 2011-Ohio-157, ¶19.

{¶28} A review of the sentencing transcript reveals that Mr. Ahladis pled to and was properly convicted of complicity to involuntary manslaughter, not complicity to murder as the original judgment entry reflects. Furthermore, Mr. Ahladis’ sentence of 14 years clearly correlates to a conviction of complicity to involuntary manslaughter and

complicity to aggravated burglary with merged firearm specifications. Had he been improperly convicted of complicity to murder, Mr. Ahladis would have received an indefinite sentence of 15 years to life, pursuant to R.C. 2929.02(B)(1).

{¶29} Because the nunc pro tunc entry issued by the trial court on January 21, 2010 was the appropriate means to remedy the clerical error present in Mr. Ahladis' original judgment entry and did, in fact, remedy the error, we find Mr. Ahladis' second assignment of error is moot.

{¶30} Mr. Ahladis' assignments of error are without merit and the judgment of Trumbull County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.