

[Cite as *State v. Wright*, 2016-Ohio-8549.]

STATE OF OHIO, CARROLL COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE OF OHIO)	
)	
PLAINTIFF-APPELLEE)	
)	CASE NO. 15 CA 0907
VS.)	
)	OPINION
DANNY WRIGHT)	
)	
DEFENDANT-APPELLANT)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from the Court of
Common Pleas of Carroll County, Ohio
Case No. 14 CR 5870

JUDGMENT: Affirmed.

APPEARANCES:
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JUDGES:

Hon. Mary DeGenaro
Hon. Cheryl L. Waite
Hon. Carol Ann Robb

Dated: December 22, 2016

{¶1} Defendant-Appellant, Danny Wright, appeals the trial court's judgment sentencing him to a maximum term of incarceration of 18 months, following a no contest plea to one count of aggravated assault. Because the assigned errors are meritless, the judgment of the trial court is affirmed.

{¶2} This case involves a tragic years-long feud between the victim, Wright and their families. Patrick Wright, Wright's uncle, was leaving the driveway of his residence in his truck and observed Wright, on a riding lawnmower in the neighboring lot. On this day, they exchanged non-verbal insults; specifically, both men displayed their middle fingers. According to Patrick, Wright got off his lawnmower, charged at Patrick and began assaulting him while Patrick was still seated in his truck. Wright wielded a utility knife, and punched and slashed at Patrick's face and neck area several times.

{¶3} As a result, Patrick suffered several deep lacerations across his neck and under his left jawline, across his nose and below his left eyebrow, near his left eye, and behind his left ear. He also had bruises on his face, including a severely blackened and swollen left eye. Patrick lost a large amount of blood, required approximately 60 stitches to close his wounds, and was hospitalized for one week.

{¶4} Initially, Wright told sheriff's deputies that he only attacked Patrick in self-defense after Patrick had chased him with a pipe. However, no pipe was found at the scene; Patrick's blood was located throughout the driver's side on the inside of his truck; and Debbie, Patrick's wife, took video of Wright running from Patrick's truck after the assault.

{¶5} The grand jury indicted Wright on one count of felonious assault, R.C. 2903.11(A)(2), a second-degree felony. He was arrested, pled not guilty, retained counsel, and was released on bond with conditions including electronically monitored house arrest with alcohol monitoring and his agreement not to reenter Carroll County except for court appearances and probation reporting requirements.

{¶6} Ultimately, Wright entered into a Crim.R. 11 plea agreement with the State and pled no contest to an amended count of aggravated assault, a fourth-

degree felony. No sentencing recommendation was made as part of the agreement.

{¶7} At the sentencing hearing, counsel for both sides made sentencing arguments. The victim, Patrick, and his wife Debbie both gave statements about how severely the crime had impacted their lives. The defense also presented dozens of letters from Wright's friends and family, in which they vouched for his good character and requested leniency. Wright's pastor and his employer also made statements in support of Wright during the hearing.

{¶8} After being addressed by the trial court, Wright chose to speak, but before he did, defense counsel presented Wright in the best light, stating, "Danny is not the victim here. And I would agree with [the prosecutor] that he's not the victim. He's the felon. He is being punished." However, when Wright addressed the court he gave his own version of the incident, in which he asserted he was the victim. Further, he expressed no regret for the victim's life-threatening injuries and permanent disfigurement.

{¶9} In the sentencing entry, after expressly considering the purposes of felony sentencing under R.C. 2929.11 as well as the seriousness and recidivism factors under R.C. 2929.12, the trial court imposed a maximum sentence of 18 months, along with a discretionary three-year term of post-release control. The trial court stayed execution of the sentence pending appeal.

{¶10} Both of Wright's assignments of error challenge his sentence and will be addressed together for clarity of analysis:

The trial court failed to issue a sentence that is proportional to and consistent with sentences given for similar offenses by similar offenders thereby depriving Appellant of his State and Federal rights to Due Process and Equal Protection and making said sentence both an abuse of discretion and/or contrary to law.

The trial court was bound to find that Appellant's actions were conducted while under the influence of sudden passion or in a sudden

fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force by accepting the amendment thereby causing error when it held those same factors against Appellant at sentencing.

{¶11} We review a felony sentence to determine whether the trial court's findings—or where findings are not required, the sentence itself—are clearly and convincingly unsupported by the record, or whether the sentence is otherwise contrary to law. R.C. 2953.08(G)(2); *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1; ¶ 23.

{¶12} *Marcum* does not permit appellate courts to independently weigh the sentencing factors in R.C. 2929.12 on review. *State v. Davis*, 2016-Ohio-7319, --- N.E.3d ---, ¶ 5 (7th Dist.), citing *State v. Ongert*, 8th Dist. No. 103208, 2016-Ohio-1543, ¶ 14. In other words, reversal or modification of a sentence in the wake of *Marcum*, "applies to situations in which not one sentencing factor supports a stated prison term or the trial court erroneously relied on factors that did not exist." *Davis* at ¶ 5, quoting *Ongert* at ¶ 13.

{¶13} Wright argues that the trial court erred by failing to conclude that the crime was made less serious by the fact that he was provoked by the victim. "The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is less serious than conduct normally constituting the offense: * * * In committing the offense, the offender acted under strong provocation." R.C. 2929.12(C)(2). Wright asserts that because serious provocation is an element of aggravated assault, the crime to which he pled, it was error for the trial court not to find this sentencing factor in his favor.

{¶14} The applicable aggravated assault statute states:

No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly: * * * Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance, as defined in section 2923.11 of the Revised Code.

R.C. 2903.12(A)(2).

{¶15} This argument fails for two reasons. First, throughout the sentencing entry the trial court made the following statement regarding whether Patrick facilitated the offense or that Wright acted under strong provocation: "This factor does **not** apply notwithstanding Defendant's argument that it **does** apply." (Emphasis sic). The trial court further found that there were no grounds to mitigate Wright's conduct. These findings are supported by the record. The trial court emphasized the "viciousness and potentially fatal conduct of the Defendant in slashing the victim with a box/cutter knife in the victim's face, neck and ear areas causing extensive blood loss and permanent disfiguring scars, not to mention permanent psychological/emotional damage of the victim, and family members," and noted this was "**unprovoked** conduct." (Emphasis sic.)

{¶16} Second, even assuming the trial court erred by failing to conclude the crime was less serious due to strong provocation, under the deferential standard of review presented by R.C. 2953.08(G)(2) and *Marcum*, the sentence is affirmed because several other sentencing factors support the maximum sentence, specifically, Wright's lack of remorse, the serious harm to the victim, and that Wright remained a "very real and viable threat to the health and safety of Patrick and Debbie Wright." In its sentencing entry, the trial court expressly considered the purposes of felony sentencing under R.C. 2929.11 as well as the seriousness and recidivism factors under R.C. 2929.12. The trial court specifically concluded, after listening to Wright's statements at the sentencing hearing, that it "detected no sincere remorse of

Defendant for his having inflicted life-threatening injuries upon Patrick Wright."

{¶17} The trial court also specifically stated that R.C. 2929.12(B) required it to consider "any other relevant factors, as indicating that the offender's conduct is more serious than conduct normally constituting the offense." In that regard, the court found:

* * * Principal among those "other relevant factors" is the viciousness and potentially fatal conduct of the Defendant in slashing the victim with a box cutter/knife in the victim's face, neck, and ear areas causing extensive blood loss and permanent disfiguring scars, not to mention permanent psychological/emotional damage to the victim, and family members resulting from Defendant's unprovoked conduct. Also the fact that the Indictment was amended from Felonious Assault to Aggravated Assault, reducing the degree of felony, does not change the existential reality of the viciousness of Defendant's conduct nor the life-threatening injuries of the victim.

* * * to impose Community Control Sanctions in this case, as Defendant urges, would not be commensurate with and would demean the seriousness of the Defendant's conduct and its impact up on the victim, Patrick Wright and would fail to adequately punish the Defendant for the crime he committed in this case. The minimum sanction the undersigned concludes will adequately punish the Defendant in this case is the maximum eighteen (18) month term in the Ohio Department of Rehabilitation and Correction.

{¶18} Wright also asserts that, contrary to R.C. 2929.11(B), his sentence was inconsistent with or disproportionate to sentences imposed for similar crimes committed by similar offenders. He provided two Carroll County cases to support his argument before the trial court. However, the Second District recently explained:

Consistency includes a range of sentences, taking into consideration a trial court's discretion to weigh the relevant statutory factors; even if offenses are similar, distinguishing factors may justify dissimilar sentences. *State v. Terrel*, 2d Dist. Miami No. 2014–CA–24, 2015–Ohio–4201, ¶ 16, citing *State v. Murphy*, 10th Dist. Franklin No. 12AP–952, 2013–Ohio–5599, ¶ 14, and *State v. Battle*, 10th Dist. Franklin No. 06AP–863, 2007–Ohio–1845, ¶ 24. Additionally, consistency in sentencing does not result from a case-by-case comparison, but by the trial court's proper application of the statutory sentencing guidelines. *Id.*, citing *State v. Hall*, 179 Ohio App.3d 727, 2008–Ohio–6228, 903 N.E.2d 676, ¶ 10 (10th Dist.). An offender cannot simply present other cases in which an individual convicted of the same offense received a lesser sentence to demonstrate that his sentence is inconsistent with other sentences; rather, to demonstrate that a sentence is inconsistent, an offender must show that the trial court did not properly consider applicable sentencing criteria found in R.C. 2929.11 and 2929.12. *Id.*; *Battle* at ¶ 21–23.

State v. Armstrong, 2d Dist. No. 2015-CA-31, 2016-Ohio-5263, ¶ 35

{¶19} Here, the trial court conducted a thorough analysis of the sentencing factors. Moreover, one of the cases cited by Wright was a domestic violence case, not aggravated assault. Regarding the other, it is unclear from the opinion whether the victim suffered serious harm or whether the defendant demonstrated genuine remorse, thus we are unable to compare that case with Wright's.

{¶20} Finally, Wright was originally charged with felonious assault, a second degree felony with a sentencing range of two to eight years. R.C. 2929.14(A)(2). He pled to aggravated assault, a fourth degree felony with a sentencing range of six to eighteen months. R.C. 2929.14(A)(4). A trial court may consider the original charge that was reduced as part of a plea agreement when imposing a sentence on the reduced charge. *State v. Parsons*, 7th Dist. No. 12BE11, 2013-Ohio-1281, ¶ 18.

The trial court made this specific finding: "reducing the degree of felony, does not change the existential reality of the viciousness of Defendant's conduct nor the life-threatening injuries of the victim."

{¶21} In sum, Wright's sentence is not clearly and convincingly unsupported by the record or otherwise contrary to law. Accordingly, the judgment of the trial court is affirmed.

Waite, J., concurs.

Robb, J., concurs.