[Cite as *State v. Orr*, 2024-Ohio-4707.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO	:	
	:	
Appellee	:	C.A. No. 2024-CA-13
	:	
v.	:	Trial Court Case No. 23-CR-661
	:	
SALIK KA-SHANE ORR	:	(Criminal Appeal from Common Pleas Court)
	:	
Appellant	:	
	:	

. . . . . .

O P I N I O N

Rendered on September 27, 2024

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WELBAUM, J.

{¶ 1} Defendant-Appellant, Salik Ka-Shane Orr, appeals from his conviction and sentence on one count of child endangering, following a guilty plea. According to Orr, the trial court erred in failing to follow the purposes and principles of felony sentencing and in failing to consider mitigating factors.

{¶ 2} After considering the record and relevant law, we conclude that the trial court did not err in sentencing Orr to a prison term. The court complied with statutory sentencing requirements, and the court's review of a police report included with the presentence investigation report did not involve consideration of an improper external factor. Accordingly, the judgment of the trial court will be affirmed.

I. Facts and Course of Proceedings

{¶ 3} On October 3, 2023, an indictment was filed in the trial court charging Orr with one count of felonious assault in violation of R.C. 2903.11(A)(1) and one count of endangering children in violation of R.C. 2919.22(B)(1). Both charges were second degree-felonies and arose from events that occurred on September 15, 2023, when Orr was alleged to have abused "a child under eighteen years of age, or a mentally or physically handicapped child under twenty-one years of age, and the violation resulted in serious physical harm to the child." Indictment, p. 1.

{¶ 4} On October 5, 2023, Orr entered a not guilty plea. The trial was originally set for November 28, 2023, but the court later granted Orr's request for funds to retain a pediatric doctor as an expert. The court then continued the trial and set a December 2023 review hearing. Ultimately, the court set a January 29, 2024 trial date.

{¶ 5} Before the scheduled trial date, Orr appeared in court and pled guilty to the second count, i.e., endangering children. In exchange, the State agreed to dismiss count one and agreed to a presentence investigation ("PSI"). There was no agreement as to sentencing. Transcript of Proceedings (Plea) (Jan. 17, 2024), 3-4. At that time, the

court conducted a Crim.R. 11(C) colloquy, which included informing Orr of the minimum and maximum potential prison sentence (two to eight years) for a second-degree felony. The court also informed Orr that an additional indefinite prison sentence of 50% of the imposed term would be added and, in that event, a rebuttable presumption would exist, i.e., that Orr would be released on the expiration of the minimum imposed prison term or on the presumptive earned early release date. *Id*. at 7-8. In addition, the court discussed potential rebuttal of the presumption by the Ohio Department of Rehabilitation and Corrections. *Id*. at 8-9.

{¶ 6} Following the colloquy, Orr signed a plea agreement and pled guilty. *Id.* at 18-19. The court then accepted the plea, found Orr guilty of child endangering as charged, ordered a PSI, and set sentencing for February 13, 2024. *Id*. at 19-21. The written plea agreement and judgment entry finding Orr guilty were filed on January 19, 2024.

{¶ 7} The sentencing hearing was held as scheduled, and the court sentenced Orr to an indefinite sentence of six to nine years in prison. After the hearing, the court filed a judgment entry reflecting its statutory findings under R.C. 2929.11 and R.C. 2929.12, and credited Orr with 133 days of jail-time credit as of the date of the entry. *See* Journal Entry of Judgment, Conviction, and Sentence Warrant for Removal (Feb. 13, 2024), p. 2-3. This timely appeal followed.

II. Discussion

{¶ 8} Orr's sole assignment of error states that:

The Trial Court Failed to Follow the Principles and Purposes of Felony Sentencing and to Consider Appropriate Mitigating Factors in Imposing an Indefinite Sentence of Incarceration of Six to Nine Years in Prison.

{¶ 9} Under this assignment of error, Orr contends the trial court failed to follow the principles and purposes of sentencing and also failed to consider mitigating factors when it sentenced him to an indefinite sentence of six to nine years in prison. Orr concedes that the trial court did not need to place its findings on the record. However, Orr argues the court actually failed to consider the sentencing factors because he had no prior adult felony convictions or prior adult record, and the victim's mother stated she did not want to see Orr incarcerated. Orr further contends the trial court improperly considered items outside the record, like the police report.

{¶ 10} We have stressed that a " 'trial court has full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum or more than minimum sentences.' " *State v. McCoy*, 2024-Ohio-98, ¶ 26 (2d Dist.), quoting *State v. King*, 2013-Ohio-2021, ¶ 45 (2d Dist.). Moreover, while "the trial court must consider R.C. 2929.11 and 2929.12, neither statute requires a trial court to make any specific factual findings on the record." *Id*., citing *State v. Jones*, 2020-Ohio-6729, ¶ 20. "It is enough that the record demonstrates that the trial court considered R.C. 2929.11 and R.C. 2929.12 prior to imposing its sentence." *State v. Trent*, 2021-Ohio-3698, ¶ 15 (2d Dist.).

{¶ 11} The Supreme Court of Ohio has also outlined requirements for sentencing

review. "When reviewing felony sentences, appellate courts must apply the standard of review set forth in R.C. 2953.08(G)(2)." *State v. Evans*, 2023-Ohio-3656, ¶ 8 (2d Dist.), citing *State v. Marcum*, 2016-Ohio-1002, ¶ 7. "Under that statute, an appellate court may increase, reduce, or modify a sentence, or it may vacate the sentence and remand for resentencing, only if it clearly and convincingly finds either: (1) the record does not support the sentencing court's findings under certain statutes . . . ; or (2) the sentence is otherwise contrary to law." *Id*., citing *Marcum* at ¶ 9. The two subsections involved are R.C. 2953.08(G)(2)(a) and (b).

{¶ 12} Concerning R.C. 2953.08(G)(2)(a), the Supreme Court of Ohio has stressed that this subsection "clearly does not provide a basis for an appellate court to modify or vacate a sentence if it concludes that the record does not support the sentence under R.C. 2929.11 and 2929.12, because . . . R.C. 2929.11 and 2929.12 are not among the statutes listed in the provision." *Jones* at ¶ 31. Thus, we are prohibited from "looking behind" the court's decision with respect to R.C. 2929.11 and R.C. 2929.12.

{¶ 13} A remaining possibility is that the sentence was contrary to law under R.C. 2953.08(G)(2)(b). After reviewing the history of amendments to R.C. 2953.08, the court held in *Jones* that "contrary to law" as originally enacted meant "something other than an appellate court finding that the record does not support a sentence." *Jones* at ¶ 38. The court found no reason to change the settled meaning and held that "R.C. 2953.08(G)(2)(b) therefore does not provide a basis for an appellate court to modify or vacate a sentence based on its view that the sentence is not supported by the record under R.C. 2929.11 and 2929.12." *Id*. at ¶ 41.

{¶ 14} In a later case, the Supreme Court of Ohio distinguished *Jones* and concluded that "when a trial court imposes a sentence based on factors or considerations that are extraneous to those that are permitted by R.C. 2929.11 and 2929.12, that sentence is contrary to law. Claims that raise these types of issues are therefore reviewable." *State v. Bryant*, 2022-Ohio-1878, ¶ 22. Presumably, Orr is referencing such "external" matters when he contends the trial court should not have considered the police report. However, we find no error in the court's review of the police report, which was included as part of the PSI report. Orr does not explain why this was improper, and the trial court was entitled to consider this information in deciding what sentence to impose.

{¶ 15} While *Bryant* did not define the term "extraneous," we later found that a trial court had "relied on materially false information at sentencing, which violated [the defendant's] constitutional right to due process and amounted to an impermissible consideration under R.C. 2929.12(D)(2)." *State v. Ray*, 2023-Ohio-4157, ¶ 47 (2d Dist.). Specifically, the false information in *Ray* was that the defendant had been convicted of a prior felony sex offense, which materially affected sentencing. *Id*. As a result, we reversed the trial court's 30-month sentence and remanded the case for resentencing.

{¶ 16} Subsequently, and in contrast, we rejected a defendant's claim that a court's comment about how long it took drug addicts to reach sobriety "was unsubstantiated and went against the rehabilitative purpose of felony sentencing in R.C. 2929.11(A)." *State v. Lloyd*, 2024-Ohio-1297, ¶ 18 (2d Dist.). We noted the defendant had admitted during the sentencing hearing that he was a drug addict and that he had been on drugs at the

time of his offense. We also remarked that the defendant had previously participated in a number of chemical dependency programs. *Id*. at ¶ 19. Given these facts, we found that "[t]he court's statements appear to be a recognition that the path to sobriety typically is a long and difficult process and perhaps that some degree of relapse and recidivism was to be expected." *Id*. We therefore affirmed the judgment. *Id*. at ¶ 22.

{¶ 17} In the case before us, the State asked the court to impose a significant prison term. In this regard, the State commented that the subject of the crime was an infant who also had a young sibling. The State further noted that the child's mother did not wish to be present at sentencing, that the mother had continued her relationship with Orr, and that Children Services had closed its case. Given these facts, the State stressed that the only way to protect the children was to impose a prison term. Transcript of Proceedings (Disposition) ("Disp. Tr.") (Feb. 13, 2024), 4.

{¶ 18} In imposing sentence, the trial court remarked that it had reviewed the PSI report and the police report and had reviewed the child's injuries. The court emphasized that the child had suffered serious physical pain from this matter. *Id*. at 3-4, 7, and 9. In addition, the court stated that Orr (who had just turned 21) had a history of juvenile adjudications and had not responded favorably. *Id*. at 5 and 10. Finally, the court referenced the principles and purposes of sentencing under R.C. 2929.11 and R.C. 2929.12 and outlined the factors it had considered in imposing sentence. *Id*. at 9-10. After discussing these matters, the court sentenced Orr to an indefinite sentence of six to nine years. *Id*. at 11. This was not the maximum sentence the court could have imposed (which would have been an indefinite sentence of eight to 12 years). And, as

we observed, the court then including its consideration of the statutory factors as part of the sentencing entry. In short, while the court was not required to explain its findings, it did so.

{¶ 19} R.C. 2929.11 requires courts to consider the overriding purposes of felony sentencing, which include "to protect the public from future crime by the offender and others, to punish the offender, and to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources." R.C. 2929.11(A). This statute does not prohibit courts from considering any particular factors other than that they "shall not base the sentence upon the race, ethnic background, gender, or religion of the offender." R.C. 2929.11(C). Here, the trial court did not violate that prohibition; in fact, it specifically noted during sentencing that its decision was not related to such factors. Disp. Tr. at 9-10. The severity of the injuries (a skull fracture and a fractured rib of a three-month old child, along with older, healing rib fractures, as noted in the police report, was relevant to protecting the child from future harm. PSI, Incident Report, p. 2 and Supplemental Narrative, p. 4. This was particularly true since the mother chose to continue a relationship with Orr and Children Services was no longer involved.

{¶ 20} As also relevant here, R.C. 2929.12 provides various factors for courts to consider in sentencing relating to seriousness of an offender's conduct, the likelihood of recidivism, and the offender's service in the armed forces. This statute does not limit factors courts may consider, but specifically states that courts "in addition, may consider

any other factors that are relevant to achieving those purposes and principles of sentencing." (Emphasis added.) R.C. 2929.12(A). In the remaining subsections, the statute repeatedly refers to the court's consideration of "any other relevant factors." R.C. 2929.12(B-E).

{¶ 21} According to the police report, Orr gave conflicting stories about how the child had been injured. This was certainly relevant to whether Orr was likely to reoffend. Unlike *Bryant* or *Ray*, this is not a situation where a court considered misleading information or punitively reacted to an outburst in court. Furthermore, while Orr stated during the sentencing hearing that he was "sorry" for what had occurred, other comments minimized his responsibility and showed a true lack of awareness about his actions. For example, Orr stated that he was "a child taking care of a child, first time taking care of my son." Disp. Tr. at 6-7. However, Ray was nearly 21 years old at the time of the crime, and the injury occurred during a 20- to 30-minute period when the grandmother (who was actually caring for the child full-time while her daughter worked) stepped outside to take care of a dog. Incident Report at 1-2. No unusual or even significant burden had been placed on Orr – not that this would have been an excuse to injure a child.

{¶ 22} Furthermore, Orr also said during the hearing that "being in the jail for that long [133 days] has made me be able to realize my actions." Disp. Tr. at 6. Frankly, the act in question, physically harming a three-month old defenseless baby, should have been immediately apparent to anyone.

{¶ 23} In the case before us, the sentence was within the statutory range. In addition, the transcript of the sentencing hearing and the judgment entry reveal that the

court considered all appropriate factors in R.C. 2929.11 and R.C. 2929.12 and did not consider improper external factors. Accordingly, Orr's sole assignment of error is without merit and is overruled.

III. Conclusion

{¶ 24} Orr's sole assignment of error having been overruled, the judgment of the trial court is affirmed.

. . . . . .

TUCKER, J. and LEWIS, J., concur.