[Cite as *State v. Webb*, 2024-Ohio-4711.]

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

STATE OF OHIO	:	
	:	
Appellee	:	C.A. No. 2023-CA-34
	:	
v.	:	Trial Court Case No. 2023 CR 082
	:	
SEAN COREY WEBB	:	(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, Sean Corey Webb, appeals from his conviction and sentence on one count of escape. According to Webb, during sentencing, the trial court erred by considering extraneous factors not permitted by R.C. 2929.11 and R.C. 2929.12.

Specifically, Webb argues the trial court improperly considered pending charges in another county, when Webb was entitled to a presumption that he was innocent of the charges.

{¶ 2} However, the trial court did not commit any error. Webb pled guilty to escape, which was based on the fact that Webb absconded while on post-release control supervision. In deciding on the sentence to impose, the court was entitled to consider pending charges for crimes Webb allegedly committed during the time he absconded. The sentence, therefore, was not contrary to law. Accordingly, the judgment of the trial court will be affirmed.

I. Facts and Course of Proceedings

{¶ 3} On May 1, 2023, an indictment was filed charging Webb with one count of escape in violation of R.C. 2921.34(A)(3),(C)(3), a fifth-degree felony. According to the indictment, Webb had been under supervised release detention and failed to return from October 26, 2022 through April 28, 2023. After Webb pled not guilty, trial was scheduled to begin on September 19, 2023. Another indictment was filed on August 28, 2023, charging Webb with a second count of escape for the dates of October 26, 2022 through June 30, 2023. This was also a fifth-degree felony. Webb then pled not guilty to the second count

{¶ 4} On September 14, 2023, the State filed a motion to dismiss count one based on its conclusion that count two was the more appropriate charge. On September 26, 2023, Webb appeared in court and pled guilty to count two of the indictment. In

exchange, the State agreed to dismiss count one, to recommend a prison term of 12 months, and to remain silent at sentencing concerning imposition of a post-release control ("PRC") sentence enhancement. Transcript of Audi File Plea & Sentencing Hearing ("Tr."), 6 and 8. A written plea agreement was also filed.

{¶ 5} During the plea hearing, the parties agreed that Webb was subject to imposition of 418 days of PRC enhancement. *Id*. at 7. When the court conducted the Crim.R. 11(C) colloquy, Webb said that he had served time in state prison five times, that charges against him for grand theft of a motor vehicle and second-degree felony burglary were pending in Logan County, Ohio, and that he then was on PRC from Champaign County. *Id*. at 10-11. Following the colloquy, the court accepted the plea and found Webb guilty. *Id*. at 21-22. When the court asked the State for sentencing recommendations, the State asked the court to sentence Webb to a prison term of 12 months, arguing that Webb was not amenable to community control sanctions. *Id*. at 23.

{¶ 6} In particular, the State noted that Webb was then on PRC from the same court for a 2020 escape offense and that the new offense would be his fourth time on PRC. While Webb initially did well on the 2020 PRC, the PRC officer lost contact with Webb in September 2022, and Webb was then arrested on a warrant on June 30, 2023. *Id*. at 23-24. While at large, Webb maintained some contact with his PRC officer but was not fully compliant and had also engaged in criminal conduct on June 23, 2023, resulting in the Logan County indictment. *Id*. at 24-25. Further, Webb was then in jail for PRC violations of possession a firearm in January or February 2023. *Id*. at 25.

{¶ 7} During the hearing, Webb asked the court to impose minimal sentencing and

allow him to enter a residential treatment sanction so that he could address his documented history of a substance abuse disorder. *Id*. at 27-28. Webb's attorney also stressed that the escape charge was a non-violent offense. *Id*. at 27.

{¶ 8} In discussing the circumstances with Webb, the court noted that Webb had been indicted in Logan County for committing burglary, which was classified as an offense of violence. The court also stressed it was not saying Webb had committed the offense and that it recognized Webb had the presumption of innocence regarding that charge; instead, the court was simply noting that Webb had been charged with committing an offense of violence while he was at large, even though the escape itself was not a violent offense. *Id*. at 37-38.

{¶ 9} Following the discussion, the court imposed a 12-month prison sentence and 300 days of PRC enhancement time, to be served consecutively to the underlying 12-month sentence. *Id*. at 43-44. On September 26, 2023, the court filed the plea agreement and entry accepting the plea and finding Webb guilty. On the same day, the court also filed a judgment entry. *See* Journal Entry of Judgment, Conviction and Sentence ("Entry") (Sept. 26, 2023). Webb then timely appealed from the judgment.

II. Discussion

{¶ 10} Webb's sole assignment of error states that:

> The Trial Court Erred by Considering Extraneous Factors Not Permitted by R.C. 2929.11 and R.C. 2929.12.

{¶ 11} Webb contends that the trial court improperly considered the burglary

indictment (an extraneous factor) in deciding to impose a 12-month prison sentence. According to Webb, he was presumed to be innocent of the charge, and the court's consideration of this point caused the sentence to be contrary to law.

{¶ 12} As noted, the trial court mentioned Webb's indictment during the sentencing hearing. It also included this in the judgment entry, stating that a term of imprisonment was consistent with R.C. 2929.11 for several reasons, one of which was the allegation that Webb had committed a felony of violence during the time he had absconded from PRC supervision. Entry at p. 4. In addition, the court made the required finding under R.C. 2929.13(B)(1) for imposing a prison sentence rather than community control for a fifth-degree felony. *Id*. at p. 4-5, citing R.C. 2929.31(B)(1)(b)(ix), i.e., that Webb had previously served a prison term. Webb has not challenged this aspect of the court's findings.

{¶ 13} As a preliminary point, 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.). Further, 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.).

{¶ 14} The Supreme Court of Ohio has also established requirements for purposes

of 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.

{¶ 15} Regarding 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.

{¶ 16} The remaining possibility is that the sentence, as Webb suggests, 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." *Id*. at ¶ 38. The court found no reason to change that meaning and concluded 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.

{¶ 17} In a later case, the Supreme Court of Ohio distinguished *Jones* and held 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. This is the basis for Webb's argument, although he did not mention *Bryant*. Instead, Webb relied on a lower court case that cited *Bryant*. Appellant's Brief, p. 8, quoting *State v. Schuler*, 2023-Ohio-2444 (4th Dist.).

{¶ 18} In *Bryant*, the trial court initially sentenced the defendant to 22 years in prison. Upset by the sentence, the defendant went on a profane tirade, and the judge immediately increased the sentence to 28 years in prison. In this regard, the trial court stated that it had imposed the lesser term due to the defendant's expressed remorse, but it believed, based on the outburst, that the defendant lacked any remorse. *Bryant* at ¶ 10-13. The court of appeals affirmed the sentence. *Id*. at ¶ 14-15.

{¶ 19} On further appeal, the defendant argued that the increased sentence was contrary to law because the trial court's statements were pretextual, i.e., the increase was punishment for the outburst and was not within factors the court could consider under R.C. 2929.11 or R.C. 2929.12. *Id*. at ¶ 17. Ultimately, the Supreme Court of Ohio found the increase contrary to law because "neither R.C. 2929.11 nor 2929.12 permits trial courts to consider disruptive or disrespectful courtroom behavior when fashioning sentences that comport with the principles and purposes of felony sentencing," *Id*. at ¶ 31.

{¶ 20} In reaching its decision, the court clarified its recent decision in *Jones*, stating that:

> This case is markedly different from *Jones*, 163 Ohio St.3d 242,

2020-Ohio-6729, 169 N.E.3d 649. Unlike the present case, *Jones* did not involve a claim that a trial court's sentencing findings were pretextual. Instead, the question before this court in *Jones* presupposed that a sentencing court would consider and apply the R.C. 2929.11 and 2929.12 sentencing factors, and *only* those factors, in determining what sentence is appropriate under the unique circumstances of each felony case. The narrow holding in *Jones* is that R.C. 2953.08(G)(2) does not allow 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. *See Jones* at ¶¶ 31, 39. Nothing about that holding should be construed as prohibiting appellate review of a sentence when the claim is that the sentence was imposed based on impermissible considerations – i.e., considerations that fall outside those that are contained in R.C. 2929.11 and 2929.12. Indeed, in *Jones*, this court made clear that R.C. 2953.08(G)(2)(b) permits appellate courts to reverse or modify sentencing decisions that are " 'otherwise contrary to law.' " *Jones* at ¶ 32, quoting R.C. 2953.08(G)(2)(b). This court also recognized that "otherwise contrary to law" means " 'in violation of statute or legal regulations at a given time.' " *Id*. at ¶ 34, quoting *Black's Law Dictionary* 328 (6th Ed.1990). Accordingly, 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.

(Emphasis in original.) *Bryant* at ¶ 22.

{¶ 21} While *Bryant* did not define "extraneous," we have since found that a trial court "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.). As a result, we reversed the trial court's 30-month sentence and remanded the case for resentencing. We did not rule on other assignments of error, finding them premature. *Id*. at ¶ 48-49.

{¶ 22} In contrast, we rejected a defendant's complaint that a trial 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 further remarked that the defendant had previously participated in a number of chemical dependency programs. *Id*. at ¶ 19. Given these facts, we concluded 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.

{¶ 23} 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). The trial court did not violate that prohibition here.

{¶ 24} In turn, 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).

{¶ 25} The fact that Webb may have committed felony offenses during the escape was certainly relevant to whether he was likely to commit future crimes and was not a good candidate for community control sanctions. Furthermore, the trial court stressed during the hearing that Webb was entitled to a presumption of innocence concerning the pending charges. As a result, the court did not assume Webb was guilty; instead, the existence of other charges was simply one factor the court considered. This is not a situation in which the court considered misleading information or punitively reacted to an outburst in court.

{¶ 26} As an additional point, Webb himself told the court during the sentencing hearing that he was going to plead guilty to the burglary. Tr. at 36. This is inconsistent with Webb's claim that the court improperly disregarded his presumption of innocence and improperly considered the pending charges.

{¶ 27} Here, the sentence was within the statutory range, and our review of the sentencing transcript and judgment entry reveals that the court specifically considered all the appropriate factors in R.C. 2929.11 and R.C. 2929.12. Accordingly, Webb's sole assignment of error is without merit and is overruled.

III. Conclusion

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

. . . . . .

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