

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 113711  
 v. :  
 :  
 JOSHUA GAY, :  
 :  
 Defendant-Appellant. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: October 3, 2024**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-23-685629-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Mason P. McCarthy, Assistant Prosecuting Attorney, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Francis Cavallo, Assistant Public Defender, *for appellant*.

FRANK DANIEL CELEBREZZE, III, J.:

{¶ 1} Appellant Joshua Gay (“appellant”) brings the instant appeal challenging the trial court’s imposition of the maximum prison sentence following

his theft conviction. After a thorough review of the law and applicable facts, we affirm the judgment of the trial court.

### **I. Factual and Procedural History**

{¶ 2} This case arose from appellant's misuse of his employer's company credit card. He had been issued a company card to pay for gasoline-related expenses. When confronted by his employer, he admitted that he had been filling up other individual's gas tanks and charging them \$40 for \$60 worth of gasoline.

{¶ 3} Appellant was charged with one count of theft, a felony of the fourth degree, in violation of R.C. 2913.02(A)(2), with the value of the property stolen was \$7,500 or more but less than \$150,000.

{¶ 4} Appellant and the State entered into a plea agreement wherein appellant would plead guilty to an amended count of theft, a felony of the fifth degree, in violation of R.C. 2913.02(A)(1). He agreed to pay restitution to the victim in the amount of \$15,249.68. The trial court sentenced appellant to 12 months in prison, plus a \$250 fine and restitution.

{¶ 5} Appellant then filed the instant appeal, raising one assignment of error for our review:

The trial court erred when it imposed the maximum sentence without support in the record for the requisite statutory findings under R.C. 2953.08(G) and R.C. 2929.14(C).

### **II. Law and Analysis**

{¶ 6} In his sole assignment of error, appellant argues that the trial court erred by imposing the maximum prison sentence, which he contends was not

warranted under the circumstances. He acknowledges that the sentence was within the permissible statutory range; however, he argues that the record does not demonstrate that the trial court considered the statutory factors.

{¶ 7} When reviewing felony sentences, appellate courts apply the standard of review found in R.C. 2953.08(G)(2). *State v. Marcum*, 2016-Ohio-1002, ¶ 9. Under R.C. 2953.08(G)(2), 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) that the record does not support certain specified findings or (2) that the sentence imposed is contrary to law.

{¶ 8} R.C. 2953.08(G)(2)(b) “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.” *State v. Jones*, 2020-Ohio-6729, ¶ 39. Additionally,

if the sentence is within the statutory range for the offense and the trial court considered both the purposes and principles of felony sentencing in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12, the court’s imposition of any prison term for a felony conviction is not contrary to law.

*State v. Phillips*, 2021-Ohio-2772, ¶ 7 (8th Dist.).

{¶ 9} While trial courts are required to consider both R.C. 2929.11 and 2929.12 before imposing a prison sentence, they are not required to make specific findings under any of those considerations. *Jones* at ¶ 20, citing *State v. Wilson*, 2011-Ohio-2669, ¶ 31; *State v. Arnett*, 2000-Ohio-302. “Indeed, consideration of

the factors is presumed unless the defendant affirmatively shows otherwise.” *Phillips* at ¶ 8, citing *State v. Wright*, 2018-Ohio-965, ¶ 16 (8th Dist.).

{¶ 10} Appellant was convicted of theft, a fifth-degree felony. As appellant acknowledges, the sentence of 12 months for this offense is within the statutory range of six to twelve months. R.C. 2929.14(A)(5).

{¶ 11} In his brief, appellant argues that the trial court relied heavily on the fact that he had seven prior offenses for “theft and thievery,” arguing that this was the court’s only consideration. He further notes that his employer submitted a letter to the court, which conveyed very positive things about appellant. He contends that the record does not reflect that the court considered this mitigating information.

{¶ 12} At sentencing, the court indicated that it had received appellant’s employer’s letter. Further, the court had ordered a presentence investigation and noted appellant’s prior theft-related convictions.

{¶ 13} In its sentencing entry, the court stated that it had “considered all required factors of the law[.]” and that “prison [was] consistent with the purpose of R.C. 2929.11.” This court has previously noted that a trial court’s statement in its sentencing journal entry that it considered the required statutory factors alone is enough to fulfill its obligations under R.C. 2929.11 and 2929.12. *State v. Keith*, 2016-Ohio-5234, ¶ 11 (8th Dist.), citing *State v. Sutton*, 2015-Ohio-4074 (8th Dist.), and *State v. Clayton*, 2014-Ohio-112 (8th Dist.).

{¶ 14} The trial court was not required to discuss the individual factors contained within the statutes. *See State v. Shabazz*, 2020-Ohio-799, ¶ 17 (8th Dist.),

citing *State v. Roberts*, 2008-Ohio-1942, ¶ 10 (8th Dist.). Consequently, we “cannot infer from a trial court’s failure to discuss the specific statutory factors that it did not consider them.” *State v. Francis*, 2024-Ohio-1472, ¶ 18 (8th Dist.), citing *State v. Roberts*, 2019-Ohio-49, ¶ 13 (2d Dist.), citing *State v. Sparks*, 2018-Ohio-3298, ¶ 8 (2d Dist.).

**{¶ 15}** We find that appellant has not affirmatively demonstrated that the trial court failed to consider the statutory factors. Appellant’s sole assignment of error lacks merit and is overruled.

**{¶ 16}** Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant’s conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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FRANK DANIEL CELEBREZZE, III, JUDGE

EMANUELLA D. GROVES, P.J., and  
SEAN C. GALLAGHER, J., CONCUR