



State v. Long

2024-Ohio-3303 (2024) | Cited 0 times | Ohio Court of Appeals | August 29, 2024

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT COUNTY OF CUYAHOGA

STATE OF OHIO, :

Plaintiff-Appellee, : No. 113406 v. :

LARENZANEY LONG, :

Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED RELEASED AND JOURNALIZED: August 29, 2024

Criminal Appeal from the Cuyahoga County Common Pleas Court Case No. CR-22-670511-A

Appearances:

County Prosecuting Attorney, and Margaret Graham, Assistant Prosecuting Attorney, for appellee.

Cullen Sweeney, Cuyahoga County Public Defender, and Thomas T. Lampman, Assistant Public Defender, for appellant.

ANITA LASTER MAYS, J.: ¶1 Defendant- and asks this court to vacate the sentence and remand this case for a new

sentencing hearing.

¶2 On October 11, 2022, Long pleaded guilty to an amended count of

attempted felonious assault, a third-degree felony, in violation of R.C. 2923.02 and

2903.11(A)(1). At the plea hearing, Long was referred to the court psychiatric clinic



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and a sentencing hearing was scheduled for November 11, 2022. Journal Entry No. 131005588 (Oct. 12, 2022). On November 7, 2022, the sentencing hearing was rescheduled to court-ordered psychiatric appointment. The court ordered Long to reschedule the appointment. On November 22, 2022, the trial court again, rescheduled the sentencing hearing to December 22, 2022, to get her personal affairs in order and test negative for all illegal substances. On December 22, 2022, Long arrived late to court, and the trial court issued a capias. Long objected and the trial court ordered Long to turn herself in on December 27, 2022, at 10:00 am. The trial court indicated that Long would be held in custody until the new sentencing hearing on January 19, 2023.

December 22, 2022, journal entry states:

Defendant present in court. Prosecutor(s) [M. A.] present. Court reporter [J. S.] present. Defendant to turn herself in on 12/27/22 at 10:00. State of Ohio ordered to notify victim of date/time of sentencing. Sentencing set for 01/19/2023 at 08:30 AM. Journal Entry No. 135708603 (Dec. 22, 2022).

{¶3} On December 27, 2022, Long filed a motion to reconsider and notice of her attempt to comply. as instructed and tried to turn herself in to the jail. However, the clerk of courts, the main s December 22, 2022 journal entry was not sufficient enough for her remand and that no warrant or capias existed that would allow the jail to hold Long.

{¶4} of her attempts to comply with its December 22, 2022 order and to reconsider the order. Long moved the court to simply hold the sentencing hearing on January 19 without ordering her remanded. The record does not reflect whether the trial court granted



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entry on January 5, 2023,

stating that the sentencing date is still January 19, 2023. The trial court also ordered Long to be screened for eligibility to be placed in the community-based correctional f Journal Entry No. 136598117 (Jan. 5, 2023).

{¶5} On January 19, 2023, the trial court continued the sentencing hearing to February 2, 2023, because the court was engaged in trial on another case. On February 2, 2023, Long failed to appear in court for the sentencing hearing and a capias was issued. On September 16, 2023, Long was taken into custody and a new felony case was added. Journal Entry No. 159704248 (Sept. 26, 2023). {¶6} On October 6, 2023, Long filed a motion to reinstate bond. motion, she states that she is pregnant with her third child and failed to appear at

the February 2, 2023 sentencing hearing because she was pregnant and learned about another indictment against her. Long stated that she was scared she would be sent to prison while pregnant and unable to make arrangements for the care of her other two children.

{¶7} The trial court set a hearing on the motion for October 18, 2023. At the motion hearing, Long waived her presence, and the trial court denied the motion. The trial court also scheduled the sentencing hearing for October 23, 2023. On October 31, 2023, the sentencing hearing took place. The record does not reflect why the hearing was rescheduled for a later date.

{¶8} At the sentencing hearing, the trial court imposed a prison sentence of 30 months. The journal entry reflects that the trial court considered all required



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factors of the law and found that prison is consistent with the purpose of

R.C. 2929.11. Journal Entry No. 163375075 (Oct. 31, 2023).

{¶9} The trial court allowed the victim to speak at the sentencing hearing.

Tr. 64. The trial court asked,

blurring, banging bad.

it happened. And I have a heart murmur, liver condition and kidneys My life is not the same.

Tr. 65.

{¶10} The trial court asked the victim to speak about her injuries. To which

she replied: I was on blood clot I had a blood clot in

Id. The victim continued

stating that she still is having problems with her eye and is in the process of trying

to obtain therapy for it. Tr. 66. Long apologized to the victim. Tr. 67.

{¶11} The trial court proceeded with sentencing, and the following

exchanged occurred:

THE COURT: Well, Ms. Long, a couple of things I note. Again, originally we took your plea on October 11th of 2022, and sentencing was set for November 10th of 2022. And I believe whether or not you were out on bond or not prior to that point in time.

But obviously you were out after the plea. We referred you to the Court Psychiatric Clinic for an appointment for a report to be prepared. We had to continue the original sentencing at [d And the reason that is stated missed the psychiatric appointment, and so you were re-ordered to

schedule a new appointment, State was to notify victim of the date and of the new sentencing date, which at that point in time would have been November 22nd. So November 22nd we gave you the opportunity to get your personal affairs in order and test negative for all substances.



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You continued it to be rescheduled for December 22nd. On December 22nd we were in court and you were ordered to turn yourself in on December 27th at 10:00 a.m. On December 27th, we came in, [defense counsel] asked for a motion for reconsideration for your not sure just filed a motion for reconsideration. In any event DEFENSE COUNSEL: I can explain that, your Honor. I would be happy to, if you want.

THE COURT: the next entry is dated January 5th. Sentencing remains set for 1/19 and th that says request. We must have been engaged in a trial.

DEFENSE COUNSEL: I believe so, Judge.

THE COURT: JE that indicates that we are still in trial. That was from 1/26, continued sentencing for February 2nd. On February 2nd she failed appear. So defense counsel], I hope you know that I have a very high opinion of you, particularly your advocacy, and I believe it to be a genuine advocacy on behalf of your client. I do genuinely appreciate that. I appreciate the time that your office put in here with respect to reintegration plan. Regrettably, I so wholeheartedly agree with your assessment that we are putting her in a much worse situation, and her children are just screwed. way that the JE reads, that the writing was on the wall that you were

going to spend a little timeout. You were responsible enough sometime that good in math, if you just had a child in October, sometime around January, February, whatever, you chose to be irresponsible and have another child. begin to express how frustrated and aggravated I am that now you have put all of us here, all the rest of us taxpayers in a situation that we are hoping and praying to God that your children survive foster care and are not standing in front next to [defense counsel] in 18 years facing the same situation that you are, because you had a terrible upbringing. Without specific recollection, by reading the JE, it clearly was my thought process and probably again [defense counsel], I mean this truly in a [complimentary] sense, because of your advocacy, my guess is that probably originally I was intending to send her to the that

point in time. However, after considering the purposes and principles genuine remorse. been capias after all this time. community control sanctions. -month prison

sentence on this case. Because you will be receiving a prison sentence, you will be subject to PRC for a mandatory period of one year up to a maximum of three. If you violate any PRC rules or conditions, you could go back up for half the time. For rule violations on this felony, that time can be ru

imposing any further fines, fees or costs.

Tr. 68-72.



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{¶12} Long filed this appeal assigning one error for our review:

the sentence on unlawful considerations.

I. Sentence Contrary to Law

A. Standard of Review

{¶13} We review felony sentences under the standard set forth in

R.C. 2953.08(G)(2). *State v. Marcum*, 2016-Ohio-1002, ¶ 1, 21. Under

R.C. 2953.08(G)(2), an appellate court may increase, reduce, modify, or vacate and

remand a challenged felony sentence if the court clearly and convincingly finds

by relevant sentencing statutes or the sentence is otherwise contrary to law. A

sentence is contrary to law if it falls outside the statutory range for the offense or if

the sentencing court failed to consider the purposes and principles of sentencing

set forth in R.C. 2929.11 and the sentencing factors in R.C. 2929.12. *State v.*

Pawlak, 2016-Ohio-5926, ¶ 58 (8th Dist.). Conversely, 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

felony conviction is not contrary to law. *State v. Woodard*, 2018-Ohio-2402, ¶ 35

(8th Dist.); see also *State v. Clay*, 2020-Ohio-1499, ¶ 26 (8th Dist.), citing *Pawlak*

at ¶ 58.

B. Law and Analysis

{¶14} contrary to law because the trial court expressed that it was offended, frustrated,

and aggravated by Long choosing to have another child. A sentence is contrary to



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law if it falls outside the statutory range for the offense or if the sentencing court

failed to consider the purposes and principles of sentencing set forth in

R.C. 2929.11 and the sentencing factors in R.C. 2929.12. Pawlak at ¶ 58.

{¶15} State v. Bryant, 2022-

Ohio-1878, ¶ 22, quoting State v. Jones, 2020-Ohio-6729, ¶ 34, quoting Law Dictionary 328 (6th Ed.1990). sentence based on factors or considerations that are extraneous to those that are

Id. {¶16} Long pleaded guilty to attempted felonious assault, a third-degree

felony, in violation of R.C. 2923.02 and 2903.11(A)(1). According to R.C.

division (A)(3)(a) of this section applies, the prison term shall be a definite term of

nine, twelve, eighteen, twenty-four, thirty, or thirty-

{¶17} The trial court sentenced Long to 30 months in prison, which is within

the statutory range for the offense. Next, we determine if the trial court failed to

consider the purposes and principles of sentencing set forth in R.C. 2929.11 and

2929.12.

State v. Roby, 2023-Ohio-1889, ¶ 10 (8th Dist.).

However, R.C. 2929.11 and 2929.12 are not fact-finding statutes and although the trial court must consider the factors, it is not required to make specific findings on the record regarding its consideration of those factors, even when imposing a more-than-minimum sentence.

Id., quoting State v. Artis, 2022-Ohio-3819, ¶ 13 (8th Dist.), citing State v. Pate,

2021-Ohio-1089, ¶ 6 (8th Dist.).

{¶18} Id., quoting Artis at ¶ 13, citing State

v. Wright, 2018-Ohio-965, ¶ 16 (8th Dist.). in its sentencing journal entry that it considered the required statutory factors is



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Id., quoting Artis at ¶ 13, citing State v. Sutton, 2015-Ohio-4074, ¶ 72 (8th Dist.); State v. Clayton, 2014-Ohio-112, ¶ 9 (8th Dist.).

{¶19} As stated above, before the trial court sentenced Long, it stated, in part:

the JE reads, that the writing was on the wall that you were going to spend a little timeout. You were responsible enough sometime during that good in math, if you just had a child in October, sometime around January, February, begin to express how frustrated and aggravated I am that now you have

put all of us here, all the rest of us taxpayers in a situation that we are hoping and praying to God that your children survive foster care and are not standing in front next to [defense counsel] in 18 years facing the same situation that you are, because you had a terrible upbringing. Without specific recollection, by reading the JE, it clearly was my thought process and probably again [defense counsel], I mean this truly in a [complimentary] sense, because of your advocacy, my guess is that probably originally I was intending to send her to the

point in time.

Tr. 70-71.

{¶20} Although the trial court referenced her pregnancy, those statements

Additionally,

i.e.,

considerations that fall outside those that are contained in R.C.

2929.11 and 2929.12. See Bryant, 2022-Ohio-1878, ¶ 22. The trial court stated at

the sentencing hearing that it considered the purposes and principles set forth in felony sentencing guidelines. Tr. 71. Additionally, the journal entry states the

court considered all required factors of law and finds that prison is consistent with

the purpose of R.C. 2929.11.

{¶21} The record does not demonstrate that the trial court used the fact that



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Long was pregnant as consideration for sentencing. Nor does the record reflect
The trial court stated that it originally was
considering CBCF. However, because Long failed to appear and a capias was
issued, the trial court found that Long was not amenable to community control
sanctions. Tr. 71-72. remorse, but because Long was capias for more than six months
Tr. 71. As such, the trial court did not err in
sentencing Long to 30 months imprisonment because the sentence is not contrary
to law because it is well within the statutory range for the offense and the record
demonstrates that the trial court considered the purposes and principles of
sentencing set forth in R.C. 2929.11 and 2929.12.

{¶22}

{¶23} 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. 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.

ANITA LASTER MAYS, JUDGE

KATHLEEN ANN KEOUGH, A.J., and EILEEN T. GALLAGHER, J., CONCUR

