



## State v. Anderson

2024-Ohio-1688 (2024) | Cited 0 times | Ohio Court of Appeals | May 2, 2024

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT COUNTY OF CUYAHOGA

STATE OF OHIO, :

Plaintiff-Appellee, : No. 113159 v. :

DALE ANDERSON, JR., :

Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED RELEASED AND JOURNALIZED: May 2, 2024

Criminal Appeal from the Cuyahoga County Court of Common Pleas Case No. CR-23-682160-A

Appearances:

Attorney, and Daniel Schrembeck, Assistant Prosecuting Attorney, for appellee.

Wegman Hessler Valore, and Dean Valore, for appellant.

MARY EILEEN KILBANE, P.J.:

Defendant-appellant his sentence following a guilty plea for attempted menacing by stalking. For the reasons that follow, we affirm. Factual and Procedural History

On June 20, 2023, a Cuyahoga County Grand Jury indicted Anderson

on two counts of menacing by stalking in violation of R.C. 2903.211(A)(1), with

furthermore specifications, both felonies of the fourth degree. Anderson initially



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pleaded not guilty to the indictment.

On August 1, 2023, the court held a change-of-plea hearing. At this hearing, the assistant prosecuting attorney placed the plea offer on the record as follows: in exchange for pleading guilty to one amended count of attempted menacing by stalking, a felony of the fifth degree, the remaining count of menacing by stalking would be dismissed. The agreement also required that Anderson have no contact with the victim.

Defense counsel confirmed that that was his understanding of the plea agreement, and the court proceeded to engage Anderson in a Crim.R. 11 plea colloquy. The court ultimately accepted guilty plea to the offense outlined above. The court ordered a presentence-

On August 22, 2023, the case proceeded to sentencing. The assistant prosecuting attorney addressed the court, reading a written statement from the victim into the record. The statement summarized the a 2014 incident in which Anderson stalked the victim at her home and her place of employment. The victim stated that her mental health has declined drastically over the past decade, and she cannot go into public without worrying that Anderson will find her.

Defense counsel addressed the court and stated that Anderson was sexually abused by a family member when he was a child and was finally seeking counseling to process that trauma. Defense counsel also stated that Anderson was



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Defense counsel also stated that although this case involved the same victim as the 2014 incident, there was no intervening contact between then and now, and Anderson did not realize that it was the same person. Ultimately, defense counsel requested that the court sentence Anderson to probation.

Anderson also addressed the court and apologized to the court and the victim; he stated that he did not mean to alarm the victim when he entered her workplace.

The court ultimately sentenced Anderson to 12 months in prison.

Anderson filed a timely notice of appeal and presents one assignment of error for our review:

The trial court the fifth degree was contrary to law.

### Law and Analysis

In his sole assignment of error, imposition of the maximum prison sentence for a fifth-degree felony was contrary

to law because the record does not support the findings necessary to impose a maximum sentence. Our review of felony sentences is governed by R.C. 2953.08(G)(2).

State v. Copley, 8th Dist. Cuyahoga No. 111960, 2023-Ohio-2687, ¶ 26, citing State v. Watkins, 8th Dist. Cuyahoga No. 110355, 2022-Ohio-1231, ¶ 21, citing State v.

Marcum, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 16. R.C.

2953.08(G)(2) provides, in part, that when reviewing felony sentences, appellate courts do not consider whether the sentencing court abused its discretion, but



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[under R.C. 2929.13(B) or (D)], [R.C.

2929.14(B)(2)(e) State v.

Nazir, 8th Dist. Cuyahoga No. 112726, 2024-Ohio-577, ¶ 19, citing Marcum.

Further, the Ohio Supreme Court has clarified that R.C. 2953.08(G)(2) 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.*, quoting *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649, ¶ 39. Additionally, a maximum sentence for a felony conviction is not contrary to law if it is within the statutory range of the offense and the court considers the purposes and principles of felony sentencing as set forth in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. *Copley* at ¶ 27, citing *State v. Seith*, 8th Dist. Cuyahoga No. 104510, 2016-Ohio-8302, ¶ 12.

When sentencing a defendant, a court must consider the purposes

and principles of felony sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. *State v. Pate*, 8th Dist. Cuyahoga No. 109758,

2021-Ohio-1089, ¶ 3, citing *State v. Hodges*, 8th Dist. Cuyahoga No. 99511, 2013-

Ohio-5025, ¶ 7. Under R.C. 2929.11(A), a

by the offender and others; (2) punish the offender; and (3) promote the effective rehabilitation of the offender using the minimum sanctions the court determines will accomplish those purposes without imposing an unnecessary burden on state

or local government resources. While a sentencing court principles and purposes of sentencing as well as the mitigating factors, the court is



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not required to use particular language or make specific findings on the record

Nazir at ¶ 22, quoting State v. Carter,

8th Dist. Cuyahoga No. 103279, 2016-Ohio-2725, ¶ 15.

Our review of the record makes clear that the trial court here imposed

a sentence on Anderson after properly considering the purposes and principles of

felony sentencing in R.C. 2929.11 and the sentencing factors in R.C. 2929.12.

Indeed, record, his tragic upbringing, and the harm suffered by the victim, among other factors.

Anderson argues that his sentence was contrary to law because he

does not represent the worst version of the offender, and his conduct was not the

worst version of the offense. Therefore, according to Anderson, a maximum prison sentence fails to achieve the overriding purposes of felony sentencing and

constitutes a waste of resources.

are all based on his disagreement with the

ing. Our case

independently weigh the evidence in the record and substitute its judgment for that

of the trial court concerning the sentence that best reflects compliance with R.C.

2929.11 and 2929.12 Nazir, 8th Dist. Cuyahoga No. 112726, 2024-Ohio-577, at

¶ 30, quoting Jones, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649, at ¶ 42.

, and it

overruled.



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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 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.

MARY EILEEN KILBANE, PRESIDING JUDGE

LISA B. FORBES, J., and ANITA LASTER MAYS, J., CONCUR

