

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

| | | |
|----------------------|---|------------------------|
| STATE OF OHIO, | : | APPEAL NO. C-150177 |
| Plaintiff-Appellee, | : | TRIAL NO. B-1402602 |
| vs. | : | |
| JOSHUA LEE INGLE, | : | <i>JUDGMENT ENTRY.</i> |
| Defendant-Appellant. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This is a criminal appeal of a sentence imposed following a community-control violation. We affirm the judgment of the trial court.

Joshua Lee Ingle pled guilty to trafficking in heroin, possession of cocaine, and carrying a concealed weapon. The court sentenced him to a three-year term of community control. During sentencing, the court informed Ingle that if he violated his community control he would receive 36 months in prison for the trafficking, 12 months for the possession, and 18 months for the carrying a concealed weapon.

Several months later, Ingle pled guilty to violating the conditions of community control for missing eight urine screens, testing positive for marijuana, missing two office visits, and failing to provide an accurate telephone number. The court sentenced Ingle to the prison terms it had announced, to be served concurrently.

In his sole assignment of error, Ingle argues that the record does not clearly and convincingly support the sentencing court's findings, because the trial court failed to adequately consider whether substantial grounds existed to mitigate the defendant's

conduct. This court may only modify or vacate a defendant's sentence if we "clearly and convincingly find" that either (1) the record does not support the mandatory sentencing findings, or (2) that the sentence is "otherwise contrary to law." R.C. 2953.08(G)(2); see *State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 11 (1st Dist.).

Although Ingle styles his assignment of error in terms of sentencing findings, neither of the statutes he cites, R.C. 2929.11 and 2929.12, require sentencing findings. Rather, the statutes mandate various factors to guide a court's discretion in imposing sentence.

Ingle complains that the court failed to consider evidence in mitigation. Specifically, he complains that the court did not follow the probation officer's recommendation that he be restored to community control and did not inquire into Ingle's drug problem. He also notes that the court began to impose sentence before hearing his statement in mitigation. The record demonstrates, however, that after beginning to impose sentence without hearing mitigation, the court corrected its mistake and heard from both counsel and the defendant before imposing sentence. The fact that the trial court disagreed with the probation officer's recommendation does not make the sentence contrary to law.

Absent an affirmative showing to the contrary, we presume the court properly considered the relevant factors set forth in R.C. 2929.11 and 2929.12. *State v. Brown*, 1st Dist. Hamilton No. C-120327, 2013-Ohio-2720, ¶ 46. Because Ingle has not made any such demonstration, we cannot clearly and convincingly find that the sentences are contrary to law. Ingle's assignment of error is overruled. The judgment of the trial court is affirmed.

OHIO FIRST DISTRICT COURT OF APPEALS

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DEWINE and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on October 16, 2015

per order of the court _____.

Presiding Judge