

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

STATE OF OHIO,	:	APPEAL NO. C-210193
	:	TRIAL NO. B-1906249
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
NATHAN MCCLENDON,	:	
	:	
Defendant-Appellant.	:	

This court sua sponte removes this case from the regular calendar and places it on the court's accelerated calendar, 1st Dist. Loc.R. 11.1.1(A), and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

After the trial court accepted Nathan McClendon's guilty plea to trafficking in heroin, a felony of the fifth degree, it deferred sentencing at McClendon's request, warning that it would impose a 12-month prison term if McClendon failed to appear for sentencing. When McClendon did not appear for sentencing, the court issued a *capias*. Following McClendon's arrest over a year later, the new sentencing judge imposed a 12-month prison term.

McClendon now appeals, arguing in a single assignment of error that the trial court erred by imposing the maximum prison term. Specifically, he argues that the trial court failed to consider certain mitigating information, including that he had not gotten

into trouble after his guilty plea, that his failure to appear for his scheduled sentencing date was due to fears of COVID-19, and that he was employed and supporting his children.

Pursuant to R.C. 2953.08(G)(2)(a), we may modify or vacate a defendant's sentence only if we clearly and convincingly find that the sentence is contrary to law or that the record does not support the trial court's findings under R.C. 2929.13(B) or other relevant statutes. *See State v. Conley*, 1st Dist. Hamilton No. C-200144, 2021-Ohio-837, ¶ 20. We are not permitted to independently weigh the evidence in the record and substitute our judgment for that of the trial court concerning the sentence that best reflects compliance with R.C. 2929.11 and 2929.12. *See State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649, ¶ 42.

McClendon concedes that the trial court had discretion to impose a prison term for a nonviolent fifth-degree felony because he previously served a prison term. *See* R.C. 2929.13(B)(1)(b)(ix). And the court was not required to make findings before imposing a prison term under that section. *See Conley* at ¶ 22. McClendon also concedes that the sentence fell within the authorized range for the offense and that it was, therefore, not contrary to law. And the court was not required to make any mandatory findings prior to imposing a maximum sentence. *See State v. Payne*, 1st Dist. Hamilton No. C-180001, 2019-Ohio-848, ¶ 13.

Here, the record demonstrates that the trial court was fully aware of the mitigation information through McClendon's and defense counsel's statements at the sentencing hearing. In addition, the court stated that it considered the information in the presentence-investigation report, McClendon's lengthy criminal record (which included three prior terms of incarceration), and the need for "deterrents [sic], incapacitation and rehabilitation," (the purposes of felony sentencing set forth in R.C.

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2929.11), as well as the seriousness and recidivism factors (set forth in R.C. 2929.12). Following our review of the record, we hold that the trial court did not err in the imposition of sentence. We overrule the assignment of error and affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., MYERS and BOCK, JJ.

To the clerk:

Enter upon the journal of the court on October 13, 2021,
per order of the court _____.
Administrative Judge