

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

STATE OF OHIO,	:	APPEAL NO. C-240086
	:	TRIAL NO. B-2302647
Plaintiff-Appellee,	:	
	:	<i>OPINION.</i>
vs.	:	
	:	
CHARLIE HART,	:	
	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 18, 2024

Melissa A. Powers, Hamilton County Prosecuting Attorney, and *Keith Sauter*,
Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Roger W. Kirk, for Defendant-Appellant.

BOCK, Presiding Judge.

{¶1} Defendant-appellant Charlie Hart pleaded guilty to aggravated assault and received a maximum 18-month sentence. On appeal, he argues that the trial court failed to consider the principles and purposes of sentencing in Ohio and that the record does not support the sentence. We disagree and hold that Hart’s sentence is not contrary to law because it is within the statutory range and the trial court’s findings indicate that it considered the purposes of felony sentencing and multiple statutory sentencing factors. We overrule Hart’s assignment of error and affirm his sentence.

I. Facts and Procedure

{¶2} Hart pleaded guilty to one count of aggravated assault in violation of R.C. 2903.12(A), a fourth-degree felony.

{¶3} At the sentencing hearing, Hart asked the trial court to impose a sentence of community control. In mitigation, Hart maintained that the circumstances surrounding the offense warranted no prison time. He explained that, while he threw a bat that hit the victim in the head, he felt threatened at the time and provoked by the victim. Plus, he had already spent five months in jail, and this was his first felony offense. He also argued that he had a job and stable housing.

{¶4} The trial court stopped Hart and explained that the female victim “was beat over the head with a baseball bat” and Hart “could have killed her.” It noted “[t]his wasn’t his first time in violence [sic].” It explained:

He has violence [sic] as a juvenile, domestic violence. And then there was another felony. It was originally attempt. Some kind of violence offense, attempted assault or something. I don’t know. Attempt something. I don’t know. It was reduced to a misdemeanor. It was

reduced to an attempt. And then he also had another domestic violence as a juvenile.

{¶5} The trial court continued and recounted how Hart was “convicted up in Fairfield also for a domestic violence” against his sister. And Hart had legal trouble in Houston when he “ran into the police down there.”

{¶6} Hart’s grandmother described to the trial court the circumstances surrounding the offense. The victim and some friends went to Hart’s grandmother’s home to confront Hart about damage to her phone. Hart’s family called the police and Hart fled. Later, his grandmother received a phone call from Hart, who was running through the woods and asked for “[s]omebody to come and get me” because “[t]hey’re trying to jump []me.” Hart apologized for the offense.

{¶7} The trial court explained that this was his “third time in court for violent behavior,” and referenced the “two juvenile cases, [the] Fairfield case, [and the] problem with the police in Houston.” It explained that Hart “[h]it this woman over the head,” and “men shouldn’t be hitting women, number one. Especially not with a baseball bat.” The trial court agreed that the offense was done in the “heat of passion.”

{¶8} The trial court sentenced Hart to 18 months in prison with credit for time served. At the hearing, the trial court warned Hart,

It’s got to stop. You’ve got a violent streak. You’ve got to get your temper under control or you’re going to end up killing somebody. You could have killed her. When you hit someone in the head you can cause a brain bleed. They can die. People die from head injuries like that. That’s not good.

II. Law and Analysis

{¶9} Hart argues that the trial court’s sentence is inconsistent with the purposes and principles of sentencing under R.C. 2929.11, and that the record does not support the sentence because it does not comport with the seriousness and recidivism factors under R.C. 2929.12.

{¶10} Hart concedes that the 18-month sentence falls within the range prescribed by R.C. 2929.14(4), which provides that, for a fourth-degree felony, “the prison term shall be a definite term of six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.” But he argues that “the record does not support the court’s sentence.” He claims that the record supports “community control or a split sentence with anger management counseling” to align with the principles and purposes of sentencing.

{¶11} But our authority to review sentencing factors contained in R.C. 2929.11 and 2929.12 is limited. *State v. Smith*, 2024-Ohio-2187, ¶ 14 (1st Dist.). An appellate court may not modify or vacate a sentence based merely on its view that the record does not support the trial court’s sentence under R.C. 2929.11 and 2929.12. *Id.*, citing *State v. Jones*, 2020-Ohio-6729, ¶ 39. In other words, we are “not permitted to independently weigh the factors in R.C. 2929.11 and 2929.12 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.’” *State v. Mimes*, 2021-Ohio-2494, ¶ 17 (1st Dist.), quoting *Jones* at ¶ 42. Hart’s record-based arguments are not well taken.

{¶12} Nevertheless, we may reverse or modify a sentencing decision that is “““otherwise contrary to law.””” *State v. Brunson*, 2022-Ohio-4299, ¶ 69, quoting *State v. Bryant*, 2022-Ohio-1878, ¶ 22, quoting *Jones* at ¶ 32, quoting R.C.

2953.08(G)(2)(b). A sentence is not clearly and convincingly contrary to law where the trial court considers the R.C. 2929.11 and 2929.12 factors, properly imposes postrelease control, and imposes a sentence within the statutory range. *State v. Collier-Green*, 2023-Ohio-2143, ¶ 12 (1st Dist.), quoting *State v. Ahlers*, 2016-Ohio-2890, ¶ 8 (12th Dist.). It is well-settled that this court should presume that the trial court considered R.C. 2929.11 and 2929.12, absent a clear showing to the contrary. *State v. Illing*, 2022-Ohio-4266, ¶ 26 (1st Dist.). A trial court is not required to “use specific language or make specific findings on the record [] to evince the requisite consideration of the applicable seriousness and recidivism factors.” *State v. Alexander*, 2012-Ohio-3349, ¶ 24 (1st Dist.), quoting *State v. Arnett*, 88 Ohio St.3d 208, 215 (2000).

{¶13} Under R.C. 2929.11(A), a trial court must be guided by “the overriding purposes of felony sentencing.” Those purposes include protecting the public from future crime, punishing the offender, and rehabilitating the offender. R.C. 2929.11(A). To that end, “the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.” *Id.*

{¶14} And R.C. 2929.12(A) explains that a trial court exercises discretion when determining “the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code.” But in doing so, “the court shall consider the factors . . . relating to the seriousness of the conduct, the factors . . . relating to the likelihood of the offender’s recidivism, . . . and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.” R.C. 2929.12(A).

{¶15} While the trial court did not cite R.C. 2929.11 or 2929.12 at the sentencing hearing or in its sentencing entry, the record does not indicate that the trial court failed to consider the principles and purposes of sentencing or the “seriousness” and recidivism factors.

{¶16} The trial court’s findings and remarks during the sentencing hearing were consistent with the purposes of felony sentencing, such as protecting the public from future crime, punishing Hart, and rehabilitating Hart. *See* R.C. 2929.11(A). Specifically, the trial court’s discussion of Hart’s “violent streak,” and the possibility that he could “end up killing somebody” suggests that it considered incapacitation and deterrence when fashioning Hart’s sentence. *See id.* The trial court’s discussion of Hart’s juvenile record and its remark that “it has to stop” are consistent with the statutory mandate that a trial court consider recidivism factors such as previous delinquency adjudications and responses to sanctions. *See* R.C. 2929.12(D)(2)-(3). The trial court referenced the fact that Hart acted in “the heat of passion,” which suggests that it considered provocation and inducement of the crime as mitigating factors. *See* R.C. 2929.12(C)(1)-(2).

{¶17} In sum, Hart’s sentence is not contrary to law. His sentence is within the statutory range, and the trial court’s findings are consistent with the purposes of felony sentencing under R.C. 2929.11 and the statutory factors listed in R.C. 2929.12. We overrule Hart’s assignment of error.

III. Conclusion

{¶18} We overrule Hart’s assignment of error and affirm his sentence.

Judgment affirmed.

ZAYAS and KINSLEY, JJ., concur.

Please note:

The court has recorded its entry on the date of the release of this opinion.