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

STATE OF OHIO,	:	APPEAL NO. C-240360 TRIAL NO. B-2303440
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY*
DAMIEN BROCK,	:	
Defendant-Appellant.	:	

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

Last year, defendant-appellant Damien Brock entered a guilty plea to cocaine possession, a fifth-degree felony. The court then placed Mr. Brock on community control for two years, further informing him that any violation of its conditions, general or special, would result in a 12-month prison sentence.

Approximately four months after his initial plea, the probation department filed a community-control sanction violation against Mr. Brock, claiming that he violated four conditions of his community control. Following a hearing, the trial court found him guilty, revoked his community control, and sentenced him to 12 months in prison, crediting him with 51 days of time served.

In his sole assignment of error, Mr. Brock maintains that the trial court erred to his prejudice by entering a sentence contrary to law. Because he failed to overcome

the presumption that the trial court considered the sentencing factors in R.C. 2929.11 and 2929.12, however, we disagree.

Pursuant to R.C. 2953.08(G)(2), an Ohio appellate court may modify or vacate a felony sentence only if it finds by clear and convincing evidence that the record ""does not support the sentencing court's findings under relevant statutes" or "the sentence is otherwise contrary to law."" *State v. Mullins*, 2024-Ohio-421, ¶ 4 (1st Dist.), quoting *State v. Shaw*, 2023-Ohio-3230, ¶ 5 (1st Dist.), quoting *State v. Marcum*, 2016-Ohio-1002, ¶ 9. However, the Ohio Supreme Court held that "R.C. 2953.08(G)(2)(a) clearly does not provide a basis for an appellate court to modify or vacate a sentence if it concludes that the record does not support the sentence under R.C. 2929.11 and 2929.12 because . . . [those statutes] are not among the statutes listed in the provision." *State v. Jones*, 2020-Ohio-6729, ¶ 31.

Accordingly, our review of the sentencing factors is limited. *State v. Hart*, 2024-Ohio-4552, ¶ 11 (1st Dist.), citing *State v. Smith*, 2024-Ohio-2187, ¶ 14 (1st Dist.). We may not modify or vacate a sentence based merely on our assessment of the record or otherwise "'independently weigh the factors in R.C. 2929.11 and 2929.12 and substitute our judgment for that of the trial court.'" *Id.*, quoting *State v. Mimes*, 2021-Ohio-2494, ¶ 17 (1st Dist.). And significantly, "'because R.C. 2929.11 and 2929.12 are not fact-finding statutes, we presume that the trial court considered factors absent affirmative demonstration to the contrary.'" *Mullins* at ¶ 5, quoting *State v. Illing*, 2022-Ohio-4266, ¶ 26 (1st Dist.).

As an initial matter, Mr. Brock does not dispute that his 12-month sentence falls within the statutory range for a fifth-degree felony, so we instead direct our attention toward the court's consideration of the sentencing factors.

Under R.C. 2929.11(A), a trial court is directed to consider the overriding purposes of felony sentencing, which includes protecting the public from future crime, punishing the offender, and rehabilitating the offender. R.C. 2929.12(A), relatedly, requires courts to 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."

With that statutory backdrop, Ohio law provides that the 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.""" *Hart*, 2024-Ohio-4552, at ¶ 12, quoting *State v. Alexander*, 2012-Ohio-3349, ¶ 24 (1st Dist.), quoting *State v. Arnett*, 2000-Ohio-302, 215. To the contrary, courts must presume that a trial judge appropriately considered the relevant statutory factors absent proof to the contrary.

Mr. Brock believes he has found such proof, emphasizing the brief nature of the judge's consideration and analogizing his case to *State v. Jimenez*, 2017-Ohio-1553 (8th Dist.) (explaining that the summary nature of the defendant's hearing for notice of violation of his community control showed that the court failed to consider the sentencing factors). However, based on our review of the record, we cannot hold that Mr. Brock has overcome the presumption that the trial court considered the appropriate statutory criteria.

Standing alone, the brevity of the trial court's consideration is insufficient to overcome the presumption that it considered the sentencing factors in R.C. 2929.11 and 2929.12. Mr. Brock failed to provide examples or any substantiation from the

record showing the court's disregard of the sentencing factors or any application of impermissible factors.

Because Mr. Brock failed to affirmatively demonstrate that the trial court did not consider the sentencing factors in R.C. 2929.11 and 2929.12, we overrule his sole assignment of error and affirm the judgment of the trial court.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

ZAYAS, P.J., BERGERON and **KINSLEY, JJ.**

To the clerk:
Enter upon the journal of the court on 11/22/2024 per order of the court.

By:_____
Administrative Judge