

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

State of Ohio

Court of Appeals Nos. OT-10-022
OT-10-030

Appellee

Trial Court Nos. 10-CR-007
08-CR-099

v.

Shanan Conklin

DECISION AND JUDGMENT

Appellant

Decided: August 26, 2011

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
Andrew M. Bigler, Assistant Prosecuting Attorney, for appellee.

Christy L. Cole, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is a consolidated appeal from the Ottawa County Court of Common Pleas, which found appellant, Shanan Conklin, guilty of non-support of dependents, in violation of R.C. 2919.21(A)(2), a misdemeanor of the first degree. Appellant was simultaneously found guilty of failure to appear, in violation of R.C. 2937.29 and

2937.99, a felony of the fourth degree. Appellant was ordered to serve a maximum consecutive sentence of six months in the Ottawa County Detention Facility and eighteen months in the Ohio Bureau of Rehabilitation and Corrections. On June 8, 2010, a notice of appeal was filed. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} From that judgment, appellant sets forth the following assignment of error:

{¶ 3} "1. THE TRIAL COURT'S IMPOSITION OF MAXIMUM CONSECUTIVE SENTENCES ON SHANAN CONKLIN CONSTITUTES AN ABUSE OF DISCRETION AND IS CONTRARY TO LAW."

{¶ 4} The following undisputed facts are relevant to this appeal. Appellant, Shanana Conklin, has three minor children. Kay Hofacker, the paternal grandmother, has custody of two of the children. Hofacker has had custody of the children for a period of over ten years. Hofacker works full time and attends to all of the children's needs. Appellant concedes that her children are well taken care of by Hofacker.

{¶ 5} Appellant owes child support arrearages in the amount of \$31,381.21. Appellant has no limitations on her ability to work full time, but consistently fails to maintain employment. Appellant resides in Watertown, New York. She has an extensive criminal history.

{¶ 6} On July 9, 2008, appellant was indicted on four counts of criminal non-support, felonies of the fifth degree. Appellant failed to appear at her June 2, 2009 plea hearing. In addition, appellant likewise failed to appear at the January 14, 2010 pre-trial hearing in the Ottawa County Court of Common Pleas. Appellant did not request

continuances for these hearings and did not alert the court that she would not be present for these hearings. Appellant subsequently alleged to have incurred motor vehicle difficulties prior to the hearings, but her claims were not supported by any evidence.

{¶ 7} Subsequently, on March 29, 2010, appellant finally appeared at a change of plea hearing. Pursuant to a negotiated plea agreement, appellant admitted to one count of non-support of dependents and the failure to appear charges. Specifically, appellant conceded that she routinely failed to tender the court ordered child support payments. In exchange for the two guilty pleas, the trial court dismissed the remaining three felony counts of non-support of dependents.

{¶ 8} Following the resolution of her cases, appellant's pattern of non-compliance with court orders quickly resumed. On April 19, 2010, the Ottawa County Probation Department filed a complaint against appellant and requested a bench warrant due to appellant's failure to comply with the bond conditions. Specifically, appellant failed to call the probation department daily as directed. In addition, she failed to provide a urine sample as required. A bench warrant was issued the following day.

{¶ 9} On May 24, 2010, in the context of this lengthy history of violations and non-compliance, the trial court ordered appellant to serve maximum consecutive sentences of six months in the Ottawa County Detention Facility and eighteen months in the Ohio Bureau of Rehabilitation and Corrections. The sentencing transcript clearly reflects that the trial court carefully considered the record, oral statements, victim impact,

presentence report, and the overall principles and purposes of sentencing, pursuant to R.C. 2929.11 in the course of sentencing appellant.

{¶ 10} In the sole assignment of error, appellant contends the trial court erred in its maximum consecutive sentencing imposition. We do not concur. It is well established that we cannot overturn a trial court order such as the one at issue unless we find an abuse of discretion.

{¶ 11} As the Supreme Court declared in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶ 11, appellate courts reviewing felony sentences must apply a two-step approach. First, they must examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court's decision in imposing the term of imprisonment shall be reviewed under an abuse-of-discretion standard. *Kalish*, supra.

{¶ 12} "The term abuse of discretion connotes more than an error of law or judgment. It implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140. In conjunction with this, the standard of review on appeal is that of deference to the decision of the trier of fact. *Seasons Coal Co. v. City of Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶ 13} As established by *Foster*, the trial court is vested with full discretion to impose any sentence within the statutory range without any corollary requirement to issue

specific reasons or findings prior to imposition of such a sentence. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, ¶ 100.

{¶ 14} However, the trial court must still consider R.C. 2929.11 and 2929.12. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, ¶ 38. These two statutes serve as the guiding parameters for trial judges to consider in fashioning an appropriate sentence. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶ 17.

{¶ 15} As the record overwhelmingly evinces, the trial court did not abuse its discretion in sentencing appellant to a maximum consecutive term. Both the transcript and sentencing entry demonstrate that the trial court carefully considered the record, the oral statements, victim impact, the presentence investigation report, and the principals and purposes of sentencing as required under R.C. 2929.11. The trial court found that the aggravating factors of the seriousness of the offenses, the significant victim impact, and the pattern of recidivism outweighed the minimal arguments in mitigation.

{¶ 16} The trial court found appellant not amenable to community control. Specifically, the extensive and persistent criminal history for similar charges, the serious economic harm caused due to the large arrearage amount of \$31,381.21 owed to appellant's dependents, and appellant's ongoing history of indifference to adhering to court orders.

{¶ 17} Given these facts and circumstances, we cannot find the trial court was unreasonable when it ordered appellant to a maximum consecutive sentence. Pursuant to R.C. 2929.14(A)(4), the maximum prison sentence permissible for a fourth degree felony

is eighteen months. Within the parameters of R.C. 2929.24(A)(1), the maximum jail sentence permissible for a first degree misdemeanor is six months. The sentence was not contrary to law. It did not constitute an abuse of discretion. Thus, the sole assignment of error is not well-taken.

{¶ 18} Wherefore, we find that substantial justice has been done in this matter. The judgment of the Ottawa County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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