

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

STATE OF OHIO,	:	APPEAL NO. C-170249
	:	TRIAL NO. B-1606304
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ANDRE OGLESBY,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, 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.

Following his guilty plea, Andre Oglesby was convicted of burglary, a felony of the second degree, and sentenced to six years in prison. On appeal, he argues in a single assignment of error that the trial court erred in sentencing him.

Pursuant to R.C. 2953.08(G)(2)(a), we may modify or vacate Oglesby’s sentence only if we clearly and convincingly find that the record does not support the trial court’s required findings or that the sentence is contrary to law. *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 22-23; *State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 5 (1st Dist.). Oglesby’s sentence did not require the findings that R.C. 2953.08(G) specifically addresses, so we must determine whether the sentence was contrary to law.

At sentencing, the trial court indicated that it reviewed a presentence-investigation report, victim-impact statements, and a statement by the arresting officer. The court considered that both victims suffered serious psychological and economic harm as a result of the burglary offense. *See* R.C. 2929.12(B)(2). In addition, the court considered the likelihood that Oglesby would reoffend, given his history of criminal convictions, *see* R.C. 2929.12(D)(2), and his failure to respond favorably to prior sanctions, *see* R.C. 2929.12(D)(3). Oglesby had prior convictions for felony breaking and entering, theft, drug possession, disorderly conduct, and criminal trespass. He had previously served a prison term and had had a community-control sanction revoked.

Oglesby contends that the trial court failed to properly consider the purposes and principles of sentencing in R.C. 2929.11 and the factors in R.C. 2929.12, and instead, considered “factors not listed by statute,” such as the potential for harm to the victims and inconvenience to a witness.

Although the court did not specifically state on the record that it considered the purposes or principles of sentencing in R.C. 2929.11 or the seriousness and recidivism factors in R.C. 2929.12, it was not required to do so. *See State v. Kennedy*, 2013-Ohio-4221, 998 N.E.2d 1189, ¶ 118 (1st Dist.). We may presume that the court considered the appropriate factors unless the record affirmatively demonstrates otherwise. *See State v. Bedell*, 1st Dist. Hamilton No. C-160911, 2018-Ohio-721, ¶ 29.

Nor was the court limited to a consideration of the enumerated sentencing factors; R.C. 2929.12 provides that a court may consider any other relevant factors. Therefore, the court’s remark that it considered the fact that someone could have been murdered if the victims had awoken during the burglary was within the court’s discretion. The court simply recognized the danger inherent in a burglary offense. Also, the court’s remarks about a witness being inconvenienced by Oglesby’s delay in

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entering his guilty plea, when considered in the context of the entire sentencing hearing, could simply have reflected the trial court's view about the authenticity of his remorse. *See* R.C. 2929.12(D)(5); *see, e.g., State v. Rahab*, 150 Ohio St.3d 152, 2017-Ohio-1401, 80 N.E.3d 431, ¶ 28.

Oglesby was charged with a second-degree felony, R.C. 2911.12(A)(2), for which there is a presumption for a prison term of two, three, four, five, six, seven, or eight years. *See* R.C. 2929.13(D)(1) and 2929.14(A)(2). His six-year sentence fell within the permissible range and was not contrary to law.

Therefore, we overrule the single assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute 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., MYERS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on June 27, 2018

per order of the court _____.
Presiding Judge