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

STATE OF OHIO,	:	APPEAL NO. C-180169 TRIAL NO. B-1601202
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
RANDALL DEITZ,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar. 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.

Defendant-appellant Randall Deitz appeals from the judgment of the Hamilton County Court of Common Pleas convicting him, after his pleas of no contest, of three counts of unlawful sexual conduct with a minor, in violation of R.C. 2907.04(A). In February 2018, the trial court sentenced Deitz to a two-year, concurrent prison term on each count and classified him as a Tier II sex offender or child-victim offender.

The allegations involved a female victim, R.H., with whom Deitz had repeatedly engaged in sexual intercourse in 2016, when R.H. was less than 16 years of age and Deitz, at 29 years of age, was ten or more years her elder. Deitz was R.H.'s supervisor at his family's food concession business, and the sexual intercourse took place at work. R.H. became pregnant and later gave birth to Deitz's child.

At sentencing, the trial court considered a variety of evidence, including 24 letters written by friends and family of Deitz that were undisputedly in support of Deitz, although

they are not a part of the appellate record. The court listened to the testimony of clinical psychologist Dr. Ed Conner, who indicated that during his initial evaluation of Deitz regarding the criminal conduct with R.H., Deitz had presented with a moderate to low risk to reoffend and was not remorseful. Dr. Connor identified Deitz's primary problem as his lack of any appreciation for how he had taken advantage of the power differential in the relationship, due to the difference in age and the fact that Deitz was R.H.'s supervisor in his family's business, and had used emotional coercion to complete the crimes. Deitz, too, had previously fathered a child with a 16-year-old female who was much younger than he. Dr. Connor testified that Deitz was participating in a therapy program with him and recommended the court place Deitz on community control to complete that program. Dr. Connor admitted, however, that prisons also have effective sex-offender programs.

The court also considered Deitz's statement. Deitz apologized to R.H. and her family, requested that R.H. allow him to be a part of their child's life, and requested that the court impose community control so that he could complete Dr. Connor's sex-offender program and continue to manage his family's concession business to support his children.

Finally, the court considered the presentence-investigation report, which indicated that Deitz had two DUI convictions in Kentucky and that minimum or nonreporting supervision would not be appropriate, the victim-impact statements, and the oral statements provided by R.H. and her parents at the sentencing hearing. R.H. indicated that she had feared repercussions, including violence, if she had said no to Deitz's advances at work, and that she has suffered serious emotional distress due to his conduct. Her parents indicated that her family has suffered both financially and emotionally. R.H., her parents, and the prosecutor took the position that Deitz presented a higher risk to reoffend based on his fathering of a child with a 16-year-old seven years prior, and they requested prison time for Deitz.

In his sole assignment of error, Deitz argues that the trial court's imposition of a prison term instead of placing him on community control was both an abuse of discretion and contrary to law. Initially, we reject Deitz's abuse-of-discretion arguments, because this court no longer reviews felony sentences under an abuse-of-discretion standard. This court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court's statutory findings, if any, or that the sentence is otherwise contrary to law. R.C. 2953.08(G)(2), explained in *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231. *See State v. White*, 2013-Ohio-4225, 997 N.E.2d 629 (1st Dist.). Because sentencing findings were not required in this case, we may modify or vacate Deitz's sentence only if we clearly and convincingly find that it was contrary to law.

Deitz argues his sentence was contrary to law for several reasons. First, he argues the trial court failed to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors set forth in R.C. 2929.12, and the evidence he presented supporting those considerations.

This court can presume that the trial court considered those provisions unless the record clearly and convincingly shows otherwise. *See State v. Kennedy*, 2013-Ohio-4221, 998 N.E.2d 1189, ¶ 118 (1st Dist.), cited in *State v. Mincey*, 2018-Ohio-662, 107 N.E.3d 735, ¶ 43 (1st Dist.). Here, the trial court did not specifically state that it had considered R.C. 2929.11 and 2929.12 when fashioning Deitz's sentence, but it made reference to the contents of those statutes at sentencing. For instance, the court mentioned the "toll" Deitz's actions had had on everyone in the courtroom, including R.H. and her family, that it could place Deitz on community control, as recommended by Deitz's doctor, and that Deitz had "shown a pattern of conduct and a pattern of choices that th[e] court could not condone." The court additionally stated that it was striving to be "consistent" and that it

did not believe "a longer-term sentence benefits anyone." Thus, Deitz has failed to rebut the presumption of regularity.

Further, Deitz cannot show that the trial court failed to consider all the evidence offered in mitigation, including the letters from supporters and the testimony from Dr. Connor about recidivism. The court stated several times during the sentencing hearing that it had read the letters and specifically referenced Dr. Connor's recommendation of community control when announcing Deitz's sentence. The record demonstrates that the court weighed that evidence along with Deitz's statement and the other evidence before imposing a two-year-aggregate term, which was much less than the maximum 15-year-aggregate term available for his repeated violation of R.C. 2907.04(A).

Deitz's other arguments attacking the sentence are equally meritless. Specifically, where defense counsel agreed at the sentencing hearing that the 24 individuals who had written letters in support of Deitz did not need to address the court, Deitz cannot now complain that the trial court hampered his mitigation efforts by indicating it was unnecessary for those supporters to orally address the court. Further, as Deitz now concedes, the trial court was not required to complete a felony sentencing worksheet.

Similarly, we find meritless Deitz's arguments directed towards the court's consideration of information and opinions presented by R.H. and her family. The court may rely on reliable hearsay in its sentencing decision, especially when it is not objected to, *see* Evid.R. 101(C)(3) and *State v. Cook*, 83 Ohio St.3d 404, 425, 700 N.E.2d 570 (1998), cited in *State v. Caperton*, 1st Dist. Hamilton No. C-000666, 2001-Ohio-5242, and R.C. 2929.19(A) empowered the court to allow R.H.'s parents to present information relevant to sentencing. Further, Deitz has not demonstrated how the trial court denied him any rights provided by R.C. 2930.14(B). Likewise, while R.H. and her family recommended sentences, Deitz did not object to this testimony, and he has not shown

how this is error in a noncapital case. Further, R.C. 2930.13(C)(4) expressly allows the victim to recommend an appropriate sanction.

Finally, Deitz claims the trial court violated his due-process rights when engaging in a consistency analysis. As codified in R.C. 2929.11(B), when sentencing for a felony, the court must impose a sentence that is "consistent with sentences imposed for similar crimes committed by similar offenders."

Deitz points to the trial court's comment at the sentencing hearing that Deitz's two-year prison term was similar to a sentence previously imposed on a teacher for engaging in similar conduct. According to Deitz, there is nothing similar about the crimes because his case did not involve a teacher-student relationship. Deitz's misguided argument, however, suggests that he is still unable to appreciate that he took advantage of the power differential in the relationship and used emotional coercion when committing the offenses against R.H., a minor. And, as noted by the state, the court's comment demonstrates that "the court did not single Deitz out for a harsher sentence, which the court had discretion to do." In sum, the comment does not demonstrate a due-process violation.

Ultimately, Deitz has failed to demonstrate that his sentence was clearly and convincingly contrary to law. *See* R.C. 2953.08(G)(2). Consequently, 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.

MYERS, P.J., CROUSE and **WINKLER, JJ.**

To the clerk:

Enter upon the journal of the court on May 15, 2019
per order of the court _____.
Presiding Judge