

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

STATE OF OHIO,	:	APPEAL NO. C-190257
Plaintiff-Appellee,	:	TRIAL NO. B-1802486
vs.	:	<i>JUDGMENT ENTRY.</i>
IMMANUEL DAVID LEE,	:	
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.

Defendant-appellant Immanuel David Lee entered a plea of guilty to one count of intimidation of a witness in violation of R.C. 2921.04(B)(1) and one count of violating a protection order in violation of R.C. 2919.27(A)(2). The counts arose from Lee's contact with a witness in a criminal case in an attempt to prevent that witness's testimony. Both counts were felonies of the third degree, which carried a possible sentence of nine to 36 months in the penitentiary. At sentencing, the trial court merged the protection-order-violation count with the intimidation count and sentenced Lee to 36 months in prison on that charge. As to sentencing, the trial court said:

I am always inclined to give somebody a second chance if the indication is that they will not be a recidivist or cause violence or commit other crimes while they're on community control.

However, in this case because of the underlying cases that related to the protective order, that was serious injury, a broken nose and other psychological and physical injuries to Ms. Bradford, and the fact that the very detailed clinical evaluation that was given on Mr. Lee in which they indicated that he has an unspecified bipolar disorder and

is on psychotropic medication, and the indication that he's been discharged from any residential treatment that would be available to him and no assurance because the prognosis is guarded that he would remain on psychotropic medication, I find that a prison sentence is indicated on Count [One], and the sentence will be that you are confined in the Department of Corrections for a period of 36 months *

* *

In one assignment of error, Lee claims that the trial court improperly imposed a 36-month prison sentence.

This court reviews sentences under the standard of review set forth in R.C. 2953.08(G)(2). Under that standard, an appellate 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 findings under relevant statutes or that the sentence is otherwise contrary to law.” See *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1.

Lee argues that the sentence was improper because the trial court did not consider the fact that Lee was institutionalized at the time he made the threats and was unable to carry them out. He further argues that his crime did not result in physical harm, that he suffered from bipolar disorder that was being treated by medication, and that those factors were also not considered by the trial court.

But the record indicates that the trial court found it more important that Lee was no longer institutionalized and that there were no mechanisms in place to ensure that Lee remained compliant with his medication. Further, while the threatening calls did not directly result in physical harm, they threatened physical harm and arose from the intimidation of a witness in a case that had also involved physical harm. The trial court was simply not confident that Lee would not be a threat if he remained free.

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Lee has not argued that the trial court failed to weigh the proper statutory factors under R.C. 2929.11 and 2929.12, but instead argues that the trial court did not give the proper weight to the factors that favored community control or a lesser sentence. But the record does not establish that the trial court's weighing of the factors resulted in findings that were unsupported by the record. The fact that the trial court did not consider the mitigating factors significant enough to warrant a lesser sentence is insufficient to reverse that sentence. We overrule Lee's sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., MYERS and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on April 22, 2020

per order of the court _____.

Presiding Judge