

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-A-0062
LAURA L. PARKE,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Ashtabula County Court of Common Pleas, Case No. 2010 CR 377.

Judgment: Affirmed.

Thomas L. Sartini, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Jane Timonere, Timonere Law Offices, L.L.C., 4 Lawyers Row, Jefferson, OH 44047-1099 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Laura L. Parke appeals from a judgment of the Ashtabula County Court of Common Pleas, which sentenced her to five years in prison for deception to obtain dangerous drugs and engaging in a pattern of corrupt activity. Using her position as an assistant to a psychiatrist, Ms. Parke forged 43 prescriptions obtaining 4500 Oxycodone pills, as part of an illegal prescription drug pyramid. On appeal, she claims the trial

court failed to consider the mandatory statutory factors when sentencing her. After reviewing the record and pertinent law, we affirm her sentence.

Substantive Facts and Procedural History

{¶2} Ms. Parke worked for Dr. Ajit, a psychiatrist in Ashtabula County. She forged 43 prescriptions, which were filled in various pharmacies throughout Ashtabula County, for a total of 4500 Oxycodone pills. The illegal prescription drug activities, which involved Ms. Parke as well as her brother and a friend of his, came to an end only when a pharmacist became suspicious and reported his concerns to the authorities. The resulting criminal investigation led to an indictment against Ms. Parke and several co-defendants.

{¶3} Ms. Parke was charged with (1) two counts of deception to obtain dangerous drugs, a third-degree felony, in violation of R.C. 2925.22(A)(B)(2)(b), (2) 13 counts of illegal processing of a drug document, a felony of the fourth degree, in violation of R.C. 2925.23(B)(1), (3) 11 counts of complicity to deception to obtain a dangerous drug, a felony of the third degree, in violation of R.C. 2925.22(A)(B)(2)(b) and R.C. 2923.03, and (4) one count of engaging in a pattern of corrupt activity, a felony of the first degree, in violation of R.C. 2923.32(A)(1)(B)(1).

{¶4} Ms. Parke pled guilty to two counts of deception to obtain dangerous drugs and one count of engaging in a pattern of corrupt activity, and the state dismissed the remaining charges. The court ordered a presentence report.

{¶5} At sentencing, the prosecutor, defense counsel, Ms. Parke's counselor, an investigator from the State of Ohio Board of Pharmacy, as well as Ms. Parke herself, all made statements before the court.

{¶6} The prosecutor recommended ten years of prison time, describing Ms. Parke as at the top of the illegal prescription drug pyramid, using her position at the psychiatrist's office to forge the prescriptions. When a pharmacist became suspicious of a prescription forged by her, the pharmacist called Dr. Ajit's office but was assured by Ms. Parke as to the legitimacy of the prescription. After the illegal activities came to light, Ms. Parke minimized her part, blamed everything on her brother and his friend, claiming they coerced her into participating in the activities, and alleged her brother stole a prescription pad while once at the doctor's office seeking care.

{¶7} The State Board of Pharmacy investigator, using a chart of the illegal prescriptions forged by Ms. Parke, explained to the trial court that his examination of the serial numbers on the forged prescriptions revealed that they did not originate from the same pad – the serial numbers on the forged prescriptions were not in sequential order, which they would have been if they had come from the same prescription pad.

{¶8} The investigator also remarked that Mr. Ajit's medical practice consisted primarily of caring for patients who were trying to get off the opiates, yet Ms. Parke used her position in his office to achieve the exact opposite. He stated,

{¶9} "We'll never know how many people got addicted to medication because of the scrips that she wrote, or how many people committed crimes here in the county to get money to pay her for the prescriptions that she wrote. Or how many young people took prescription drugs and got addicted for the first time because of her. But I can tell you that this county is worse off because of her actions. And in my 11 years of doing this I have never spoken at a sentencing hearing, because I've never felt so strongly that someone deserves to go to the prison as I do Ms. Parke."

{¶10} The defense counsel conceded Ms. Parke has a prior felony conviction and had served prison time. She stated, however, that Mrs. Parke was coerced by her brother and his friend into participating in these illegal prescription activities. Ms. Parke's counselor also spoke to the court, stating that Ms. Parke has been attending counseling sessions regularly since her indictment, and that she was very remorseful and concerned about her special-needs child.

{¶11} Ms. Parke admitted she wrote the prescriptions, but maintained that she was forced to engage in the illegal activities by her brother and his friend, who intimidated and coerced her, and that the latter had even threatened her and her children's lives. Regarding the state investigator's statements that the forged prescriptions did not come from the same prescription pad, she explained her brother could have stolen blank prescriptions from multiple pads, which would have accounted for the prescriptions not being in sequential order. Ms. Parke also maintained that she was not paid any money for the illegal prescriptions; nor had she taken any illegally obtained medications herself.

{¶12} Before sentencing her, the trial court stated,

{¶13} "Well there's no denying the seriousness of the whole situation. The impact of these offenses. And of course we're talking about a first degree felony among the other third degree felonies, so these are not exactly minor charges. And certainly what you did is very wrong. You certainly used * * * amazingly poor judgment, even if you had been threatened."

{¶14} The court sentenced her to three years for each count of deception to obtain dangerous drugs, and five years for the count of engaging in a pattern of corrupt activity, to be served concurrently, for a total of five years.

{¶15} Ms. Parke now appeals, raising the following assignment of error:

{¶16} “The trial court failed to consider the mandatory factors contained in the felony sentencing statutes, Ohio Revised Sections 2929.11, *Purposes of Felony Sentencing*, and 2929.12, *Seriousness and Recidivism Factors*, as required by law. This resulted in imposition of an illegal sentence.”

Reviewing Sentences Post Foster

{¶17} The Supreme Court of Ohio, in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, provided a two-step analysis for an appellate court to apply when reviewing felony sentences.

{¶18} First, the reviewing court 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 appellate court then reviews the trial court’s decision under an abuse-of-discretion standard. *Id.* at ¶4. The first prong of the analysis instructs that “the appellate court must ensure that the trial court has adhered to all applicable rules and statutes in imposing the sentence. As a purely legal question, this is subject to review only to determine whether it is clearly and convincingly contrary to law, the standard found in R.C. 2953.08(G).” *Id.* at ¶14. The *Kalish* court explained that the applicable statutes to be applied by a trial court include the felony sentencing statutes R.C. 2929.11 and R.C. 2929.12, which are not fact-finding statutes like R.C. 2929.14. *Id.* at ¶17. As part of its analysis of whether the sentence is “clearly and convincing contrary to law,” an appellate court must be satisfied that the trial court considered the purposes and principles of R.C. 2929.11 and the factors listed in R.C. 2929.12.

{¶19} If the first prong is satisfied, that is, the sentence is not “clearly and convincingly contrary to law,” the appellate court must then engage in the second prong of the analysis, which requires an appellate court to determine whether the trial court abused its discretion in selecting a sentence within the permissible statutory range. *Id.* at ¶17. The *Kalish* court explained the effect of R.C. 2929.11 and 2929.12 in this connection:

{¶20} “R.C. 2929.11 and 2929.12 * * * are not fact-finding statutes like R.C. 2929.14. Instead, they serve as an overarching guide for [a] trial judge to consider in fashioning an appropriate sentence. In considering these statutes in light of *Foster*, the trial court has full discretion to determine whether the sentence satisfies the overriding purpose of Ohio’s sentencing structure. Moreover, R.C. 2929.12 explicitly permits trial courts to exercise their discretion in considering whether its sentence complies with the purposes of sentencing. It naturally follows, then, to review the actual term of imprisonment for an abuse of discretion.” *Kalish* at ¶17.

Whether the Trial Court Considered R.C. 2929.11 and R.C. 2929.12

{¶21} On appeal, Ms. Parke claims the trial court’s sentence is contrary to law because it failed to consider the factors in R.C. 2929.11 and R.C. 2929.12. This alleged error relates to the first prong of the *Kalish* analysis.

{¶22} The overriding purpose of felony sentencing pursuant to R.C. 2929.11 is to protect the public from future crimes and to punish the offender, and R.C. 2929.12 requires a court to consider the seriousness and recidivism factors. The latter statute provides a nonexclusive list of factors relating to the seriousness of the offense and recidivism of the offender for the court to consider in imposing a sentence to meet objectives of felony sentencing. Furthermore, this court has long noted that, although a

trial court is required to consider the seriousness and recidivism factors in R.C. 2929.12, the court does not need to make specific findings on the record in order to evince the requisite consideration of all applicable seriousness and recidivism factors. *State v. Blake*, 11th Dist. No. 2003-L-196, 2005-Ohio-686, ¶16. See also *State v. Lewis*, 11th Dist. No. 2006-L-224, 2007-Ohio-3014, ¶24; *State v. Rady*, 11th Dist. No. 2006-L-213, 2007-Ohio-1551, ¶46.

{¶23} Here, the trial court heard statements from the following: the prosecutor, who explained Ms. Parke's pivotal role in the prescription drug pyramid; the state investigator, who emphasized the harm from the dispersing of the vast quantity of illegal drugs to the community; the defense counsel, who acknowledged Ms. Parke's prior felony conviction; her counselor, who reported her feelings of remorse, and Ms. Parke herself, who claimed coercion and blamed her transgression on others in her life.

{¶24} Prior to sentencing Ms. Parke, the trial court alluded to the seriousness of the situation and the impact of her offenses. In the judgment entry, the court stated it has considered the record, oral statements, the purposes and principles of sentencing under R.C. 2929.11, and the seriousness and recidivism factors under R.C. 2929.12, as well as the need for deterrence, incapacitation, rehabilitation, and restitution. Given this record, we cannot say the trial court failed to consider the requisite statutory principles and factors. Although the court did not make specific findings regarding various factors on the record, such findings are not necessary to evince the court's consideration of those factors.

{¶25} Ms. Parke, in addition, complains that it was "unfair" for the trial court to permit the state investigator's unsworn testimony which referenced an exhibit (the chart of forged prescriptions) not properly authenticated.

{¶26} R.C 2929.19 permits “the offender, the prosecuting attorney, the victim or the victim’s representative in accordance with section 2930.14 of the Revised Code, and, with the approval of the court, any other person [to] present information relevant to the imposition of sentence in the case” at the sentence hearing. Thus, the trial court here was within its authority to allow the state Board of Pharmacy investigator to describe his investigation. We note that there was no objection at the sentencing hearing from the defense to the investigator’s unsworn testimony and to his use of exhibit without proper authentication. This court has repeatedly refused to consider errors which were not brought to the trial court’s attention at a time when such errors could have been avoided or corrected by the trial court. *State v. Vanac*, 11th Dist. No. 2011-L-027, 2011-Ohio- 6338, ¶26, citing *State v. Childs*, 14 Ohio St.2d 56, 236 (1968), paragraph three of the syllabus. Because Ms. Parke did not raise any objection at a time when these perceived errors could be cured, any claim of errors is waived.

{¶27} The sole assignment of error is without merit.

{¶28} Judgment of the Ashtabula County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.