

[Cite as *State v. Barker*, 2009-Ohio-5036.]

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 09CA1
vs.	:	T.C. CASE NO. 08CR648
DAVID S. BARKER	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

.

O P I N I O N

Rendered on the 25th day of September, 2009.

.

Stephen K. Haller, Pros. Attorney; Elizabeth A. Ellis, Asst.
Pros. Attorney, 61 Greene Street, Xenia, OH 45385
Attorneys for Plaintiff-Appellee

P.J. Conboy, II, Atty. Reg. No. 0070073, 5613 Brandt Pike, Huber
Heights, OH 45424
Attorney for Defendant-Appellant

.

GRADY, J.:

{¶1} Defendant, David Barker, entered pleas of guilty pursuant to a negotiated plea agreement to petty theft, R.C. 2913.02 (A) (1), a first degree misdemeanor; failure to register, R.C. 2950.04 (E), a fourth degree felony; two counts of breaking and entering, R.C. 2911.13 (A), felonies of the fifth degree;

possession of criminal tools, R.C. 2923.24(A), a fifth degree felony; and receiving stolen property, R.C. 2913.51(A), a fifth degree felony. In exchange, the State recommended community control sanctions with restitution. The trial court instead sentenced Defendant to the maximum allowable prison term on each charge: one hundred eighty days for petty theft, eighteen months for failure to register, and twelve months for breaking and entering, possession of criminal tools, and receiving stolen property. The trial court ordered all of the sentences to be served concurrently, for a total sentence of eighteen months.

{¶ 2} Defendant timely appealed to this court from his conviction and sentence. Defendant's appellate counsel filed an *Anders* brief, *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 19 L.Ed.2d 493, stating that he could find no meritorious issues for appellate review. We notified Defendant of his appellate counsel's representations and afforded him ample time to file a pro se brief. None has been received. This case is now before us for our independent review of the record. *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

{¶ 3} Defendant's appellate counsel has identified one possible issue for appellate review, which concerns the severity of Defendant's sentence.

{¶ 4} In *State v. Jeffrey Barker*, Montgomery App. No. 22779, 2009-Ohio-3511, at ¶36-38, we wrote:

{¶ 5} "The trial court has full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum, consecutive, or more than minimum sentences. *State v. Foster*, 109 Ohio St.3d 1, 845 N.E.2d 470, 2006-Ohio-856, at paragraph 7 of the syllabus. Nevertheless, in exercising its discretion the trial court must consider the statutory policies that apply to every felony offense, including those set out in R.C. 2929.11 and 2929.12. *State v. Mathis*, 109 Ohio St.3d 54, 846 N.E.2d 1, 2006-Ohio-855, at ¶ 37.

{¶ 6} "When reviewing felony sentences, an appellate court must first determine whether the sentencing court complied with all applicable rules and statutes in imposing the sentence, including R.C. 2929.11 and 2929.12, in order to find whether the sentence is contrary to law. *State v. Kalish*, 120 Ohio St.3d 23, 896 N.E.2d 124, 2008-Ohio-4912. If the sentence is not clearly and convincingly contrary to law, the trial court's decision in imposing the term of imprisonment must be reviewed under an abuse of discretion standard. *Id.*

{¶ 7} "The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the trial court's

attitude is unreasonable, arbitrary, or unconscionable.' *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144."

{¶ 8} When the court imposed its sentence the court clearly stated that it had considered the record, the presentence investigation report, the purposes and principles of felony sentencing in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12, as well as the letters of recommendation that were submitted on Defendant's behalf. The court also afforded both Defendant and his counsel an opportunity to speak before imposing sentence. The trial court fully complied with all applicable rules and statutes in imposing its sentence. The sentence is not clearly and convincingly contrary to law. *Kalish*.

{¶ 9} The prison terms imposed by the trial court, while the maximum allowable for each offense, are nevertheless within the authorized range of available punishments for first degree misdemeanors and fourth and fifth degree felonies. R.C. 2929.24(A)(1), 2929.14(A)(4), (5). The trial court specifically noted that Defendant's prior record has not been very good, that Defendant has previously served a prison term, that Defendant is not amenable to community control sanctions, and that a prison term is consistent with the principles and purposes of felony sentencing. R.C. 2929.13(B)(1)(g),

(B) (2) (a). Defendant attempted to explain or justify his criminal behavior, which involved stealing scrap metal, by stating that his first child was on the way and "I didn't know what to do. Times are tough and the economy here is really bad, . . ."

{¶ 10} We find no abuse of discretion on the part of the trial court in imposing its sentence. *Kalish*.

{¶ 11} In addition to reviewing the possible issue for appeal raised by Defendant's appellate counsel, we have conducted an independent review of the trial court's proceedings in this case and have found no errors having arguable merit.

{¶ 12} Accordingly, Defendant's appeal is without merit and the judgment of the trial court will be affirmed.

BROGAN, J., And FROELICH, J. concur.

Copies mailed to:

Elizabeth A. Ellis, Esq.
P.J. Conboy, II, Esq.
David S. Barker
Hon. J. Timothy Campbell