

[Cite as *State v. Rice*, 2011-Ohio-130.]

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2010 CA 7
v.	:	T.C. NO. 09CR773
MICHELLE RICE	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

**OPINION**

Rendered on the 14<sup>th</sup> day of January, 2011.

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DONOVAN, J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Michelle Rice, filed January 21, 2010. On September 9, 2009, Rice was indicted on one count of receiving stolen property, in violation of R.C. 2913.51(A), and two counts of forgery, in violation of R.C. 2913.31(A)(1), all felonies of the fifth degree. The forgery counts contained

specifications that the victim, who was Rice's grandfather, was an elderly or disabled adult. In exchange for Rice's guilty pleas, the State agreed to drop the specifications attendant to the forgery charges. The trial court sentenced Rice to a prison term of one year on each count, with the sentences for forgery to be served concurrently with each other, but consecutively to the the sentence for receiving stolen property, for a total sentence of two years. The court also ordered Rice to serve a three-year term of post-release control and to pay restitution in the amount of \$800.00.

{¶ 2} Rice asserts one assignment of error as follows:

{¶ 3} "THE TRIAL COURT ABUSED ITS DISCRETION IN SENTENCING MS. RICE TO MAXIMUM SENTENCES WHEN ALL RELEVANT INFORMATION INDICATED SHE SHOULD RECEIVE COMMUNITY CONTROL."

{¶ 4} At sentencing, counsel for Rice advised the court that Rice "continues to seek treatment for her bipolar disorder," and that Rice had been "working with her grandfather \* \* \* doing some odd jobs around the house to kind of reestablish a bond and a trust between the two of them." Defense counsel requested that Rice be sentenced to community control. When asked if she had anything to say, Rice responded, "Nothing more than just to let my grandpa know that I'm sorry." Rice's grandfather also asked the court to give Rice "probation and make her go to intensive doctors for a chemical imbalance. I think she has a chemical imbalance to where she just doesn't think right."

{¶ 5} Prior to the imposition of sentence, the following exchange occurred:

{¶ 6} "THE COURT: \* \* \* You have a prior theft conviction in June 2007. You committed three felony offenses in the summer of 2009. Your codefendant [sic], Mr.

Clifford, went to prison. And while you were harming the community by committing felony offenses of receiving stolen property and forgery, you were receiving benefits from the community in the form of food stamps in the amount of \$367 a month.

{¶ 7} “MS. MARLOW: Your Honor, my client indicates that while she was the named beneficiary of the food stamps, she was providing those food stamps to her mother while *she* was providing care to her son while she gets her mental illness treated.

{¶ 8} “THE COURT: You lost your children, so for some reason or another you are not capable of caring for them. So in reviewing all of the circumstances I don’t see any positives, and there must be some punishment for the felony offenses that you have committed.”

{¶ 9} “In *State v. Kalish*, 120 Ohio St.3d 23, \* \* \* 2008-Ohio-4912, the Ohio Supreme Court attempted to resolve the standard for reviewing trial court sentencing decisions after *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-256. \* \* \* [T]he court held that appellate courts must adopt a two-step approach. They must examine the sentencing court’s compliance with all applicable rules and statutes to determine whether the sentence is clearly and convincingly contrary to law. The court noted that a sentence outside the permissible statutory range is clearly and convincingly contrary to law. The court stated, if the first prong is satisfied, the trial court decision shall be reviewed under the abuse of discretion standard using R.C. 2929.11 and 2929.12 as guides in fashioning an appropriate sentence.

{¶ 10} “\* \* \*

{¶ 11} “Our review standard was further complicated by the Supreme Court opinion in *State v. Mathis*, 109 Ohio St.3d 54, \* \* \*2006-Ohio-855, where the court held that trial

court's are no longer required to make findings **or** give their reasons for imposing maximum, consecutive, or more than minimum sentences.” *State v. Money*, Clark App. No. 2009-CA-118, 2010-Ohio-5753, ¶ 4, 6 (emphasis in original).

{¶ 12} “The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender. R.C. 2929.14(A). Unless otherwise required by R.C. 2929.13 and R.C. 2929.14, the trial court has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in R.C. 2929.11. R.C. 2929.12(A). The trial court must also consider the seriousness of the offender’s conduct, its impact upon the victim, and the sentences imposed for similar crimes committed by similar offenders. R.C. 2929.11(B). It may consider any other factors that are relevant to achieving the purposes and principles of sentencing. R.C. 2929.12. (Citation omitted).” *State v. Boyce*, Clark App. Nos. 2009 CA 30, 2009 CA 31, 2009 CA 44, 2009 CA 70, 2010-Ohio-212, ¶ 13 ““Upon a record that is silent with respect to the trial court’s consideration of the factors set forth in R.C. 2929.12, a presumption arises that the trial court complied with its duty to consider those factors.” *State v. Bailey*, Montgomery App. No. 19849, 2004-Ohio-400, ¶ 6 (citation omitted).

{¶ 13} “‘Abuse of discretion’ has been defined as an attitude that is unreasonable, arbitrary or unconscionable. (Internal citation omitted). It is to be expected that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary.

{¶ 14} “A decision is unreasonable if there is no sound reasoning process that would support that decision. It is not enough that the reviewing court, were it deciding the issue *de*

*novo*, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result.” AAAA *Enterprises, Inc. v. River Place Community Redevelopment* (1990), 50 Ohio St.3d 157, 161.

{¶ 15} R.C. 2929.14(A)(5) provides that the prison term for a felony of the fifth degree “shall be six, seven, eight, nine, ten, eleven, or twelve months,” and Rice’s sentences are within the statutory range. In order to reverse the trial court’s sentence upon an abuse of discretion standard, the sentence must be unreasonable as a matter of law. The trial court, in sentencing Rice, noted her prior conviction, her receipt of food stamps, and the loss of her children. We conclude that the trial court considered all of the appropriate sentencing factors. On this record, we cannot conclude that Rice’s sentence is unreasonable as a matter of law, and since an abuse of discretion is not demonstrated, Rice’s sole assigned error is overruled. The judgment of the trial court is affirmed.

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GRADY, P.J., and FAIN, J., concur.

Copies mailed to:

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