

[Cite as *State v. Lewis*, 2007-Ohio-6607.]

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2006CA0119
vs.	:	T.C. CASE NO. 2006CR156
ROGER D. LEWIS	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

. . . . .

O P I N I O N

Rendered on the 7<sup>th</sup> day of December, 2007.

. . . . .

Stephen K. Haller, Pros. Attorney; Elizabeth A. Ellis, Atty.  
Reg. No.0074332, Asst. Pros. Attorney, 61 Greene Street,  
Xenia, OH 45385  
Attorney for Plaintiff-Appellee

Larry J. Denny, Atty. Reg. No.0020430, 371 West First Street,  
Dayton, OH 45402  
Attorney for Defendant-Appellant

. . . . .

GRADY, J.:

{¶ 1} Defendant, Roger Lewis, entered a plea of guilty to one count of engaging in a pattern of corrupt activity, R.C. 2923.32(A)(1), pursuant to a negotiated plea agreement. In exchange, the State dismissed other drug and possession of criminal tools charges. Despite a recommendation in the

presentence investigation report for a maximum available sentence of eight years, the trial court sentenced Defendant to a six year prison term.

{¶ 2} Defendant timely appealed to this court. He challenges only his sentence.

FIRST ASSIGNMENT OF ERROR

{¶ 3} "THE TRIAL COURT ABUSED ITS DISCRETION IN IMPOSING A SIX YEAR PRISON SENTENCE UPON DEFENDANT."

{¶ 4} Defendant argues that the trial court abused its discretion in imposing a six year prison sentence. In support of that claim Defendant mentions a number of factors which he claims favor a lesser sentence. For instance, Defendant has no prior felony convictions, was cooperative with the probation department while free on pretrial bail, and remained drug-free while on pretrial bail. Furthermore, Defendant complains because the trial court relied upon statements in the presentence report by Detective Craig Polston that Defendant was the ringleader of the group of drug dealers who were arrested, that he laughed about his arrest, saying law enforcement couldn't prove the charges, and that Defendant refused to cooperate with authorities after his arrest and refused to identify his drug suppliers.

{¶ 5} Defendant argues that the record contradicts

Polston's characterization of him as the ring leader, and demonstrates that his involvement in this drug operation was exaggerated. For example, Defendant claims that he was not the target of this police investigation, and that the polygraph examination Defendant took while awaiting sentencing indicates that Defendant was only able to obtain between and one and three pounds of marijuana, not the fifty pounds contemplated by this undercover police sting operation.

{¶ 6} After *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, the appellate court's standard of review when examining felony sentences is an abuse of discretion. *State v. Slone* (January 12, 2007), Greene App. No. 2005CA79, 2007-Ohio-130. That standard connotes more than a mere error of law or an error in judgment. It implies an arbitrary, unreasonable, unconscionable attitude on the part of the trial court. *State v. Adams* (1980), 62 Ohio St.2d 151. Ordinarily, a trial court does not abuse its discretion when it imposes a sentence within the permissible range authorized by R.C. 2929.14(A). *State v. Cowan*, 167 Ohio App.3d 233, 2006-Ohio-3191, at ¶ 22.

{¶ 7} Although after *Foster* trial courts are not required to make any findings or give reasons before imposing any sentence within the authorized statutory range, including maximum, consecutive, or more than minimum sentences, *Foster*

syllabus at ¶ seven, courts nevertheless are still required to comply with the sentencing laws unaffected by *Foster*, such as R.C. 2929.11 and 2929.12 which require consideration of the purposes and principles of felony sentencing and the seriousness and recidivism factors. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855. A sentencing court does not have to make any specific findings to demonstrate its consideration of those general guidance statutes. *Foster* at ¶ 42; *State v. Arnett* (2000), 88 Ohio St.3d 208, 215. Rather, a court can meet its obligation with a simple recitation that it has considered those statutory factors. *Id*; *State v. Dunn* (August 19, 2005), Montgomery App. No. 20765, 2005-Ohio-4507.

{¶8} Defendant pled guilty to engaging in a pattern of corrupt activity, a felony of the second degree for which the possible sentence is a prison term of two to eight years. R.C. 2929.14(A)(2). The trial court sentenced Defendant to a six year prison term, well within the authorized range. In imposing that sentence the trial court stated that it had considered the record, the presentence investigation report, the principles and purposes of felony sentencing under R.C. 2929.11, Defendant' sentencing memorandum, the statements of counsel and Defendant at the sentencing hearing, and that it had balanced the seriousness and recidivism factors in R.C.

2929.12.

{¶ 9} At the sentencing hearing the State claimed that Detective Polston's recommendation of a maximum sentence of eight years was reasonable because it was based upon his extensive dealings and conversations with Defendant concerning not only this particular drug transaction that involved three pounds of marijuana, but also future drug transactions. The State also pointed out that Defendant was the main actor, the person who negotiated with the undercover police officers. Nevertheless, the trial court imposed less than the maximum sentence.

{¶ 10} Defendant attempted to minimize his involvement in this drug ring in relation to that of his co-defendants, claiming that he was not the ringleader and did not have access to large quantities of marijuana over three pounds, as demonstrated by the results of his polygraph examination. According to Defendant, he exaggerated his involvement and "role played" when he initially spoke to the police. In that regard Defendant is not challenging the accuracy of any verifiable objective fact or information contained in his presentence report, only Detective Polston's subjective conclusion that Defendant was the leader of this drug ring based upon the police investigation.

{¶ 11} By attempting to minimize his involvement and unlawful conduct, Defendant refused to take full responsibility for his actions and, accordingly, has not demonstrated any genuine remorse. R.C. 2929.12(D)(5). The trial court apparently chose, as it had the right to do, to believe the results of the police investigation which concluded that Defendant was the leader of this drug ring, rather than Defendant's claim that his involvement was exaggerated. Furthermore, given that Defendant pled guilty to a violation of R.C. 2923.32(A)(1), the trial court properly concluded that this offense was part of organized criminal activity. R.C. 2929.12(B)(7). These factors, R.C. 2929.12(B)(7) and 2929.12(D)(5), indicate that Defendant's conduct is more serious and that Defendant is likely to commit future crimes.

{¶ 12} While there are some sentencing factors in this case that favor Defendant and militate in favor of a less severe sentence, there does not exist clear and convincing evidence in this record that the trial court acted in an arbitrary, unreasonable, or unconscionable manner in imposing a six year prison sentence. No abuse of discretion has been demonstrated.

{¶ 13} Defendant's first assignment of error is overruled.

SECOND ASSIGNMENT OF ERROR

{¶ 14} "DEFENDANT'S SENTENCE IS VIOLATIVE OF THE SENTENCING GUIDELINES AS SET FORTH IN ORC 2929.11 AND ORC 2929.12"

{¶ 15} Defendant argues that in imposing a six year prison term the trial court failed to consider and follow the general guidelines in R.C. 2929.11 and 2929.12 because a number of the seriousness and recidivism factors in R.C. 2929.12 favor him and militate in favor of a less severe sentence.

{¶ 16} The trial court indicated on the record that it had considered the purposes and principles of felony sentencing, which are to protect the public from future crime by the offender and to punish the offender. R.C. 2929.11(A). The court also indicated that it had balanced the seriousness and recidivism factors in R.C. 2929.12. No further findings by the court in regard to its consideration of those general guidance statutes are required by law. *Foster* at ¶ 42; *Arnett, supra; Dunn, supra.*

{¶ 17} Defendant concedes that one of the factors making his conduct more serious applies in this case. The trial court specifically found that Defendant committed this offense as part of organized criminal activity. R.C. 2929.12(B)(7). Defendant does not argue that any specific factor in R.C. 2929.12(C) making his conduct less serious applies in this

case.

{¶ 18} With respect to the likelihood of recidivism, Defendant argues that some of the factors indicating that he is not likely to commit future crimes apply in this case and favor him. We agree. Defendant has no previous juvenile delinquency adjudications, R.C. 2929.12(E)(1), and no previous felony convictions as an adult, R.C. 2929.12(E)(2). Defendant also argues that he made statements at the sentencing hearing indicating his remorse. R.C. 2929.12(E)(5). However, in that regard we believe that Defendant's acknowledgment that he made dumb decisions and got himself into this situation may have been offset by Defendant's attempt to minimize his involvement and unlawful conduct with respect to this drug ring, which constitutes a failure to accept full responsibility for his actions. Defendant has not demonstrated genuine remorse, R.C. 2929.12(D)(5), which is a factor indicating that Defendant is likely to commit future crimes.

{¶ 19} Defendant also complains that because one of his co-defendants in this drug ring pled guilty to the same offense as Defendant but received a less severe sentence, three years, than Defendant received, his sentence is not consistent with sentences imposed for similar crimes committed by similar offenders. R.C. 2929.11(B). What Defendant fails to mention

is that a felony sentence should be reasonably calculated to achieve the two purposes of felony sentencing, commensurate with and not demeaning to the seriousness of the offender's conduct. *Id.* In that regard, in fashioning Defendant's sentence the trial court chose to believe the results of the police investigation in this case that concluded that Defendant was the leader of this drug ring and the main person who negotiated with undercover officers. That is a relevant factor which indicates that Defendant's conduct is more serious than that normally constituting the offense. R.C. 2929.12(B). Although Defendant now denies being the ringleader and claims that he "role played" and exaggerated his role when he first talked to police, the trial court aptly points out that Defendant never at any time offered that explanation. Instead, Defendant laughed about his arrest and said the police couldn't prove anything. He also refused to cooperate and identify his suppliers.

{¶ 20} Finally, we note that the trial court did extend some leniency to Defendant to the extent that the six year prison term it imposed was clearly not the maximum allowable sentence of eight years recommended by the presentence report, which the trial court could have lawfully imposed in this case. Certainly, while there are some sentencing factors in

this case that apply and favor Defendant and a less severe sentence, this record does not even remotely demonstrate that the trial court acted in an arbitrary, unreasonable, unconscionable manner in imposing a six year prison term. No abuse of discretion has been demonstrated.

{¶ 21} Defendant's second assignment of error is overruled.

The judgment of the trial court will be affirmed.

BROGAN, J. And DONOVAN, J., concur.

Copies mailed to:

Elizabeth A. Ellis, Esq.  
Larry J. Denny, Esq.  
Hon. J. Timothy Campbell