

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

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| STATE OF OHIO, | : | APPEAL NO. C-070088 |
| | : | TRIAL NO. B-0507406 |
| Plaintiff-Appellee, | : | |
| | : | <i>JUDGMENT ENTRY.</i> |
| vs. | : | |
| GLENN E. BATES, | : | |
| | : | |
| Defendant-Appellant. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant, Glenn E. Bates, was convicted of felonious assault under R.C. 2903.11(A)(1), a second-degree felony. The trial court sentenced him to serve eight years' imprisonment. Bates appealed his conviction to this court. We vacated the sentence because the trial court had failed to notify him of the ramifications of violating post-release control as required by R.C. 2929.19(B)(3) and remanded the case to the trial court for resentencing. We affirmed the trial court's judgment in all other respects.²

On remand, the trial court held a new sentencing hearing at which it informed Bates about the consequences of violating post-release control. It also resentenced him, again imposing an eight-year prison term. This appeal followed.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² See *State v. Bates* (Dec. 13, 2006), 1st Dist. No. C-050973.

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In his sole assignment of error, Bates contends that the trial court erred in sentencing him because it failed to consider the factors outlined in R.C. 2929.11. He argues that the record does not show that the trial court considered sentences imposed for similar crimes and that the sentence was disproportionate to other sentences imposed for similar conduct. This assignment of error is not well taken.

Following *State v. Foster*,³ trial courts have full discretion to impose a prison sentence within the statutory range for the crime committed and need not make findings or give their reasons for imposing more than the minimum, maximum, or consecutive sentences.⁴ But the court in exercising its discretion must carefully consider the statutes that apply to every felony case, including R.C. 2929.11 and 2929.12.⁵ R.C. 2929.11(B) states that a sentence imposed for a felony “shall be reasonably calculated to achieve the two overriding purposes of felony sentencing * * *, commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.”

In this case, the sentence was within the statutory range for a second-degree felony.⁶ Bates contends that his sentence was inconsistent with sentences imposed for similarly situated offenders. We disagree. This court has held that consistency is not synonymous with uniformity. Consistency requires the trial court to weigh the same statutory sentencing factors for each defendant.⁷

When resentencing Bates, the trial court specifically stated, “I’m going to sentence Mr. Bates as follows consistent with those portions of the Ohio sentencing law that

³ 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

⁴ Id.; *State v. Harris*, 1st Dist. No. C-060691, 2007-Ohio-5127.

⁵ *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1.

⁶ See R.C. 2929.14(A)(2).

⁷ *State v. McIntosh*, 160 Ohio App.3d 544, 2005-Ohio-1760, 828 N.E.2d 138.

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remain[,] that are constitutional and the purposes and principles of sentencing under Ohio law[.]” Thus, the trial court considered the applicable statutory sentencing factors.

Further, this case involved a brutal assault and the victim suffered substantial harm. Bates had a significant criminal record, and he had been to prison five times before the commission of this offense. He has not demonstrated that his sentence was “outside the mainstream of local judicial practice.”⁸ The trial court’s imposition of an eight-year sentence was not so arbitrary, unreasonable, or unconscionable as to connote an abuse of discretion.⁹ Consequently, we overrule Bates’s assignment of error and affirm the trial court’s judgment.

A certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 12, 2007
per order of the Court _____
Presiding Judge

⁸ Id.

⁹ See *State v. Clark*, 71 Ohio St.3d 466, 1994-Ohio-43, 644 N.E.2d 331.