

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

STATE OF OHIO,	:	APPEAL NO. C-070264
	:	TRIAL NO. B-0611799
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
RICHARD MANSFIELD,	:	
	:	
Defendant-Appellant.	:	

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

Defendant-appellant, Richard Mansfield, appeals a conviction for escape under R.C. 2921.34(A). We find no merit in his two assignments of error, and we affirm the trial court's judgment.

The record shows that, as part of his post-release control for a previous conviction, Mansfield was required to successfully complete a halfway-house program as directed by the Adult Parole Authority. He was charged with escape after he left the Volunteers of America halfway-house program without permission in November 2006.

After pleading guilty to the escape charge, the trial court continued the case for sentencing until February 2007. The court let Mansfield out on his own recognizance so that he could return to the halfway house. It specifically warned him that if he did not go

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

to the halfway house and stay there, it would sentence him to five years in prison, the maximum term he could receive.

Mansfield reported to the halfway house, but subsequently left. He also did not appear for sentencing, so the court issued a *capias* for his arrest. After Mansfield was arrested, he was returned to the trial court for sentencing. He told that court that he went back to his job and was trying to take care of his family and some health issues. The trial court sentenced him to the five years in prison that it had previously stated it would impose. This appeal followed.

In his first assignment of error, Mansfield contends that the trial court abused its discretion in imposing the maximum sentence. He argues that the record shows that the court considered inappropriate criteria in imposing the sentence. This assignment of error is not well taken.

Following *State v. Foster*,<sup>2</sup> 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.<sup>3</sup> In exercising its discretion, the court must carefully consider the statutes that apply to every felony case, including R.C. 2929.11 and 2929.12.<sup>4</sup> But the court need not state on the record that it has considered the statutory criteria or its reasons for imposing a sentence within the statutory range.<sup>5</sup>

In this case, the sentence was within the statutory range for a third-degree felony.<sup>6</sup> Mansfield argues that the court based its sentence on his failure to return to the halfway house in February 2007 and his failure to appear for sentencing, not on the conduct he

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

<sup>3</sup> *Id.*; *State v. Johnson*, 1st Dist. No. C-070051, 2007-Ohio-6512.

<sup>4</sup> *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, 846 N.E.2d 1.

<sup>5</sup> *State v. Goggans*, 5th Dist. No. 2006-CA-07-0051, 2007-Ohio-1433.

<sup>6</sup> See R.C. 2929.14(A)(3).

had admitted, the escape in November 2006. The court could have imposed the maximum sentence without finding any additional fact or making any statement on the record. “The fact that the trial judge explained his reasons for imposing the maximum sentence on the record cannot transform a sentence *within the range provided by statute* into a constitutionally infirm sentence on the grounds that the statements constitute impermissible ‘judicial fact-finding.’ ”<sup>7</sup> (Emphasis in original.)

Further, this court has held that a defendant’s failure to appear is a relevant consideration in sentencing.<sup>8</sup> Despite Mansfield’s original escape from the halfway house, the court allowed him a second chance by releasing him on his own recognizance to return to and complete the program at the halfway house. It warned him that if he did not, he would receive a five-year prison term. Mansfield not only left the halfway house, committing the same crime for which he was awaiting sentencing, but failed to appear for his sentencing hearing. Those facts, together with Mansfield’s criminal history, supported the trial court’s imposition of the maximum sentence.

Mansfield further contends that the sentence is cruel and unusual punishment because it is “greatly excessive under traditional concepts of justice” and is “manifestly disproportionate” to his crime. We disagree.

As a general rule, a sentence that falls within the terms of a valid statute cannot amount to cruel and unusual punishment under the Eighth Amendment.<sup>9</sup> Violations of the Eighth Amendment are rare. Courts have applied the Eighth Amendment to “sanctions which under the circumstances would be considered shocking to any reasonable person” or to penalties “so greatly disproportionate to the offense as to shock

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<sup>7</sup> *Goggans*, supra.

<sup>8</sup> *State v. Price*, 1st Dist. No. C-030262, 2003-Ohio-7109.

<sup>9</sup> *McDougle v. Maxwell* (1964), 1 Ohio St.2d 68, 203 N.E.2d 334; *State v. Brewster*, 1st Dist. Nos. C-030024 and C-030025, 2004-Ohio-2993; *State v. Thomas*, 1st Dist. No. C-010724, 2002-Ohio-7333.

**OHIO FIRST DISTRICT COURT OF APPEALS**

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the sense of justice of the community.”<sup>10</sup> The sentence in this case clearly does not rise to that level. Consequently, we overrule Mansfield’s first assignment of error.

In his second assignment of error, Mansfield contends that he was denied the effective assistance of counsel. But he makes only a general claim; he does not specify how counsel was ineffective. He has not demonstrated that his counsel’s representation fell below an objective standard of reasonableness or that, but for counsel’s unprofessional errors, the results of the proceeding would have been otherwise. Therefore, he has failed to meet his burden to show ineffective assistance of counsel.<sup>11</sup> We overrule his second assignment of error and affirm his conviction.

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.

**SUNDERMANN, P.J., CUNNINGHAM and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on February 13, 2008  
per order of the Court \_\_\_\_\_  
Presiding Judge

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<sup>10</sup> *State v. Weitbrecht*, 86 Ohio St.3d 368, 1999-Ohio-113, 715 N.E.2d 167; *Brewster*, supra; *Thomas*, supra.

<sup>11</sup> *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052; *State v. Hirsch* (1998), 129 Ohio App.3d 294, 717 N.E.2d 789.