

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

STATE OF OHIO,	:	APPEAL NO. C-100169
Plaintiff-Appellee,	:	TRIAL NO. B-0906536
vs.	:	<i>JUDGMENT ENTRY.</i>
BARRY LUMPKINS,	:	
Defendant-Appellant.	:	

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

Defendant-appellant, Barry Lumpkins, appeals the judgment of the Hamilton County Court of Common Pleas sentencing him to concurrent 12-month prison terms for two counts of trafficking in cocaine, felonies of the fifth degree. He was convicted after entering guilty pleas.

In a single assignment of error, Lumpkins now argues that the court imposed excessive sentences.

Under *State v. Foster*,² a trial court has full discretion to impose a sentence within the applicable statutory range. A reviewing court must first determine whether the sentence was clearly and convincingly contrary to law.³ If the sentence

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

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

³ *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶14-17.

OHIO FIRST DISTRICT COURT OF APPEALS

was not contrary to law, the appellate court then reviews the sentence under an abuse-of-discretion standard.⁴ Where the trial court does not explicitly put on the record its consideration of applicable sentencing statutes, it is nonetheless presumed that the court properly considered those statutes.⁵

In this case, the sentences were not contrary to law, and the trial court did not abuse its discretion in imposing them. Lumpkins's criminal record included five previous prison terms and numerous other convictions, many of which related to drugs. While Lumpkins emphasizes his efforts at rehabilitation, the trial court presumably took those efforts into account in ordering the sentences to run concurrently. We overrule the assignment of error and affirm the judgment of the trial court

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 17, 2010

per order of the Court _____
Presiding Judge

⁴ Id.

⁵ Id. at fn. 4.