

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

STATE OF OHIO,	:	APPEAL NO. C-140493
Plaintiff-Appellee,	:	TRIAL NO. B-1207481
vs.	:	<i>JUDGMENT ENTRY.</i>
BILLY D. WILLIAMS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Billy D. Williams pleaded guilty to two counts of telecommunications fraud, fifth-degree felonies, in violation of R.C. 2913.05. The trial court sentenced Williams to 24 months' community control, as he was a first-time offender. The trial court informed Williams that if he violated his community control, he could be sent to prison for the maximum prison term of 24 months. While serving his community-control sanction, Williams pleaded no contest to a community-control violation for failing to attend appointments with his probation officer. The trial court, noting that Williams faced 24 months' incarceration, revoked his community control and sentenced him to 11 months' incarceration on each count, to be served concurrently. This appeal followed.

Williams asserts two assignments of error challenging the sentences imposed by the trial court. In his first assignment of error, Williams argues that the trial court

erred by imposing prison terms for the nonviolent fifth-degree felonies. This argument is without merit.

Under R.C. 2953.08(G)(2), we may modify or vacate a sentence if we clearly and convincingly find that either the record does not support the sentencing court's findings or if the sentence is otherwise contrary to law. *See State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 11 (1st Dist.). Originally, the trial court sentenced Williams to community control under R.C. 2929.13(B)(1)(a) as he was a first time offender convicted of a fifth-degree felony. However, when he violated his community control, the trial court had the authority under R.C. 2929.15(B) to sentence him to a prison term within the statutory range available for the offense. *See State v. Brooks*, 103 Ohio St.3d 134, 136, 2004-Ohio-4746, 814 N.E.2d 837. The statutory range for a fifth-degree felony is between six and 12 months in prison. R.C. 2929.14(A)(5). Here, the trial court sentenced Williams to two concurrent terms of 11 months' incarceration after Williams was found to have violated his community control. Because the sentences are permitted by R.C. 2929.15(B) and are within the statutory range, we cannot find that the sentences were clearly and convincingly contrary to law. The first assignment of error is overruled.

In Williams's second assignment of error, he argues that the trial court failed to consider whether his sentences accomplished the sentencing purposes without imposing an unnecessary burden on government resources. We disagree.

R.C. 2929.11 and 2929.12 require the court to consider several factors when determining a felony sentence. The statutes do not state that the trial court must place those factors on the record, only that the court must consider them in sentencing. We may presume that the sentencing court took the necessary factors into consideration if the defendant has not demonstrated otherwise. *State v.*

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Kennedy, 2013-Ohio-4221, 998 N.E.2d 1189, ¶ 118 (1st Dist.); see *State v. McAfee*, 1st Dist. Hamilton No. C-130567, 2014-Ohio-1639, ¶ 18.

Here, although the trial court did not state that it considered the purposes and principles on the record, Williams has not made an affirmative demonstration that the trial court failed to consider them. Therefore, we do not find his sentences to be clearly and convincingly contrary to law. The second assignment of error is overruled. The judgment of the trial court is affirmed.

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.

FISCHER, P.J., DEWINE and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on September 25, 2015
per order of the court _____.

Presiding Judge