IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-160254 C-160255
Plaintiff-Appellee,	:	TRIAL NOS. 15CRB-23856 C-15CRB-29108
vs.	:	*JUDGMENT ENTRY.*
MICHAEL POGUE,	:	
Defendant-Appellant.	:	

We consider these consolidated appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In these appeals, appellant Michael Pogue challenges the judgment of the Hamilton County Municipal Court convicting him, upon his pleas of no contest, of menacing in the case numbered 15CRB-23856 and receiving stolen property in the case numbered C-15CRB-29108. Advancing one assignment of error, Pogue argues that the trial court abused its discretion by imposing maximum sentences on his misdemeanor offenses.

Specifically, Pogue contends that the trial court (1) failed to consider the factors enumerated in R.C. 2929.22(B)(1), and (2) imposed sentences contrary to law because he had not committed the worst form of each offense as required under R.C. 2929.22(C). We disagree.

When imposing a misdemeanor sentence, the trial court is required to consider the factors set forth in R.C. 2929.22(B)(1)(a) through (e) and all other factors relevant to achieving the purposes and principles of sentencing enumerated in R.C. 2929.21. Failure to do so constitutes an abuse of discretion. *State v. Black*, 1st Dist. Hamilton No. C-060861, 2007-Ohio-5871, ¶ 20. In this case, the trial court did not expressly state on the record that it had considered these factors. But it is well settled that when a misdemeanor sentence is within the permissible statutory limits, the trial court is presumed to have considered the required factors, in the absence of a demonstration to the contrary by the defendant. *Id.*; *State v. Wagner*, 80 Ohio App.3d 88, 608 N.E.2d 852 (12th Dist.1992).

Here, Pogue has failed to overcome that presumption. At the sentencing hearing, the court noted that community control was not appropriate due to Pogue's attitude. Although Pogue had pleaded no contest to the charges, during sentencing, he argued with the court about the underlying facts and failed to acknowledge any remorse for his conduct. Pogue had made clear during his presentence interview that he did not take seriously the charges to which he had pleaded no contest when he stated, "I'm pretty ticked that I'm even going through this. I don't have the money or the time to keep coming down here."

As to Pogue's argument that, because he had not committed the worst form of each misdemeanor offense, the court was without authority to impose maximum sentences, we note that R.C. 2929.22(C) provides that a maximum sentence is appropriate for an offender "whose conduct and response to prior sanctions for prior offenses demonstrate that the imposition of the longest jail term is necessary to deter the offender from committing a future crime."

Given Pogue's contentious and dismissive attitude, his unwillingness to accept responsibility for his actions, and the fact of his long criminal history, we cannot say that

the trial court abused its discretion in imposing its sentences. Thus, we overrule Pogue's sole assignment of error.

Therefore, we affirm the trial court's judgment.

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.

CUNNINGHAM, P.J., DEWINE and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on November 23, 2016

per order of the court _______________________________.

Presiding Judge