

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

STATE OF OHIO,	:	APPEAL NO. C-160513
	:	TRIAL NO. B-1600905A
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
KEVIN CHOATE,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal 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.

Defendant-appellant Kevin Choate pled guilty to the offenses of failure to comply with an order or signal of a police officer, a third-degree felony, and assault, a fifth-degree felony. The trial court sentenced Choate to nine months' imprisonment for failure to comply and six months' imprisonment for assault. The sentences were made consecutive, resulting in an aggregate sentence of 15 months' imprisonment. The trial court additionally informed Choate that he faced a discretionary three-year period of postrelease control.

In his sole assignment of error, Choate argues that the record does not support the sentence imposed and that the trial court should have sentenced him to a period of community control. Under R.C. 2953.08(G)(2), we may only vacate or modify a defendant's sentence if we clearly and convincingly find that the record

does not support any mandatory sentencing findings or that the sentence imposed is otherwise contrary to law. *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231; *State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 11 (1st Dist.).

Choate argues that the trial court failed to consider the principles and purposes of sentencing under R.C. 2929.11, and that a weighing of the relevant factors in R.C. 2929.12 supports a sentence of community control, rather than incarceration. The trial court is not required to make specific findings on the record with respect to these statutes, and we may presume that the trial court considered them. *See State v. McGee*, 1st Dist. Hamilton No. C-150496, 2016-Ohio-7510, ¶ 33. In this case, the trial court specifically stated on the record that it had considered the principles and purposes of sentencing, including all seriousness and recidivism factors. It further explained in detail its reasons for imposing a sentence of incarceration rather than community control.

With respect to his conviction for failure to comply, Choate further argues that the trial court failed to properly apply the seriousness factors in R.C. 2921.331(C)(5)(b). His contention is without merit. During Choate's plea hearing, the prosecutor made the following statement concerning the facts of this case: "According to the officer, [Choate] was pin-balling through traffic, going up to 55 miles-per-hour on Colerain Avenue in the area on Colerain Avenue where it was 35 miles-per-hour." The bill of particulars further indicated that the vehicle pursuit occurred at around 2:30 in the afternoon, and that, during the pursuit, two children under the age of five were present in Choate's vehicle. In addition, Choate failed to comply with red lights and nearly struck a police cruiser, causing the officer driving that cruiser to swerve off of the road.

Following our review, we cannot clearly and convincingly find that the trial court failed to properly apply and weigh the factors in R.C. 2929.331(C)(5)(b) when sentencing Choate. Choate's sentence was not contrary to law, and the trial court did not err in imposing a sentence of incarceration. Choate's assignment of error is overruled.

The state contends that Choate's conviction subjected him to a mandatory period of postrelease control, and consequently, that the trial court erred by informing Choate that he faced a discretionary period of postrelease control. Because the state failed to raise this issue in a cross-appeal, as required by App.R. 3(C), this issue is not properly before this court for review.

Having overruled Choate's sole assignment of error, we accordingly affirm the judgment of the trial court.

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.

MOCK, P.J., ZAYAS and MYERS, JJ.

To the clerk:

Enter upon the journal of the court on March 8, 2017
per order of the court _____.
Presiding Judge