

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

RONALD J. BRANDON

Defendant-Appellant

: JUDGES:

:

: Hon. John W. Wise, P.J.

: Hon. Patricia A. Delaney, J.

: Hon. Earle E. Wise, Jr., J.

:

: Case No. CT2017-0081

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: O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County
Court of Common Pleas, Case No.
CR2017-0117

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

September 7, 2018

APPEARANCES:

For Plaintiff-Appellee:

D. MICHAEL HADDOX
MUSKINGUM COUNTY PROSECUTOR

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For Defendant-Appellant:

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Delaney, J.

{¶1} Defendant-Appellant Ronald J. Brandon appeals the October 19, 2017 sentencing entry of the Muskingum County Court of Common Pleas. Plaintiff-Appellee is the State of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} The Muskingum County Sheriff's Office ("MCSO") had Defendant-Appellant Ronald J. Brandon under its surveillance because it suspected Brandon was operating a drug trafficking ring out of his mother's home and other locations. MCSO used a confidential information to make a number of controlled drug buys from January 15, 2016 through May 20, 2016. The confidential informant made buys from A.J., M.B., and Brandon. The MCSO also conducted a number of trash pulls from four separate residences finding evidence of drug trafficking.

{¶3} On May 26, 2016, the MCSO simultaneously executed search warrants at four different locations. The investigation found evidence that Brandon purchased and supplied drugs to A.J. and M.B., which they then sold. Based on the evidence discovered, Brandon was indicted by the Muskingum County Grand Jury on the following charges: Count One, trafficking in drugs (cocaine), a fifth-degree felony in violation of R.C. 2925.03(A)(1); Count Two, possession of drugs (cocaine), a fifth-degree felony in violation of R.C. 2925.11(A); Count Three, possession of drugs (methamphetamine), a third-degree felony in violation of R.C. 2925.11(A); Count Four, possession of drugs (delta-9-tetrahydrocannabinol), a fifth-degree felony in violation of R.C. 2925.11(A); Count Five, engaging in a pattern of corrupt activity, a first-degree felony in violation of

R.C. 2923.32(A)(1); and Count Six, having a weapon under disability, a third-degree felony in violation of R.C. 2923.13(A)(3).

{¶4} Brandon was arraigned on April 17, 2017 and entered a plea of not guilty to all charges.

{¶5} The matter proceeded to a jury trial on September 12, 2017. Brandon waived his right to a jury trial on the charge of having a weapon under disability, for which the trial court found Brandon guilty. The jury found Brandon guilty of the remaining charges. The jury verdict was memorialized by judgment entry filed on September 14, 2017.

{¶6} A sentencing hearing was held on October 18, 2017 and the sentencing entry was issued on October 19, 2017. The trial court sentenced Brandon to an aggregate prison term of 15 years. Specifically, it sentenced Brandon to:

- 11 months on Count One
- 11 months on Count Two
- 30 months on Count Three
- 11 months on Count Four
- 10 years on Count Five
- 30 months on Count Six

The trial court ordered that Counts One, Two, Three, and Four should be served concurrently with one another. Count Five should be served consecutively to Counts One through Four. Count Six should be served consecutively to Count Five. At the hearing, and incorporated into the sentencing entry, the trial court stated that pursuant to R.C. 2929.14(C)(4)(b) and (c), the imposition of consecutive sentences was necessary to

protect the public from future crime or to punish Brandon, consecutive sentences were not disproportionate to the seriousness of Brandon's conduct, and Brandon posed a danger to the public.

{¶7} It is from this sentencing entry Brandon now appeals.

ASSIGNMENT OF ERROR

{¶8} Brandon raises one Assignment of Error:

{¶9} "THE RECORD IN THIS MATTER DOES NOT SUPPORT THE IMPOSITION OF CONSECUTIVE SENTENCES PURSUANT TO STATE LAW R.C. 2929.14."

ANALYSIS

{¶10} Brandon argues the trial court erred when it imposed consecutive sentences. We disagree.

{¶11} Under R.C. 2953.08(G)(2)(a), we consider whether there is clear and convincing evidence in the record to support the trial court's findings under R.C. 2929.14(C)(4) to impose consecutive sentences. *State v. Compton*, 5th Dist. Muskingum No. CT2018-0004, 2018-Ohio-2868, 2018 WL 3491901, ¶ 12 citing *State v. Deeb*, 6th Dist. Erie No. E-14-117, 2015-Ohio-2442, ¶ 27. See, also, R.C. 2953.08(C)(1).

{¶12} In Ohio, there is a statutory presumption in favor of concurrent sentences for most felony offenses. R.C. 2929.41(A). The trial court may overcome this presumption by making the statutorily-enumerated findings set forth in R.C. 2929.14(C)(4). *State v. Whitman*, 5th Dist. Stark No. 2017CA00079, 2018-Ohio-2924, ¶ 92 citing *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 23. This statute requires the trial

court to undertake a three-part analysis. *State v. Alexander*, 1st Dist. Hamilton Nos. C–110828 and C–110829, 2012–Ohio–3349, 2012 WL 3055158, ¶ 15.

{¶13} R.C. 2929.14(C)(4) provides as follows:

If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶14} “R.C. 2929.14(C)(4) provides that a trial court may require the offender to serve multiple prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any one of three facts specified in subdivisions (a), (b), and (c).” *Compton, supra* at ¶ 14 quoting *State v. Leet*, 2nd Dist. Montgomery No. 25966, 2015–Ohio–1668, ¶ 15 (internal quotations and brackets omitted).

{¶15} In *Bonnell, supra*, at the syllabus, the Supreme Court of Ohio held that the trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and to incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings. The sentencing court is not required to recite “a word-for-word recitation of the language of the statute.” *Bonnell*, ¶ 29. “[A]s long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld.” *Id.*

{¶16} Brandon argues the record does not support the imposition of consecutive sentences. In support of his assigned error, he contends the trial court erred in imposing the near maximum sentence on Count Five, engaging in a pattern of corrupt activity, a first-degree felony. Brandon asserts the State failed to prove that Brandon was the ringleader of a drug trafficking enterprise. Brandon’s arguments sound in an appeal of the manifest weight or sufficiency of the evidence, but those issues were not raised as assignments of error.

{¶17} In the present case, the trial court made written findings in accordance with the language of R.C. 2929.14(C)(4) and subdivisions (b) and (c). (Sentencing Entry, Oct. 19, 2017). Similar oral findings were made on the record at sentencing. (Oct. 18, 2017 Sentencing Hrg., T. 19). The trial court found that Brandon had two prior felony drug cases for possession of drugs, one case in 2009 and one case in 2014. (T. 15). The 2009 conviction was overturned. (T. 16). Brandon was previously convicted of two separate charges of misdemeanor assault, misdemeanor possession of marijuana, two charges of domestic violence, and open container. (T. 16). As a juvenile, Brandon was convicted of aggravated possession of drugs, failure to comply, and rape. (T. 16). The jury determined Brandon was guilty of trafficking in drugs, possession of drugs, and engaging in a pattern of corrupt activity. Brandon has not appealed those convictions.

{¶18} Based on the foregoing, we find that the trial court's findings for imposing consecutive sentences were supported by the record and the trial court did not err in imposing consecutive sentences.

{¶19} Brandon's sole Assignment of Error is overruled.

CONCLUSION

{¶20} The judgment of the Muskingum County Court of Common Pleas is affirmed.

By: Delaney, J.,

Wise, John, P.J. and

Wise, Earle, J., concur.