

[Cite as *State v. Allison*, 2017-Ohio-7176.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105152

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DALANTE ALLISON, JR.

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART, REVERSED IN PART,
AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-14-590268-A, CR-14-591385-A, CR-14-591566-A, CR-15-593673-A, and
CR-15-594891-A

BEFORE: E.T. Gallagher, P.J., Blackmon, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: August 10, 2017

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EILEEN T. GALLAGHER, P.J.:

{¶1} Defendant-appellant, Dalante Allison, Jr. (“Allison”), appeals from the trial court’s imposition of consecutive sentences. He raises two assignments of error for our review:

1. The trial court erred when it imposed consecutive sentences without making the findings mandated by R.C. 2929.14(C)(4) and incorporating those findings into the sentencing journal entries.

2. The trial court erred when it used an incorrect version of R.C. 2929.11(A) to sentence Allison. The sentence was therefore contrary to law.

{¶2} After careful review of the record and relevant case law, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I. Procedural History

{¶3} In August 2015, Allison appeared before the trial court to enter pleas in Cuyahoga C.P. Nos. CR-14-590268-A, CR-14-591385-A, CR-14-591566-A, CR-15-593673-A, and CR-15-594891-A.

{¶4} In Case No. CR-14-590268-A, Allison pleaded guilty to drug trafficking in violation of R.C. 2925.03(A)(1), a felony of the fifth degree.

{¶5} In Case No. CR-14-591385-A, Allison pleaded guilty to drug trafficking in violation of R.C. 2925.03(A)(2), a felony of the fourth degree, with a one-year firearm specification and forfeiture specifications; and possession of criminal tools in violation of R.C. 2923.24(A), a felony of the fifth degree, with forfeiture specifications.

{¶6} In Case No. CR-14-591566-A, Allison pleaded guilty to an amended count of drug trafficking in violation of R.C. 2925.03(A)(2), a felony of the third degree, with juvenile and forfeiture specifications; and possession of criminal tools in violation of R.C. 2923.24(A), a felony of the fifth degree, with forfeiture specifications.

{¶7} In Case No. CR-15-593673-A, Allison pleaded guilty to three counts of corrupting another with drugs in violation of R.C. 2925.02(A)(3), felonies of the second degree; and one count of drug trafficking in violation of R.C. 2925.03(A)(2), a felony of the fourth degree, with forfeiture specifications.

{¶8} In Case No. CR-15-594891-A, Allison pleaded guilty to three counts of drug trafficking in violation of R.C. 2925.03(A)(2), felonies of the fifth degree, with forfeiture specifications.

{¶9} After conducting a plea colloquy, the trial court accepted Allison's guilty pleas in each case and referred Allison to the county probation department for a presentence investigation report ("PSI").

{¶10} In September 2015, the trial court held a sentencing hearing. At the hearing, the trial court heard from the state, a detective familiar with the facts of the cases, defense counsel, Allison's mother, and Allison.

{¶11} Detective Tamika Agnew ("Det. Agnew") spoke on behalf of the state, and described the extent of Allison's distribution of heroin in Cuyahoga County, including his involvement in the sale of heroin to individuals who suffered nonfatal overdoses. Det.

Agnew explained that Allison continued to distribute heroin despite his repeated arrests and, in her view, is a “danger to society.”

{¶12} Based on the nature of the crimes and the “horrible heroin epidemic taking place in our community,” the state asked the trial court to impose a “lengthy” prison term.

The state noted that Allison showed no remorse for his conduct and continued to sell heroin while his cases in this matter were pending.

{¶13} On Allison’s behalf, defense counsel asked the court to impose the minimum sentence permitted by statute based on Allison’s young age, the recent birth of his daughter, and his prior cooperation with the police. In addition, Allison’s mother stated that Allison was “a product of his environment,” but could be rehabilitated if given the opportunity. Finally, Allison offered an apology to his family, the court, and the community. He accepted responsibility for his actions and admitted that he continued to sell drugs during the pendency of his cases because he was enamored with the lifestyle.

{¶14} In formulating Allison’s sentence, the trial court stated that it had reviewed Allison’s PSI and carefully considered the “overriding purposes of felony sentencing,” as set forth in R.C. 2929.11, “as well as the recidivism factors set forth in R.C. 2929.12.” In addition, the court noted that Allison was before the court on five cases and had committed several of the offenses while out on bond.

{¶15} In Case No. CR-14-590268-A, the trial court imposed a prison sentence of nine months. In Case No. CR-14-591385-A, the trial court imposed a one-year prison term on the firearm specification, to run prior and consecutive to a 12-month prison term

on the underlying drug trafficking conviction. In Case No. CR-14-591566-A, the trial court imposed a 12-month prison term on the drug trafficking conviction, and a nine-month prison term on the possession of criminal tools conviction, to run concurrently with each other. In Case No. CR-15-593673-A, the trial court imposed five-year prison terms on each corrupting another with drugs convictions, and a 12-month prison term on the drug trafficking conviction, to run concurrently to each other. In Case No. CR-15-594891-A, the trial court imposed a 12-month prison term on the drug trafficking convictions, as charged in Counts 1 and 3, and a nine-month prison term on the drug trafficking convictions, as charged in Count 2, to run concurrently to each other.

{¶16} At the conclusion of the sentencing hearing, the trial court ordered the sentences imposed in each case to be served consecutively to each other, for a total prison term of nine years and nine months.

{¶17} In December 2016, this court granted Allison's motion for delayed appeal. In April 2017, however, we sua sponte remanded Case No. CR-14-591385-A to the trial court for correction of the record pursuant to App.R. 9(E), stating, in pertinent part:

The appellant pleaded guilty to Count 2, trafficking with a 1 year firearm specification and forfeiture specifications, and Count 5, possession of criminal tools with forfeiture specifications. Counts 1, 3, and 4 were dismissed. The sentencing journal entry of 09-12-2015 fails to impose any sentence with regard to Count 5. And therefore fails to comport with *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, which requires that a judgment of conviction set forth (1) the fact of conviction, (2) the sentence as to each count, (3) the judge's signature, and (4) a time-stamp indicating entry on the journal by the clerk. * * * Upon remand, the appellant must be resentenced in this case de novo in the presence of the trial court and in full compliance with the mandate of *State v. Lester*, supra.

{¶18} Pursuant to our order, the trial court held a de novo resentencing hearing in Case No. CR-14-591385-A in May 2017. At the sentencing hearing, the trial court imposed a one-year prison term on the firearm specification, to run prior and consecutive to a 12-month prison term on the underlying drug-trafficking conviction. In addition, the trial court imposed a concurrent nine-month prison term on the possession of criminal tools conviction. At the conclusion of the hearing, the trial court ordered that the aggregate 24-month sentence imposed in Case No. CR-14-591385-A be served consecutive to the sentences imposed in Case Nos. CR-14-590268-A, CR-14-591566-A, CR-15-593673-A, and CR-15-594891-A.

{¶19} Allison now appeals his consecutive sentences.

II. Law and Analysis

A. Consecutive Sentence

{¶20} In his first assignment of error, Allison argues the trial court erred when it imposed consecutive sentences without making the findings mandated by R.C. 2929.14(C)(4).

{¶21} We review felony sentences under the standard set forth in R.C. 2953.08(G)(2). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 16. R.C. 2953.08(G)(2) provides that a reviewing court may overturn the imposition of consecutive sentences where the court “clearly and convincingly” finds that (1) “the record does not support the sentencing court’s findings” under R.C. 2929.14(C)(4), or (2) “the sentence is otherwise contrary to law.” *Id.*

{¶22} R.C. 2929.14(C)(4) provides that in order to impose consecutive sentences, the trial court must find that consecutive sentences are (1) necessary to protect the public from future crime or to punish the offender, (2) that such sentences would not be disproportionate to the seriousness of the conduct and to the danger the offender poses to the public, and (3) that one of the following applies:

(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 postrelease 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.

R.C. 2929.14(C)(4).

{¶23} In order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 33. “Nor is [the trial court] required to give a talismanic incantation of the words of the statute, provided that the necessary findings can be found in the record and are incorporated into the sentencing entry.” *Id.*

{¶24} At the September 2015 sentencing hearing in this case, the trial court stated that it carefully considered the seriousness of the offenses, Allison's criminal history, and the fact that Allison committed additional offenses while out on bond. The court further expressed that it was guided by the overriding purposes of felony sentencing and the relevant recidivism factors. However, the trial court made no finding concerning whether consecutive sentences would be disproportionate to the seriousness of the conduct and to the danger the offender poses to the public. In the absence of such a finding, we find the trial court failed to make the findings required by the statute before imposing consecutive sentences. *See State v. Hauser*, 8th Dist. Cuyahoga No. 103880, 2016-Ohio-7710.

{¶25} The unusual procedural history of this case, however, requires further discussion. As stated, in April 2017, this court sua sponte remanded Case No. CR-14-591385-A to the trial court for a de novo sentencing hearing based on the court's failure to impose a sentence on Allison's possession of criminal tools conviction in that case. On remand, the trial court complied with this court's order and resentenced Allison on each count. Thereafter, the prosecutor urged the trial court to make the necessary findings for imposing consecutive sentences under R.C. 2929.14(C)(4), and the trial court made the following statement:

The Court does find consecutive sentences are necessary to protect the public from future crime, as well as to punish the offender. Additionally, consecutive sentences are not disproportionate to the seriousness of Mr. Allison's conduct and the danger he poses to the public.

At least one of the following do apply — more than one of them apply. The defendant committed one or multiple offenses while awaiting trial or sentencing, or was under community control or was under postrelease control for a prior offense, or at least two of the multiple offenses were committed in this case as part of one or more courses of conduct, and the harm caused by said multiple offenses was so great or unusual that no single prison term for any of the courses of conduct adequately reflects the seriousness of Mr. Allison's conduct, or his history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the defendant.

{¶26} Upon review, we find the trial court made the necessary findings for running Allison's aggregate 24-month sentence in Case No. CR-14-591385-A consecutive to the sentences already being served in Case Nos. CR-14-590268-A, CR-14-591566-A, CR-15-593673-A, and CR-15-594891-A. Moreover, we cannot find that the record clearly and convincingly does not support the sentencing court's consecutive sentence findings under R.C. 2929.14(C)(4). Significantly, the record reflects that Allison was aware that the heroin he was selling had caused several overdoses, yet he continued to sell the drug throughout this community in the pursuit of his own greed and vanity.

{¶27} However, the trial court's compliance with R.C. 2929.14(C)(4) during the May 2017 resentencing hearing in Case No. CR-14-591385-A did not cure the trial court's failure to make the necessary findings for running the sentences imposed in Case Nos. CR-14-590268-A, CR-14-591566-A, CR-15-593673-A, and CR-15-594891-A consecutive to each other. Accordingly, we vacate Allison's aggregate nine-year and nine-month sentence and remand the case for resentencing for the trial court to consider whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) in Case Nos. CR-14-590268-A, CR-14-591566-A, CR-15-593673-A, and CR-15-594891-A. If the

court determines consecutive sentences are necessary in those cases, it is required to make the necessary findings on the record and incorporate those findings in the sentencing journal entry in accordance with *Bonnell*.

{¶28} Allison’s first assignment of error is overruled in part and sustained in part.

B. Consideration of R.C. 2929.11(A)

{¶29} In his second assignment of error, Allison argues the trial court imposed a sentence that is contrary to law based on the court’s application of an “incomplete and incorrect version of R.C. 2929.11(A).”

{¶30} R.C. 2929.11(A) provides that the overriding purposes of felony sentencing are (1) to protect the public from future crime by the offender and others; and (2) to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. Further, the sentence imposed shall be “commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact on the victim, and consistent with sentences imposed for similar crimes by similar offenders.” R.C. 2929.11(B).

{¶31} In this case, the trial court stated that in formulating Allison’s sentence it was guided by R.C. 2929.11(A) and that “the overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender.” Relying on the foregoing statement, Allison argues the trial court applied an outdated version of R.C. 2929.11(A) and failed to explicitly consider the “minimum

sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.” We disagree.

{¶32} Allison correctly states that the current version of R.C. 2929.11(A) requires the trial court to consider the minimum sanctions necessary for accomplishing the overriding purposes of felony sentencing without imposing an unnecessary burden on state or local government resources. However, contrary to Allison’s position, the trial court was not required to use any particular language or make any specific findings on the record. *See State v. Evans*, 8th Dist. Cuyahoga No. 101485, 2015-Ohio-1022, ¶ 34, citing *State v. Brown*, 8th Dist. Cuyahoga No. 100874, 2014-Ohio-4381, ¶ 10. The case law is clear that a sentencing court need not state anything further than that it considered all required statutory factors to fully comply with the sentencing statutes. *State v. Stewart*, 8th Dist. Cuyahoga No. 104402, 2017-Ohio-740, ¶ 9, citing *State v. Kamleh*, 8th Dist. Cuyahoga No. 97092, 2012-Ohio-2061, ¶ 61.

{¶33} In this case, the trial court expressly stated on the record that it carefully considered R.C. 2929.11 and 2929.12, and reiterated in each sentencing journal entry that it “considered all required factors of law,” and found “that prison is consistent with the purpose of R.C. 2929.11.” Under these circumstances, we find the trial court’s partial recitation of the language contained in R.C. 2929.11(A) during the September 2015 sentencing hearing did not render Allison’s sentences contrary to law.

{¶34} Allison’s second assignment of error is overruled.

{¶35} Judgment affirmed in part, reversed in part, and remanded for a limited sentencing hearing.

It is ordered that appellee and appellant share costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR