

[Cite as *State v. Ladson*, 2017-Ohio-8876.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105374

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANTONIO LADSON

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-13-579698-A and CR-15-594963-A

BEFORE: Keough, A.J., Blackmon, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: December 7, 2017

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KATHLEEN ANN KEOUGH, A.J.:

{¶1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc. App.R. 11.1. The purpose of an accelerated appeal is to allow this court to render a brief and conclusory opinion. *State v. Priest*, 8th Dist. Cuyahoga No. 100614, 2014-Ohio-1735, ¶ 1.

{¶2} Defendant-appellant, Antonio Ladson, appeals the sentences imposed following a community control violation hearing. For the reasons that follow, we reverse and remand for resentencing.

{¶3} In 2014, Ladson pleaded guilty in Case No. CR-13-579698 to one count each of attempted burglary and menacing by stalking. The court sentenced him to two years of community control sanctions, advising him that if he violated the terms and conditions of community control, he would be subject to more restrictive sanctions or a prison term of 18 months. In June 2015, Ladson violated community control when he was charged in a subsequent case. As a result of the violation, he was placed in a group home with electronic monitoring. However, in January 2016, Ladson again violated community control. Although the court allowed Ladson to continue in the group home with electronic monitoring, the court advised him that any further violation of community control sanctions could result in more restrictive sanctions, or a prison sentence of 12 months on the attempted burglary offense consecutive to 18 months on the menacing by stalking. Undeterred, Ladson violated community control sanctions in April 2016 by contacting the victim in the case. The court then terminated community control

sanctions and imposed a sentence of 30 months in prison — 12 months for attempted burglary, consecutive to 18 months for menacing by stalking.

{¶4} In June 2015, Ladson pleaded guilty in Case No. CR-15-594963 to two counts of menacing by stalking (Counts 1 and 2), violating a temporary protection order (Count 4), and criminal damaging (Count 5). At the time of the plea, the court stated that Counts 1 and 2 merged for sentencing purposes. The court sentenced Ladson to five years of community control sanctions, advising him that if he violated the terms and conditions of community control, he would be subject to more restrictive sanctions or a prison sentence of 18 months on Count 1, 18 months on Count 2, and 36 months on Count 4, with a suspended six-month sentence on Count 5. In January 2016, Ladson violated community control sanctions. Although he was allowed to remain in the group home with electronic monitoring, he was advised that a further violation could result in more restrictive sanctions or a prison term of 72 months. When Ladson violated community control in April 2016, the court terminated community control sanctions and imposed a 72-month sentence — 18 months on Count 1, 18 months on Count 2, and 36 months on Count 4, to be served consecutively.

{¶5} In this delayed appeal, Ladson challenges the sentences imposed in these two cases, raising two assignments of error.

I. Consecutive Sentences

{¶6} In his first assignment of error, Ladson contends that the trial court erred when it imposed consecutive prison terms without making the necessary findings required

under R.C. 2929.14(C)(4), resulting in a sentence that is contrary to law and unsupported by the record.

{¶7} Consecutive sentences may be imposed only if the trial court makes the required findings under R.C. 2929.14(C)(4). *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 20-22. Under the statute, consecutive sentences may be imposed if the trial court finds that consecutive sentences are (1) necessary to protect the public from future crime or to punish the offender, and (2) not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. In addition, the court must find that any of the following applies:

- (1) the offender committed one or more of the multiple offenses while awaiting trial or sentencing, while under a sanction, or while under postrelease control for a prior offense;
- (2) at least two of the multiple offenses were committed as part of one or more courses of the conduct, and the harm caused by two or more of the offenses was so great or unusual that no single prison term for any of the offenses committed as part of the courses of conduct adequately reflects the seriousness of the offender's conduct; or
- (3) the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶8} Compliance with R.C. 2929.14(C)(4) requires the trial court to make the statutory findings at the sentencing hearing, which means that “the [trial] court must note that it engaged in the analysis’ and that it ‘has considered the statutory criteria and specifie[d] which of the given bases warrants its decision.’” *Bonnell* at ¶ 26, quoting

State v. Edmonson, 86 Ohio St.3d 324, 326, 715 N.E.2d 131 (1999). Further, the reviewing court must be able to discern that the record contains evidence to support the findings. *State v. Davis*, 8th Dist. Cuyahoga No. 102639, 2015-Ohio-4501, ¶ 21, citing *Bonnell* at ¶ 29. A trial court is not, however, required to state its reasons to support its findings, nor is it required to give a rote recitation of the statutory language, “provided that the necessary findings can be found in the record and are incorporated in the sentencing entry.” *Bonnell* at ¶ 37.

{¶9} In cases where consecutive sentences are imposed following a violation and termination of community control sanctions, the mandates of R.C. 2929.14(C)(4) must still be followed. See *State v. Fraley*, 105 Ohio St.3d 13, 2004-Ohio-7110, 821 N.E.2d 995, ¶ 17 (at a community-control-revocation hearing, the court sentences the offender anew and must comply with the relevant sentencing statutes); *State v. Heinz*, 146 Ohio St.3d 374, 2016-Ohio-2814, 56 N.E.3d 965, ¶ 15; *State v. Duncan*, 2016-Ohio-5559, 61 N.E.2d 61 (12th Dist.) (R.C. 2929.14(C)(4) findings must be made when sentencing a defendant to consecutive prison terms for community control violations).

{¶10} After reviewing the sentencing transcript, we find that the trial court did not make the requisite R.C. 2929.14(C)(4) findings in support of its imposition of consecutive sentences in Case No. CR-13-579698.¹ Specifically, the trial court failed to find that (1) consecutive sentences are not disproportionate to the seriousness of the offender’s

¹ Any challenge to the findings made for the imposition of consecutive sentences in Case No. CR-15-594963 is rendered moot based on the disposition of Ladson’s second assignment of error, which will be discussed below.

conduct, and (2) at least one of the factors in R.C. 2929.14(C)(4)(a)-(c) applied. Moreover, we note that when the trial court was attempting to make the requisite findings, the court was addressing Ladson's offenses and conduct in Case No. CR-15-594963. (Tr. 10.)

{¶11} Accordingly, Ladson's sentence in Case No. CR-13-579698 is vacated, and the case is remanded for resentencing for the trial court to consider whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) and, if so, to make the required findings on the record and incorporate those findings in the sentencing journal entry in accordance with *Bonnell*. The first assignment of error is sustained.

II. Allied Offenses

{¶12} In his second assignment of error, Ladson contends that the trial court erred when it failed to merge offenses of similar import for the purposes of sentencing. We agree.

{¶13} At the time of Ladson's plea in Case No. CR-15-594963, the trial court noted that Counts 1 and 2, the menacing by stalking offenses, "merge for purposes of sentencing." Although the court erred during the initial 2015 sentencing when it advised Ladson that a violation of community controls sanctions could result in a prison sentence of "Count 1 — 18 months, Count 2 — 18 months, Count 4 — 36 months, consecutive," the error did not become ripe for review until the actual term of incarceration was imposed for the violation of community control. *State v. Dismukes*, 8th Dist. Cuyahoga

No. 89169, 2007-Ohio-5847, ¶ 7, citing *State v. Smith*, 3d Dist. Defiance No. 4-06-18, 2006-Ohio-5149; *State v. Ogle*, 6th Dist. Wood No. WD-01-040, 2002-Ohio-860.

{¶14} At sentencing for Ladson's violation of community control, the trial court imposed a prison sentence on both Counts 1 and 2, counts that were originally declared allied at the time of the plea. This error renders Ladson's sentence void. *State v. Holmes*, 8th Dist. Cuyahoga No. 100388, 2014-Ohio-3816, ¶ 20 (once a trial court determines that two offenses are allied and are subject to merger, the trial court acts without authority when it imposes a sentence on both offenses; rendering the sentence void.) The imposition of individual sentences on counts that constitute allied offenses of similar import violates R.C. 2941.25 and the Double Jeopardy Clause. *Id.* at ¶ 19.

{¶15} Accordingly, the trial court erred in imposing individual sentences on both Counts 1 and 2. Ladson's sentence is reversed, and the case is remanded to the trial court to conduct a new sentencing hearing to allow the state to make an election on which count survives merger. If the trial court subsequently finds that consecutive sentences are appropriate under R.C. 2929.14(C)(4) for the remaining counts, the court must make the required statutory findings on the record, and incorporate those findings in the sentencing journal entry. Ladson's second assignment of error is sustained.

{¶16} The sentences are vacated, and the cases are remanded for resentencing.

It is ordered that appellant recover from appellee 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.

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE

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