

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106119

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DANIEL R. ROSARIO

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-17-613748-A

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

RELEASED AND JOURNALIZED: March 29, 2018

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PATRICIA ANN BLACKMON, J.:

{¶1} Daniel R. Rosario (“Rosario”) appeals his five-year prison sentence for robbery and community control sanctions (“CCS”) violations and assigns the following error for our review:

I. The trial court imposed a sentence that is contrary to law when it failed to make all the factual findings necessary to sentence appellant to consecutive sentences under R.C. 2929.14.

{¶2} Having reviewed the record and pertinent law, we affirm. The apposite facts follow.

{¶3} On June 27, 2017, Rosario pled guilty to one count of robbery in violation of R.C. 2911.02(A)(1), a second-degree felony, with a one-year firearm specification. On July 26, 2017, the court sentenced Rosario to three years in prison for the robbery, to run consecutive to one year in prison for the firearm specification. The court also found Rosario to be in violation of CCS previously imposed in *State v. Rosario*, Cuyahoga C.P. Nos. CR-14-582320 (Apr. 22, 2015) and CR-14-591138 (Apr. 22, 2015). The court sentenced Rosario to one year in prison for violating his CCS and ran this sentence consecutive to the four-year sentence in the case at hand. Rosario now appeals his five-year prison sentence.

Felony Sentencing Standard of Review

{¶4} R.C. 2953.08(G)(2) provides, in part, that when reviewing felony sentences, the appellate court's standard is not whether the sentencing court abused its discretion; rather, if this court "clearly and convincingly" finds that (1) "the record does not support the sentencing court's findings under" R.C. Chapter 2929 or (2) "the sentence is otherwise contrary to law," then we may conclude that the court erred in sentencing. *See also State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231.

{¶5} A sentence is not clearly and convincingly contrary to law "where the trial court considers the purposes and principles of sentencing under R.C. 2929.11 as well as the seriousness and recidivism factors listed in R.C. 2929.12, properly applies post-release control, and sentences a defendant within the permissible statutory range." *State v. A.H.*, 8th Dist. Cuyahoga No. 98622, 2013-Ohio-2525, ¶ 10.

{¶6} Pursuant to R.C. 2929.11(A), the two overriding purposes of felony sentencing are "to protect the public from future crime by the offender and others," and "to punish the offender using the minimum sanctions that the court determines accomplish those purposes * * *." Additionally, 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 committed by similar offenders." R.C. 2929.11(B).

{¶7} Furthermore, in imposing a felony sentence, "the court shall consider the factors set forth in [R.C. 2929.12(B) and (C)] relating to the seriousness of the conduct [and] the factors provided in [R.C. 2929.12(D) and (E)] relating to the likelihood of the offender's recidivism * * *." R.C. 2929.12. However, this court has held that

“[a]lthough the trial court must consider the principles and purposes of sentencing as well as the mitigating factors, the court is not required to use particular language or make specific findings on the record regarding its consideration of those factors.” *State v. Carter*, 8th Dist. Cuyahoga No. 103279, 2016-Ohio-2725, ¶ 15.

Consecutive Sentences

{¶8} Additionally, “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 * * *.” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37. Pursuant to R.C. 2929.14(C)(4), the court must find consecutive sentences are “necessary to protect the public from future crime or to punish the offender”; “not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public”; and at least one of the following three factors:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction * * *, 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.

{¶9} In the instant case, Rosario argues that the court failed to “make the mandatory findings necessary for imposing consecutive sentences under R.C.

2929.14(C)(4).” Specifically, Rosario argues that the court “did not engage in a proportionality analysis comparing the seriousness of the appellant’s conduct to the need for consecutive sentences” nor did the court “make the finding that the consecutive sentence is not disproportionate to the danger the appellant poses to the public.”

{¶10} At the sentencing hearing, the court noted on the record that Rosario was under community control sanctions when he committed the robbery in question. Additionally, according to the record, Rosario tested positive for cocaine while on probation in his two previous cases. The court considered “the record, the [presentence investigation report], and any written or oral statements made to the court today as is required by Revised Code Section 2929.19(B)(1).”

{¶11} The state outlined the facts leading to Rosario’s conviction as follows: On October 5, 2016, Rosario and an unidentified woman held the victim at gunpoint at the Michael J. Zone Recreation Center in Cleveland. Rosario and the woman took the victim’s keys from her locker, fled the scene, and stole the victim’s car from the parking lot. A few days later, the Cleveland police found the victim’s car, which was damaged and stripped of salable parts, in front of Rosario’s house. The victim later identified Rosario from a lineup.

{¶12} The victim’s husband wrote an impact statement, in which he indicated that “they’re nervous all the time. My wife has changed a lot. She lives in fear all the time that something might happen to our six-year-old daughter. We do not visit the rec center that much anymore because of fear. It has affected me as I have not been able to buy another car and I have to ride a bike to work even if it rains or snows.”

{¶13} Rosario addressed the court and apologized:

Sorry for the crime I committed and I accept the consequences for what I did. I know I was wrong. But at the time I was high on drugs and didn't know what I was doing, your Honor. * * * I have been trying drug treatment. I've been doing NA and AA. And like I've been trying to better myself because I have a daughter on the way. Like I've been trying to better myself getting off drugs, because I had a heroin problem and coke problem. I've been trying to better myself the six months I've been here.

{¶14} After considering this evidence, the court made the following findings on the record:

[L]ooking at the * * * purposes and principles of sentencing under Ohio Revised Code Section 2929.11, the seriousness and recidivism factors relevant to the offense and offender, pursuant to Revised Code Section 2929.12 and the need for deterrence, incapacitation, rehabilitation and restitution, the court finds that a prison term is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code and finds that the offender is not amenable to an available community control sanction.

Furthermore, this court has considered the factors set forth in 2929.12 and finds that a prison term is commensurate with the seriousness of the defendant's conduct, its impact on the victims, that it is reasonably necessary to deter the offender in order to protect the public from future crime and would not place unnecessary burden on government resources.

As it pertains to case numbers 582320, 591138, the court finds that the defendant has violated the terms of his community control. The community control in those two cases are hereby terminated and the court imposes a prison term of one year for case number [582320] and one year for case number 591138. That time will run concurrent for a total time on those two cases of one year.

In case number 613748 the court first imposes the one-year firearm specification time. That one year is mandatory and must be served first before the defendant serves time on the underlying offense.

And on the underlying offense * * * the court sentences the defendant to three years in prison.

* * *

The court further finds that consecutive sentences in this case [are] 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, to the danger the offender poses to the public. And the court finds that the defendant committed the offense in case number 613748 while he was on community control in case numbers 582320 and 591138. So the defendant is sentenced to a total time of five years in prison. That will be three years on the underlying offense, one year for the one-year gun spec and one year for the probation cases. So the probation cases, case number 582320, 591138, while they are running concurrent, they will run consecutive to case number 613748.

{¶15} Upon review, we find that the court made the proper statutory findings to impose consecutive sentences and that these findings are supported by evidence in the record. Accordingly, Rosario's sole assigned error is overruled.

{¶16} Sentence affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's conviction having

been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

PATRICIA ANN BLACKMON, JUDGE

EILEEN T. GALLAGHER, P.J., and
MELODY J. STEWART, J., CONCUR