

[Cite as *State v. Scott*, 2018-Ohio-1849.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106090

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DOMINIQUE R. SCOTT

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-17-615460-A

BEFORE: Stewart, J., McCormack, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: May 10, 2018

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MELODY J. STEWART, J.:

{¶1} Defendant-appellant Dominique Scott appeals his sentence after he pleaded guilty to multiple crimes he committed while on community control sanctions. In his assignment of error, Scott challenges the court's imposition of consecutive sentences. We find no error and affirm.

{¶2} One afternoon, near a busy street and with people around, police attempted to stop a vehicle after observing suspected drug activity. Scott, who was behind the wheel of the subject vehicle, attempted to flee by reversing at a high rate of speed. He lost control and crashed into a nearby building. With the passenger side of the car pinned against the side of the building, Scott attempted to run. A foot chase ensued, after which the police apprehended Scott. There was a passenger in the car who was not injured in the crash, and he was able to exit the car from the driver side. Police searched the car and found quantities of heroin and cocaine, a scale, and a loaded firearm.

{¶3} Scott pleaded guilty to four crimes: two counts of trafficking in drugs, one count of having weapons while under disability, and one count of failure to comply with order or signal of police officer. Each trafficking count was in violation of R.C. 2925.03(A)(2) and contained a firearm specification; however, one count was a second-degree felony and the other was a fourth-degree felony. Having weapons while under disability, in violation of R.C. 2923.13(A)(3), was a third-degree felony. Failure to comply, in violation of R.C. 2921.331(B), was also a third-degree felony.

{¶4} The trial court sentenced Scott to a total term of seven years in prison. It sentenced him to 3 years for one trafficking count and 18 months for the other. It sentenced him to three years for having weapons while under disability and three years for failure to comply. The court ran the terms for trafficking and having weapons while under disability concurrent to each other for a total of three years. The court ran Scott's one-year firearm terms concurrent to each other, but consecutive to their predicate offenses. Finally, the court ran his failure to comply sentence consecutive to the other terms.

{¶5} On appeal, Scott argues that the trial court abused its discretion by imposing consecutive sentences without making findings pursuant to R.C. 2929.14(C)(4). Before addressing the substance of Scott's argument, we note that according to R.C. 2953.08(G)(2), this court does not review felony sentences for abuse of discretion. Instead, as relevant here, that statute permits us to disturb a felony sentence only if we "clearly and convincingly" find that either (1) "the record does not support the sentencing court's findings" under specified divisions of R.C. 2929.13, 2929.14, or 2929.20, or (2) "the sentence is otherwise contrary to law." R.C. 2953.08(G)(2). Nevertheless, we now address Scott's claim that the trial court erred by imposing consecutive sentences without making findings pursuant to R.C. 2929.14(C)(4).

{¶6} As a general rule in Ohio, there is a presumption in favor of concurrent sentences unless the trial court makes the specified findings required by R.C. 2929.14(C)(4). *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 22-23. There are, however, relevant exceptions to this general rule that are dispositive of Scott's claim. In this case, and irrespective of R.C. 2929.14(C)(4), the trial court was statutorily required to impose consecutive sentences for Scott's firearm specification and failure to comply violation. His assertion that a court may only impose consecutive sentences pursuant to R.C. 2929.14(C)(4) is incorrect.

1. Firearm Specification

{¶7} By law, and without consideration of R.C. 2929.14(C)(4), a court must impose the prison sentence for a firearm specification “consecutively to and prior to any prison term imposed for the underlying felony * * * and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.” *State v. Lewis*, 2017-Ohio-4300, 92 N.E.3d 325, ¶ 37 (8th Dist.), quoting R.C. 2929.14(C)(1)(a). Because that statute required Scott's sentences for his firearm specifications be served consecutive to the underlying offenses, the court was not required to make R.C. 2929.14(C)(4) findings before imposing a consecutive sentence. *See State v. Goins*, 8th Dist. Cuyahoga No. 103874, 2016-Ohio-5930, ¶ 9. Accordingly, there was no error as to the court's order requiring Scott's term for his firearm specifications be consecutive to the other offenses.

2. Failure to Comply

{¶8} A court may impose consecutive sentences for certain violations of R.C. 2921.331(B) irrespective of R.C. 2929.14(C)(4). *See State v. Spicer*, 8th Dist. Cuyahoga Nos. 92384 and 92385, 2010-Ohio-61, ¶ 19 (“pursuant to R.C. 2921.331(D), a term of imprisonment for failure to comply must run consecutive to that of any other term of imprisonment”). A court may order a consecutive sentence for a violation of R.C. 2921.331(B) pursuant to the following framework:

If an offender is sentenced pursuant to division (C)(4) or (5) of this section for a violation of division (B) of this section, and if the offender is sentenced to a prison term for that violation, the offender shall serve the prison term consecutively to any other prison term or mandatory prison term imposed upon the offender.

R.C. 2921.331(D).

{¶9} As relevant to this case, division (C)(5) requires a court, as trier of fact, to find proof beyond reasonable doubt that “[t]he operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.” R.C. 2921.331(C)(5)(a)(ii).

{¶10} This court has stated that while R.C. 2921.331(C)(5)(a) generally requires the trier of fact to make specific findings, a defendant's guilty plea to the charges demonstrates an admission sufficient to satisfy the requirements of R.C. 2921.331(C)(5)(a). *State v. Kimmie*, 8th Dist. Cuyahoga No. 104298, 2016-Ohio-7724, ¶ 4, citing *State v. Wright*, 11th Dist. Lake No. 2006-L-017, 2006-Ohio-3435, ¶ 6; *see also State v. Mason*, 8th Dist. Cuyahoga No. 69280, 1996 Ohio App. LEXIS 1872, 8 (May 9, 1996) ("Guilty pleas constitute a complete admission of factual and substantive guilt.").

{¶11} Here, through his guilty plea, Scott admitted the findings required by R.C. 2921.331(C)(5)(a). He pleaded guilty to a violation of R.C. 2921.331(B), a third-degree felony, as charged in the indictment, including a statement that "the operation of the motor vehicle by [Scott] caused a substantial risk of serious physical harm to persons or property." Scott's admission therefore established that his violation of R.C. 2923.331(B) was punishable pursuant to division (C)(5). According to R.C. 2923.331(D) then, and irrespective of R.C. 2929.14(C)(4), the court was required to impose the sentence for that violation consecutively. *See Kimmie* at ¶ 6 ("Because [the defendant] was sentenced under R.C. 2921.331(C)(5), the trial court was required, as a matter of law, to impose consecutive sentences."). As such, the trial court did not err with regard to imposing a consecutive sentence for Scott's failure to comply.

{¶12} Judgment 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 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.

MELODY J. STEWART, JUDGE

TIM McCORMACK, P.J., and
MARY J. BOYLE, J., CONCUR