

[Cite as *State v. Cobb*, 2018-Ohio-5043.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106928

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MONTEZ COBB

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-17-623540-A

BEFORE: Celebrezze, J., S. Gallagher, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: December 13, 2018

ATTORNEY FOR APPELLANT

Kimberly Kendall Corral
4403 St. Clair Avenue
Cleveland, Ohio 44103

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor
BY: Edward R. Fadel
Assistant Prosecuting Attorney
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J.:

{¶1} Defendant-appellant, Montez Cobb, brings the instant appeal challenging his aggregate 30-year prison sentence for various theft-related offenses to which he pled guilty. Specifically, Cobb argues that the trial court's sentence violates the constitutional prohibition against cruel and unusual punishment, the trial court erred in imposing consecutive sentences, the trial court's sentence was influenced by improper considerations, and that he was denied his constitutional right to the effective assistance of counsel. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶2} The instant matter originated in juvenile court¹ when Cobb was charged in connection with various theft-related offenses that occurred between March 2017 and June 2017, involving eight different victims. The juvenile court held a probable cause hearing on September 18 and 19, 2017. Following the juvenile court proceedings and a bindover hearing,

the matter was transferred to the General Division of the Cuyahoga County Court of Common Pleas on November 22, 2017.

{¶3} On November 22, 2017, the Cuyahoga County Grand Jury returned a 26-count indictment charging Cobb with aggravated burglary, grand theft, robbery, kidnapping, aggravated robbery, misuse of credit cards, and identity fraud. Cobb was arraigned on December 5, 2017. He pled not guilty to the indictment.

{¶4} After exchanging discovery, the parties reached a plea agreement. The state agreed to amend the aggravated robbery offense charged in Count 7 by deleting the underlying one-year firearm specification. The state asserted that the counts to which Cobb would be pleading guilty did not merge for sentencing purposes because they involved different victims. (Tr. 11.) Furthermore, the state recommended a sentencing range of 20 to 30 years in prison. (Tr. 12.)

{¶5} On February 13, 2018, Cobb pled guilty to (1) aggravated burglary, a first-degree felony in violation of R.C. 2911.11(A)(2), with a one-year firearm specification as charged in Count 1; (2) robbery, a third-degree felony in violation of R.C. 2911.02(A)(3) as charged in Count 3; (3) robbery, second-degree felonies in violation of R.C. 2911.02(A)(2) as charged in Counts 4 and 24; (4) aggravated robbery, a first-degree felony in violation of R.C. 2911.01(A)(1), with a three-year firearm specification as amended in Count 7; (5) aggravated robbery, first-degree felonies in violation of R.C. 2911.01(A)(1) as charged in Counts 11 and 12; and (6) aggravated robbery, a first-degree felony in violation of R.C. 2911.01(A)(3) as charged in Count 19. The remaining 18 counts were nolle.

{¶6} The trial court proceeded immediately to sentencing on February 13, 2018. Four of the victims addressed the trial court during the sentencing phase of the hearing. Also, one of the

¹ Cuyahoga J.C. No. DL-109817.

lead investigators with the Cleveland State University Police Department, Sergeant Richard Flannery, and Cleveland City Councilman, Kerry McCormack, addressed the trial court. The prosecutor requested that the trial court impose a prison sentence within the recommended sentencing range of 20 to 30 years. Cobb's defense counsel addressed the trial court and requested the court to impose a prison sentence at the lower end of the recommended sentencing range. (Tr. 45.) Finally, Cobb addressed the court prior to the imposition of sentence.

{¶7} The trial court sentenced Cobb to an aggregate prison term of 30 years: ten years on the aggravated burglary offense in Count 1, consecutive to the one-year underlying firearm specification; two years on the robbery offense in Count 3; six years on the robbery offense in Count 4; six years on the robbery offense in Count 24; ten years on the aggravated robbery offense in Count 7, consecutive to the three-year underlying firearm specification; ten years on the aggravated robbery offense in Count 11; ten years on the aggravated robbery offense in Count 12; and ten years on the aggravated robbery offense in Count 19.

{¶8} The trial court ordered the one-year firearm specification underlying Count 1 to be served consecutively to the three-year firearm specification underlying Count 7, for a total prison term on these specifications of four years. The trial court ordered Counts 3, 4, and 24 to run concurrently to one another for a total of six years in prison. The trial court ordered Counts 12 and 19 to run concurrently to one another for a total of ten years in prison. The trial court ordered Counts 1, 7, and 11 to run concurrently to one another for a total of 14 years in prison. Finally, the trial court ordered the 14-year sentence on Counts 1, 7, and 11 to run consecutively to the ten-year sentence on Counts 12 and 19, and consecutively to the six-year sentence on Counts 3, 4, and 24, for an aggregate prison term of 30 years.

{¶9} The trial court's sentencing journal entry, filed on February 15, 2018, failed to

reflect that the court ordered the six-year sentence on Counts 3, 4, and 24 to run consecutively to the 14-year sentence on Counts 1, 7, and 11, and the 10-year sentence on Counts 12 and 19. Accordingly, the trial court issued a nunc pro tunc sentencing entry on March 1, 2018, correcting this clerical error and confirming that Cobb's total sentence was 30 years in prison.

{¶10} On March 12, 2018, Cobb filed the instant appeal challenging the trial court's sentence. He assigns four errors for review:

I. The trial court erred in sentencing [Cobb] to a sentence so substantial that [it] is tantamount to a life sentence in violation of the Eight [sic] Amendment to the United States Constitution.

II. The trial court erred in ordering the sentences on each of [Cobb's] [o]ffenses to run consecutive.

III. The trial court improperly considered her personal judgments of the juvenile court system in sentencing [Cobb].

IV. Trial [c]ounsel was ineffective for failing to pre[sent] mitigating factors specific to [Cobb's] [y]outh.

II. Law and Analysis

A. Trial Court's Sentence

{¶11} In his first, second, and third assignments of error, Cobb challenges the aggregate 30-year prison sentence imposed by the trial court. Specifically, he argues that the 30-year sentence violates the constitutional prohibition against cruel and unusual punishment, the trial court erred in imposing consecutive sentences, and that the trial court improperly considered her negative view of the juvenile justice system and her personal desire to correct the system's flaws in imposing consecutive sentences.

{¶12} 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 when reviewing felony sentences, 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.”

Pursuant to R.C. 2953.08(D)(1), however, a sentence imposed upon a defendant is not subject to appellate review if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and has been imposed by the sentencing judge. This limitation on a defendant’s ability to bring an appellate challenge of an agreed sentence applies equally to cases involving range agreements, such as this case, and cases involving specific term agreements. *State v. Grant*, 8th Dist. Cuyahoga No. 104918, 2018-Ohio-1759, ¶ 18. Further, the limitation applies to cases in which the sentence includes nonmandatory consecutive sentences, despite no specific agreement as to consecutive sentences. *Id.* at ¶ 24; *State v. Glaze*, 8th Dist. Cuyahoga No. 105519, 2018-Ohio-2184, ¶ 15.

State v. Patterson, 8th Dist. Cuyahoga No. 106655, 2018-Ohio-4114, ¶ 10.

{¶13} In the instant matter, Cobb’s sentence was authorized by law, despite the absence of an explicit agreement to consecutive sentences beyond those statutorily required for the firearm specifications underlying Counts 1 and 7. *See Patterson* at ¶ 11. Furthermore, the sentence was jointly recommended. The state and defense counsel both agreed to a sentence in the range of 20 to 30 years, and the parties communicated this recommended sentencing range to the trial court. The prosecutor provided the trial court with a recommended sentence form that was acknowledged and initialed by both Cobb and his defense counsel. (*See tr.* at 12, 19.)

The recommended sentencing range of 20 to 30 years would necessarily include consecutive sentences. *See Glaze* at ¶ 15. The trial court acknowledged the parties' agreement and imposed a prison sentence of 30 years. The trial court's sentences on the aggravated burglary, robbery, and aggravated robbery counts were within the permissible statutory ranges set forth in R.C. 2929.14(A)(1), (2), and (3)(b).

{¶14} Based on the foregoing analysis, we find that Cobb's sentence is not subject to appellate review under R.C. 2953.08(D)(1). The sentence was authorized by law, jointly recommended, and imposed by the trial court at sentencing. Accordingly, Cobb's first, second, and third assignments of error are overruled.

B. Ineffective Assistance of Counsel

{¶15} In his fourth assignment of error, Cobb argues that he was denied his constitutional right to the effective assistance of counsel.

{¶16} In order to establish a claim of ineffective assistance of counsel, a defendant must prove (1) his counsel was deficient in some aspect of his representation, and (2) there is a reasonable probability that, were it not for counsel's errors, the result of the trial court proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

{¶17} In the instant matter, Cobb argues that his counsel was ineffective for failing to present "mitigating factors specific [to Cobb's] youth" at sentencing. Appellant's brief at 13. He appears to argue that counsel should have presented an argument based on the United States Supreme Court's holding in *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1

(2005).²

{¶18} Initially, the record reflects that the trial court was aware of Cobb’s age during the February 13, 2018 hearing. During the plea phase of the hearing, Cobb asserted that he was 17 years old. (Tr. 14.) During the sentencing phase of the hearing, defense counsel asserted that Cobb was charged with the offenses to which he pled guilty in juvenile court. (Tr. 50.) Furthermore, the Ohio Supreme Court has held that “[t]he presentation of mitigating evidence is a matter of trial strategy.” *State v. Hand*, 107 Ohio St.3d 378, 2006-Ohio-18, 840 N.E.2d 151, ¶ 225.

{¶19} Furthermore, the record reflects that defense counsel raised the relevant mitigating factors at sentencing. During the sentencing phase of the February 13, 2018 hearing, defense counsel asserted that Cobb had been “diagnosed with numerous mental health issues,” “experienced trauma,” and had serious, on-going issues with substance abuse. (Tr. 48-49.) Based on these mitigating factors, defense counsel advocated for a prison sentence at “the lower end of the [recommended sentencing range].” (Tr. 50.)

{¶20} Based on the foregoing analysis, we find no merit to Cobb’s ineffective assistance claim regarding counsel’s performance at sentencing. Cobb’s fourth assignment of error is overruled.

III. Conclusion

{¶21} After thoroughly reviewing the record, we affirm the trial court’s judgment. Cobb’s 30-year prison sentence is not subject to appellate review, and Cobb was not denied his constitutional right to the effective assistance of counsel.

² In *Roper*, the court recognized that children are constitutionally different than adults for purposes of sentencing and, as a result, held that capital punishment for juveniles is unconstitutional.

{¶22} 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. 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.

FRANK D. CELEBREZZE, JR., JUDGE

SEAN C. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR