

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 107813
	:	
v.	:	
	:	
DAESHAWN SIMMONS,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: August 1, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case Nos. CR-17-613952-A and CR-17-615408-B

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Gregory M. Paul, Assistant Prosecuting
Attorney, *for appellee*.

John H. Lawson, *for appellant*.

RAYMOND C. HEADEN, J.:

{¶ 1} Defendant-appellant Daeshawn Simmons (“Simmons”) appeals from
his sentence following a guilty plea. For the reasons that follow, we affirm.

Factual and Procedural History

{¶ 2} This appeal stems from Simmons's sentence in two separate cases. In connection with Cuyahoga C.P. No. CR-17-613952-A, the Cuyahoga County Grand Jury indicted Simmons on February 21, 2017, on two counts of breaking and entering, five counts of theft, five counts of burglary, and three counts of grand theft, resulting from multiple different incidents. In connection with Cuyahoga C.P. No. CR-17-615408-B, the Cuyahoga County Grand Jury indicted Simmons on March 30, 2017, on one count of aggravated robbery, together with one- and three-year firearm specifications.

{¶ 3} Both indictments resulted from a series of incidents that took place in Middleburg Heights from late 2016 through early 2017. Simmons broke into the homes and garages of multiple different individuals and stole various property, including credit cards and vehicles. The indictment in CR-17-613952-A refers to seven different victims from multiple incidents. Simmons also participated in an armed robbery, resulting in the indictment in CR-17-615408-B.

{¶ 4} On January 30, 2018, Simmons pleaded guilty to an amended count of robbery in CR-17-615408-B with a one-year firearm specification. He also pleaded guilty to three counts of burglary and one count of breaking and entering in CR-17-613952-A. The remaining counts and specification were nolle. The state and Simmons agreed that the counts would not merge for sentencing because each related to a different victim. At defense counsel's request, the court referred Simmons to the probation department for the preparation of a presentence

investigation report (“PSI”) and to the court psychiatric unit for the preparation of a mitigation report.

{¶ 5} On February 28, 2018, the court held a sentencing hearing. The court stated at the outset of the hearing that it had reviewed the PSI, the mitigation of penalty report, and a letter from Simmons. The court then heard from defense counsel, Simmons, the prosecutor, and one of the victims. In case number CR-17-613952-A, the court sentenced Simmons to two years on each burglary count and one year on the breaking and entering count to be served consecutively for a total of seven years. In case number CR-17-615408-B, the court sentenced Simmons to four years on the robbery count and one year on the firearm specification to be served consecutively for a total of five years. The court ordered that the sentences for each case be served consecutively, for a total aggregate sentence of 12 years.

{¶ 6} Simmons appeals his sentence, presenting one assignment of error for our review.

Law and Analysis

{¶ 7} In his sole assignment of error, Simmons argues that the trial court erred by imposing consecutive sentences without articulating the reasoning supporting its R.C. 2929.14(C)(4) findings.

{¶ 8} Pursuant to R.C. 2953.08, a reviewing court may overturn the imposition of consecutive sentences where it clearly and convincingly finds that the record does not support the sentencing court’s findings under R.C. 2929.14(C)(4), or the sentence is otherwise contrary to law.

{¶ 9} R.C. 2929.14(C)(4) requires a sentencing court to make certain findings before imposing consecutive sentences. First, the trial court must find that consecutive sentences are necessary to protect the public from future crime or to punish the offender. R.C. 2929.14(C)(4). The court must also find that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. *Id.* Finally, the court must find any one of the following:

(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). Beyond making these findings on the record, the court must also incorporate the findings into its sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 1.

{¶ 10} At sentencing, the trial court made findings pursuant to R.C. 2929.14(C)(4) as follows:

And that five years in Case 615408 will be run consecutive to the seven years in Case 613952; and that is because the Court finds that consecutive sentences are necessary to protect the public from future

crime and to punish the offender, and consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. And the court also finds that 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 course of conduct adequately reflects the seriousness of the offender's conduct.

This language was also contained in the corresponding sentencing journal entries in each case.

{¶ 11} In making R.C. 2929.14 findings, a sentencing court is not “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.” *Bonnell* at ¶ 37. A review of the record, including the foregoing excerpt from the sentencing transcript, clearly illustrates that the trial court made the required findings to impose consecutive sentences pursuant to R.C. 2929.14(C)(4). The court's language largely tracked the statutory language. The court also referred to the significant harm Simmons caused in both cases.

{¶ 12} Because it is clear that the trial court made the requisite findings under R.C. 2929.14(C)(4), the only basis on which Simmons can challenge his sentence is that the findings are not supported by the record. Simmons argues that the trial court failed to make consecutive sentence findings that were separate and distinct at sentencing. This court has held that R.C. 2929.14(C)(4) requires “separate and distinct findings in addition to any findings relating to purposes and goals of criminal sentencing.” *State v. Venes*, 2013-Ohio-1891, 992 N.E.2d 453, ¶ 17

(8th Dist.). Here, the foregoing R.C. 2929.14(C)(4) findings were separate and distinct from the court's reference to the purposes and principles of felony sentencing under R.C. 2929.11, the court's reference to the seriousness and recidivism factors in R.C. 2929.12, and the court's statements regarding the facts underlying Simmons's convictions and the significant harm he caused.

{¶ 13} Simmons also argues that the trial court failed to include any factual findings in support of its consecutive sentence findings. Contrary to this assertion, the trial court is not required to place the factual reasons supporting its R.C. 2929.14(C)(4) findings on the record. A sentencing court satisfies its statutory requirement "when the record reflects that the court has engaged in the required analysis and has selected the appropriate statutory criteria." *State v. Goins*, 8th Dist. Cuyahoga No. 98256, 2013-Ohio-263, ¶ 10, citing *State v. Edmonson*, 86 Ohio St.3d 324, 326, 715 N.E.2d 131 (1999). The record indeed reflects that the trial court engaged in the required analysis in accord and in compliance with judicial precedent. In addition, we do not clearly and convincingly find that the record fails to support the court's R.C. 2929.14(C)(4) findings.

{¶ 14} Judgment affirmed.

It is ordered that appellee recover from 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 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.

RAYMOND C. HEADEN, JUDGE

PATRICIA ANN BLACKMON, P.J., and
LARRY A. JONES, SR., J., CONCUR