[Cite as *State v. Jones*, 2019-Ohio-2605.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. TYLER JONES Appellant	C.A. Nos. 29206 29207 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE Nos. CR-2018-02-0454-B CR-2018-05-1517

DECISION AND JOURNAL ENTRY

Dated: June 28, 2019

HENSAL, Judge.

{¶1} Tyler Jones appeals his sentence from the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} This is a consolidated appeal of two criminal cases involving Mr. Jones. In those cases, Mr. Jones pleaded guilty to aggravated robbery with a firearm specification, felonious assault with a firearm specification, and theft. The trial court accepted Mr. Jones's plea and the matter proceeded to sentencing. After a hearing, the trial court sentenced Mr. Jones to the following terms of incarceration: 11 years for aggravated robbery, eight years for felonious assault, three years for each firearm specification, and 18 months for theft. The trial court ordered all but the theft sentence to be served consecutively, for a total of 25 years of

incarceration. Mr. Jones now appeals his sentence, raising one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

> THE TRIAL COURT ERRED BY SENTENCING MR. JONES TO A MAXIMUM TERM OF IMPRISONMENT WHEN THE FINDINGS OF THE COURT DID NOT SUPPORT SUCH A SENTENCE.

{¶3} In his sole assignment of error, Mr. Jones asserts that the trial court erred by imposing a maximum sentence for aggravated robbery and felonious assault, and by ordering those sentences to run consecutively. In reviewing a felony sentence, "[t]he appellate court's standard for review is not whether the sentencing court abused its discretion." R.C. 2953.08(G)(2). "[A]n appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence" that: (1) "the record does not support the trial court's findings under relevant statutes[,]" or (2) "the sentence is otherwise contrary to law." *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, ¶ 1. Clear and convincing evidence is that "which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶4} Section 2929.14(C)(4) provides that, "[i]f multiple prison terms are imposed on an offender for convictions of multiple offenses," the sentencing court may require the offender to serve the terms consecutively "if the court finds that the consecutive service is 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 and to the danger the offender poses to the public[.]" The court must also find "any" 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 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.

R.C. 2929.14(C)(4)(a-c).

{¶5} In *State v. Bonnell*, the Ohio Supreme Court held that Section 2929.14(C)(4) "requires the trial court to make statutory findings prior to imposing consecutive sentences," and that Criminal Rule 32(A)(4) "directs the court to state those findings at the time of imposing sentence." 140 Ohio St.3d 209, 2014-Ohio-3177, ¶ 26. It explained, however, that a "word-for-word recitation of the language of the statute is not required[.]" *Id.* at ¶ 29. Instead, "as long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld." *Id.*

{¶6} Regarding firearm specifications, Section 2929.14(B)(1)(g) provides that, if a defendant pleads guilty to aggravated robbery and felonious assault (among other offenses), along with accompanying firearm specifications, the trial court is required to order consecutive service of those two specifications. *State v. Rouse*, 9th Dist. Summit No. 28301, 2018-Ohio-3266, ¶ 11, citing R.C. 2929.14(B)(1)(g) ("Because [the defendant] pleaded guilty to two felonies enumerated within R.C. 2929.14(B)(1)(g) and two firearm specifications linked to those

felonies, the court was required to sentence him to consecutive three-year prison terms on his specifications.").

{¶7} As previously noted, Mr. Jones pleaded guilty to aggravated robbery with a firearm specification, felonious assault with a firearm specification, and theft. At the sentencing hearing, the trial court indicated that consecutive sentences were necessary to protect the public from future crime, as well as to punish Mr. Jones. It determined that consecutive sentences were not disproportionate to the seriousness of Mr. Jones's conduct or to the danger he posed to the public. It also determined that Mr. Jones committed aggravated robbery and felonious assault as part of one course of conduct, and that the harm caused by the offenses was so great that no single prison term would adequately reflect the seriousness of Mr. Jones's conduct. Lastly, it noted that his criminal history demonstrated that consecutive sentences were necessary to protect the public from future crime.

{¶8} On appeal, Mr. Jones summarily asserts that a maximum sentence was not justified. He also asserts that there was no basis for determining that concurrent prison terms would not adequately protect the public or reflect the seriousness of his conduct. Mr. Jones further asserts that, given his lack of an adult criminal record, the trial court was not justified in ordering the sentences to be run consecutively.

{¶9} As the State points out, the record reflects that the trial court reviewed Mr. Jones's presentence investigation report. That report, however, was not made part of the record on appeal. It is the appellant's responsibility to ensure that the record on appeal contains all matters necessary to allow this Court to resolve the issues on appeal. *State v. Daniel*, 9th Dist. Summit No. 27390, 2014-Ohio-5112, ¶ 5, citing App.R. 9. This Court has consistently held that, where the appellant has failed to provide a complete record to facilitate appellate review, we are

compelled to presume regularity in the proceedings below and affirm the trial court's judgment. *Id.*, citing *State v. McGowan*, 9th Dist. Summit No. 27092, 2014-Ohio-2630, ¶ 6. In cases such as this where the presentence investigation report is necessary to enable an appropriate review of the propriety of the sentence, Mr. Jones's failure to ensure that the record includes that report requires a presumption of regularity in the sentencing proceedings. *State v. Yuncker*, 9th Dist. Medina No. 14CA0068–M, 2015–Ohio–3933, ¶ 17, citing *Daniel* at ¶ 6; *McGowan* at ¶ 7. Thus, in light of the trial court's findings and Mr. Jones's failure to include the presentence investigation report as part of the record on appeal, we overrule his assignment of error.

III.

{¶10} Mr. Jones's assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

CALLAHAN, P.J.
CARR, J.
CONCUR.

APPEARANCES:

ALAN M. MEDVICK, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.