

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 13AP-196
Plaintiff-Appellee,	:	(C.P.C. No. 12CR-07-3609)
v.	:	
	:	(REGULAR CALENDAR)
Antonious D. Hunter,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 17, 2013

Ron O'Brien, Prosecuting Attorney, and *Valerie Swanson*, for appellee.

Yeura R. Venters, Public Defender, and *Allen V. Adair*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶ 1} This is an appeal by defendant-appellant, Antonious D. Hunter, from a judgment of the Franklin County Court of Common Pleas sentencing appellant to consecutive terms of imprisonment following his guilty plea to two counts of sexual battery.

{¶ 2} On July 19, 2012, appellant was indicted on three counts of rape, in violation of R.C. 2907.02. On December 20, 2012, appellant entered a guilty plea to two counts of sexual battery, stipulated lesser offenses. The trial court conducted a sentencing hearing on March 1, 2013. By entry filed March 6, 2013, the trial court sentenced

appellant to serve a three-year prison term as to each count, with the sentences to be served consecutive to each other.

{¶ 3} On appeal, appellant sets forth the following assignment of error for this court's review:

The trial court erred by imposing consecutive sentences without making findings required by R.C. 2929.14(C)(4).

{¶ 4} Under his single assignment of error, appellant contends the trial court erred by failing to make requisite findings under R.C. 2929.14(C)(4) before imposing consecutive sentences. Appellant notes that House Bill 86 ("H.B. 86"), effective September 30, 2011, restored the requirement that trial courts set forth findings when consecutive sentences are imposed. Appellant argues that the trial court's failure to make the necessary findings requires a remand for resentencing.

{¶ 5} In response, the state does not challenge appellant's assertion that the trial court failed to make statutory findings for imposing consecutive sentences as set forth in R.C. 2929.14(C)(4). Rather, the state argues that this court should apply a plain error standard of review and find that no plain error occurred in this case.

{¶ 6} R.C. 2929.14(C)(4) states:

If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison 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, and if the court also finds 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.

{¶ 7} As indicated by appellant, H.B. 86 became effective September 30, 2011. The enactment of H.B. 86 "revived the language in R.C. 2929.14(E)(4) regarding consecutive sentences and codified it as R.C. 2929.14(C)(4)." *State v. Wilson*, 10th Dist. No. 12AP-551, 2013-Ohio-1520, ¶ 12. The revisions to the felony sentencing statutes under H.B. 86 "now require a trial court to make specific findings on the record, as set forth in R.C. 2929.14(C)(4), when imposing consecutive sentences." *State v. Peddicord*, 3d Dist. No. 7-12-24, 2013-Ohio-3398, ¶ 33. Specifically, R.C. 2929.14(C)(4) now requires the trial court to make the following three findings before imposing consecutive sentences: "(1) that consecutive sentences are necessary to protect the public from the future crime or to punish the offender; (2) that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public; and (3) that one of the subsections (a), (b), or (c) apply." *State v. Hubbard*, 10th Dist. No. 11AP-945, 2013-Ohio-2735, ¶ 86. A trial court "is not required to give reasons explaining these findings, nor is the court required to recite any 'magic' or 'talismanic' words when imposing consecutive sentences," but "the record must reflect that the court made the findings required by the statute." *Id.*

{¶ 8} As argued by appellant, a review of the record in the instant case fails to show that the trial court made the necessary findings under R.C. 2929.14(C)(4). During the hearing, the trial court stated: "On both counts of sexual battery, felony two, it is the sentence of the Court that you spend three years with the Ohio Department of Rehabilitation and Corrections. These will be consecutive to each other for a total of six years." (Tr. 28.) The court's failure to make the statutory findings requires us to vacate appellant's sentence and remand for resentencing. *Id.* at ¶ 87 ("Because the trial court failed to comply with R.C. 2929.14(C)(4), by failing to make any of the required findings on the record before imposing consecutive sentences, we must vacate defendant's sentence and remand the case for resentencing.").

{¶ 9} As noted, the state requests that we find no plain error resulting from the trial court's failure to make the necessary statutory findings. This argument, however, has been previously addressed and rejected by this court. *Wilson* at ¶ 18 ("Because the record demonstrates that the trial court failed to make the findings required by R.C. 2929.14(C)(4) before imposing consecutive sentences on appellant's multiple offenses, appellant's sentence is contrary to law and constitutes plain error"); *State v. Bender*, 10th Dist. No. 12AP-934, 2013-Ohio-2777, ¶ 7 (Noting, in response to state's argument that plain error standard should be applied to court's failure to comply with R.C. 2929.14(C)(4), "[o]ur recent cases indicate a tendency of this court to view a failure to precisely comply with R.C. 2929.14 as plain error as a matter of law"); *State v. Bailey*, 10th Dist. No. 12AP-699, 2013-Ohio-3596, ¶ 46 ("Failure to fully comply with R.C. 2929.14(C)(4) is plain error as a matter of law.").

{¶ 10} Based upon the foregoing, appellant's single assignment of error is sustained, the judgment of the Franklin County Court of Common Pleas is reversed, and this matter is remanded to the trial court for resentencing in accordance with law, consistent with this decision.

*Judgment reversed
and cause remanded.*

KLATT, P.J., and T. BRYANT, J., concur.

T. BRYANT, J., retired of the Third Appellate District,
assigned to active duty under authority of the Ohio
Constitution, Article IV, Section 6(C).
