

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	No. 14AP-671
	:	(C.P.C. No. 11CR-3696)
Plaintiff-Appellee,	:	and
	:	No. 14AP-672
v.	:	(C.P.C. No. 11CR-4728)
	:	and
Keveante D. Smoot,	:	No. 14AP-673
	:	(C.P.C. No. 11CR-4727)
Defendant-Appellant.	:	
	:	(REGULAR CALENDAR)
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D E C I S I O N

Rendered on March 24, 2015

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

*Yeura R. Venters*, Public Defender, and *Emily L.*  
*Huddleston*, for appellant.

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APPEALS from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Defendant-appellant, Keveante D. Smoot, appeals from judgments of the Franklin County Court of Common Pleas imposing consecutive sentences. For the following reasons, we reverse and remand to the trial court for resentencing.

**I. Facts and Procedural History**

{¶ 2} In 2011, Smoot was indicted in three separate cases: (1) in case No. 11CR-3696, he was indicted on two counts of robbery, in violation of R.C. 2911.02; (2) in case No. 11CR-4727, he was indicted on one count of burglary, in violation of R.C. 2911.12, with a firearm specification; and (3) in case No. 11CR-4728, he was indicted on one count of burglary, in violation of R.C. 2911.12, and one count of receiving stolen property, in violation of R.C. 2913.51.

{¶ 3} On January 9, 2012, Smoot plead guilty to charges in all three indictments. Specifically, he pleaded guilty to attempted robbery, a felony of the fourth degree, one count of theft, a felony of the third degree, and receiving stolen property, a felony of the fourth degree. The trial court consolidated the cases and held one sentencing hearing. In each case, Smoot was sentenced to three years of community control. The trial court found that if Smoot violated community control, he would have to serve 17 months in case No. 11CR-3696, 36 months in case No. 11CR-4727, and 17 months in case No. 11CR-4728, all to be served consecutively.

{¶ 4} Smoot's probation officer requested revocation of community control on July 18, 2014. On July 25, 2014, the trial court conducted a single revocation hearing on the three cases. The trial court revoked community control and imposed 17 months in prison in case No. 11CR-3696 to run consecutive to 36 months in prison in case No. 11CR-4727. The trial court also imposed 17 months in prison in case No. 11CR-4728 to run concurrent with the first two sentences. Smoot filed a timely appeal.

## **II. Assignment of Error**

{¶ 5} Smoot assigns the following error for our review:

The trial court erred by imposing consecutive sentences without making findings required by R.C. 2929.14(C)(4) and *State v. Bonnell*, 140 Ohio St.3d. 209, 2014-Ohio-3177.

{¶ 6} Under his sole assignment of error, Smoot asserts the trial court erred in failing to make the requisite findings to impose consecutive sentences under R.C. 2929.14(C)(4) and *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177. Smoot further argues that the trial court's judgment entry fails to set forth findings supporting consecutive sentences.

{¶ 7} Following the General Assembly's enactment of Am.Sub.H.B. No. 86, effective September 30, 2011, "a sentencing court is required to make certain factual findings when imposing consecutive sentences." *State v. Moore*, 11th Dist. No. 2104-G-3183, 2014-Ohio-5182, ¶ 19. R.C. 2929.14(C) provides as follows:

(4) 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.

{¶ 8} Thus, R.C. 2929.14(C)(4) requires a trial court, in order to impose consecutive sentences, to find that: "(1) consecutive sentences are necessary to protect the public from future crime or to punish the offender; (2) 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) at least one of the factors enumerated in R.C. 2929.14(C)(4)(a)-(c) applies." *State v. Smith*, 8th Dist. No. 101105, 2014-Ohio-5547, ¶ 7.

{¶ 9} The Supreme Court of Ohio recently construed R.C. 2929.14(C)(4) as requiring "the trial court to make statutory findings prior to imposing consecutive sentences, and Crim.R. 32(A)(4) therefore directs the court to state those findings at the time of imposing sentence." *Bonnell* at ¶ 26. In *Bonnell*, the court further elaborated:

When imposing consecutive sentences, a trial court must state the required findings as part of the sentencing hearing, and by doing so it affords notice to the offender and to defense counsel. *See* Crim.R. 32(A)(4). And because a court speaks through its journal \* \* \* the court should also incorporate its statutory findings into the sentencing entry. However, a word-for-word recitation of the language of the statute is not required, and 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.* at ¶ 29. The state concedes that the trial court erred by not making the required findings before imposing consecutive sentences. R.C. 2929.14(C). Indeed, the trial court did not make any findings related to consecutive sentences. Accordingly, we sustain Smoot's sole assignment of error.

{¶ 10} Smoot additionally requests the court modify his sentence because, Smoot argues, imposing consecutive sentences cannot be supported by the facts in the record. We decline to do so. The trial court is in the best position to assess, in the first instance, whether the facts of this case support consecutive sentences under R.C. 2929.14(C).

### **III. Disposition**

{¶ 11} Based upon the foregoing, the trial court erred when it imposed consecutive sentences without first making the statutory findings required by R.C. 2929.14(C). Having sustained Smoot's sole assignment of error, we reverse the judgments of the Franklin County Court of Common Pleas and remand these matters to that court for resentencing.

*Judgments reversed;  
cause remanded with instructions.*

DORRIAN and HORTON, JJ., concur.

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