

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2003-05-042
 :
 - vs - : O P I N I O N
 : 5/24/2004
 :
 STANLEY SIMPSON, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 1997 CR 005052

Donald W. White, Clermont County Prosecuting Attorney, David H. Hoffmann, 123 North Third Street, Batavia, Ohio 45103-3033, for plaintiff-appellee

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WALSH, J.

{¶1} Defendant-appellant, Stanley Simpson, appeals the decision of the Clermont County Court of Common Pleas sentencing him to consecutive prison terms upon his convictions for aggravated robbery and felonious assault.

{¶2} In April 1997, pursuant to a negotiated plea agreement, appellant pled guilty to one count of aggravated robbery with a

firearm specification, and one count of felonious assault. Other charges against him were dismissed, and the state agreed that it would not object to concurrent prison terms. The trial court determined that appellant was voluntarily entering the guilty pleas, and informed him that it could order consecutive sentences in spite of the state's representation that it would not oppose concurrent sentences. Upon accepting the plea, the trial court found appellant guilty of the charges, and sentenced him to seven years on the aggravated robbery conviction, three years on the firearm specification, and four years on the felonious assault conviction. The court ordered that the sentences be served consecutively.

{¶3} In a delayed appeal, appellant raises two assignments of error.

{¶4} Assignment of Error No. 1:

{¶5} "THE COURT ERRED IN IMPOSING CONSECUTIVE SENTENCES."

{¶6} Pursuant to R.C. 2929.14(E)(4), a trial court may impose consecutive terms of imprisonment if it makes three findings. 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(E)(4). Second, the consecutive terms must not be disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. *Id.* Finally, the trial court must also find that one of the additional factors listed in R.C. 2929.14(E)(4)(a) through (c) applies:

{¶7} "(a) The offender committed 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.

{¶8} "(b) The harm caused by the multiple offenses was so great or unusual that no single prison term for any of the offenses committed as part of a single course of conduct adequately reflects the seriousness of the offender's conduct.

{¶9} "(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender."

{¶10} When imposing consecutive sentences, the trial court must make the statutorily enumerated findings and give reasons supporting those findings at the sentencing hearing. State v. Comer, 99 Ohio St.3d 463, 2003-Ohio-4165, paragraph one of the syllabus. R.C. 2929.14(E)(4) does not require the trial court to recite the exact words of the statute to impose consecutive sentences upon an offender. State v. Kelly (2001), 145 Ohio App.3d 277, 281. However, the trial court must state sufficient supporting reasons for the imposition of consecutive sentences. R.C. 2929.19(B)(2)(c); State v. Boshko (2000), 139 Ohio App.3d 827, 838-839.

{¶11} At the sentencing hearing, the common pleas court stated the following with regard to its decision to impose consecutive sentences:

{¶12} "Concerning whether consecutive sentences are necessary to protect the public the Court notes that the harm caused by the defendant was so great or unusual that no single prison term for any of the offenses committed as part of a single course of contact [sic]

would adequately reflect the seriousness of his conduct. It's with that in mind that I am going to order under 2929.14(E) that both of these sentences be consecutive, all of them to be served consecutively."

{¶13} Pursuant to R.C. 2929.14(E)(1)(a) "if a mandatory prison term is imposed upon an offender * * * for having a firearm on or about the offender's person or under the offender's control while committing a felony, * * * the offender shall serve any mandatory prison term imposed * * * consecutively to and prior to any prison term imposed for the underlying felony * * * and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender." Consequently, as a matter of law, the three-year prison term imposed for the firearm specification must run consecutive to the other sentences. R.C. 2929.14(E)(1)(a); State v. Patterson, Butler App. No. CA2001-09-222, 2002-Ohio-5996, at ¶26. Thus, to the extent appellant's assignment of error challenges the trial court's sentencing decision with regard to the firearm specification, it is overruled.

{¶14} However, the state concedes, and we agree, that the record does not demonstrate that the trial court made the required findings pursuant to R.C. 2929.14(E)(4) to order that the sentences for the aggravated robbery and felonious assault convictions be served consecutively. Additionally, Comer requires that the sentencing court make the required statutory findings and give the reasons supporting those findings on the record at the sentencing hearing. Comer, at paragraph one of the syllabus. Accordingly, we sustain

appellant's assignment of error, reverse the decision of the trial court imposing consecutive sentences, and remand this matter for resentencing.

{¶15} Assignment of Error No. 2:

{¶16} "THE COURT ERRED IN IMPOSING MORE THAN THE MINIMUM TERM."

{¶17} In his second assignment of error, appellant argues that the trial court failed to make the necessary findings to impose greater than minimum prison sentences. Appellant argues that the trial court was required to provide underlying reasons to support its statutory findings.

{¶18} Appellant was convicted of first and second-degree felonies, both of which carry a presumption in favor of a prison term. R.C. 2929.13(D). In order to impose more than the statutory minimum term of imprisonment on a first-time offender, like appellant, the only explicit finding that a trial court must make is "'that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others.'" State v. Edmonson, 86 Ohio St.3d 324, 326, 1999-Ohio-110, quoting R.C. 2929.14(B), see, also, Comer at ¶26.

{¶19} In the present case, the trial court made the required finding that "the shortness of a [sic] prison sentence will demean the seriousness of the defendant's conduct, and would not adequately protect the public[.]" Having made this finding, which need not be accompanied by a statement of reasons in support, the trial court was authorized to impose greater than minimum sentences for appellant's

crimes. See Edmonson at 326; Comer at ¶26. Consequently the assignment of error is overruled.

{¶20} Judgment affirmed in part, reversed in part, and cause remanded to the trial court for further proceedings according to law and consistent with this opinion.

POWELL, P.J., and VALEN, J., concur.