

[Cite as *State v. Younts*, 2010-Ohio-947.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CHAMPAIGN COUNTY

STATE OF OHIO

Plaintiff-Appellee

 V_1

JERRY VANN YOUNTS

Defendant-Appellant

Appellate Case No. 2009-CA-6

Trial Court Case Nos. 2007-CR-271
2008-CR-302

(Criminal Appeal from
Common Pleas Court)

OPINION

Rendered on the 12th day of March, 2010.

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BROGAN, J.

{¶ 1} Jerry Vann Younts appeals from his conviction and sentence following guilty pleas to several counts of drug possession and possession of criminal tools and from the revocation of his community control in another case based on the foregoing violations.

{¶ 2} In his sole assignment of error, Younts contends the trial court erred in

imposing partially consecutive sentences.¹

{¶ 3} The record reflects that Younts appeared before the trial court on December 8, 2008 and plead guilty in case number 2008-CR-302 to one count of possessing cocaine, two counts of possessing marijuana, and three counts of possessing criminal tools. All of the offenses were fifth-degree felonies except for one marijuana possession count, which was a third-degree felony. At the same time, Younts admitted that these convictions constituted a community control violation in case number 2007-CR-271, an earlier case involving illegal cultivation of marijuana.

{¶ 4} On January 12, 2009, Younts came before the trial court for sentencing on his convictions in case number 2008-CR-302 and on his community control violation in case number 2007-CR-271. After hearing arguments from counsel and allowing Younts to speak, the trial court imposed an aggregate five-year sentence for the convictions in case number 2008-CR-302. The sentence consisted of concurrent one-year terms on the five fifth-degree felonies and a consecutive four-year term on the third-degree felony. For the community control violation in case number 2007-CR-271, the trial court imposed a two-year prison term, ordering it to be served consecutive to the aggregate five-year sentence in case number 2008-CR-302.

{¶ 5} On appeal, Younts contends the trial court erred in making his sentence in the revocation case consecutive to his sentence for the drug possession and criminal tools convictions. He also disputes the trial court's decision to make his

¹Younts' assignment of error states that the trial court erred in failing "to consider" concurrent sentences. His argument on appeal, however, is that the record does not support consecutive sentences and that the trial court failed to make findings and give reasons necessary to impose them.

sentence for third-degree felony marijuana possession consecutive to the other concurrent sentences in that case. In his brief, Younts suggests that a sentencing transcript reflects shock on the part of defense counsel when he received the consecutive sentences. He also implies that an agreement for concurrent sentences may have existed between defense counsel and the prosecutor. The bulk of Younts' appellate argument, however, concerns the trial court's failure to make findings with supporting reasons for imposing consecutive sentences. Younts claims the trial court provided no reasons for imposing consecutive sentences. He also alleges that he should have received drug and alcohol treatment outside of prison.

{¶ 6} Upon review, we find Younts' assignment of error to be without merit. As a preliminary matter, the sentencing transcript does not reflect that Younts or his counsel were particularly surprised when the trial court sentenced him. Nor do we find anything in the record suggesting the existence of an agreement by the State to recommend concurrent sentences. As for Younts' primary argument, we are surprised by his untimely reliance on *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, and its progeny for the proposition that a trial court cannot impose consecutive sentences unless it makes certain findings and gives reasons for those findings. The Ohio Supreme Court expressly abrogated *Comer* four years ago in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. In the wake of *Foster*, a trial court need not make findings or give reasons for imposing consecutive sentences. See, e.g., *State v. Banks*, Montgomery App. No. 23210, 2010-Ohio-277, ¶33.

{¶ 7} When reviewing felony sentences post-*Foster*, we first must consider whether the trial court complied with all applicable rules and statutes in imposing the

sentence to determine whether it is contrary to law. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶15-17. If a sentence is not clearly and convincingly contrary to law, it is reviewed for an abuse of discretion. *Id.*; see, also, *State v. Knisley*, Montgomery App. No. 22897, 2010-Ohio-116, ¶75.

{¶ 8} In the present case, Younts' sentences are within the applicable statutory ranges, and he has not identified a violation of any sentencing rule or statute. We also find no abuse of discretion in the trial court's decision to impose partially consecutive sentences. Younts admitted at the plea hearing that he had served prison time in the early 1990s for marijuana trafficking. At the time of his offenses in case number 2008-CR-302, he was in his early fifties and was on community control in case number 2007-CR-271 for cultivating marijuana. As set forth above, the most recent offenses involved cocaine possession, marijuana possession, and possession of criminal tools. In light of Younts' prior criminal activity, his age, and his commission of the most recent offenses while on community control, we cannot say the trial court abused its discretion in sentencing him as it did. In reaching this conclusion, we note too that Younts received far less prison time than he would have if the trial court had elected to impose entirely consecutive sentences.

{¶ 9} Based on the reasoning set forth above, we overrule Younts' assignment of error and affirm the judgment of the Champaign County Common Pleas Court.

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DONOVAN, P.J., and FAIN, J., concur.

Copies mailed to:

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