

[Cite as *State v. Pugh*, 2015-Ohio-2558.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

JOHN W. PUGH

Defendant-Appellant

:
: Appellate Case No. 26448
:
: Trial Court Case No. 11-CR-4050
:
: (Criminal Appeal from
: Common Pleas Court)
:
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OPINION

Rendered on the 26th day of June, 2015.

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FAIN, J.

{¶ 1} Defendant-appellant John W. Pugh appeals from his sentence, imposed pursuant to our mandate in a previous appeal, for three counts of Aggravated Robbery, with firearm specifications. Pugh's appellate counsel has filed a brief under the authority of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), indicating that he could find no potential assignments of error having arguable merit. Neither can we. Accordingly, the judgment of the trial court is Affirmed.

I. The Course of Proceedings

{¶ 2} In 2011, Pugh was charged by indictment with three counts of Aggravated Robbery, each with a firearm specification, and one count of Engaging in a Pattern of Corrupt Activity, also with a firearm specification. The Aggravated Robbery counts related to three robberies, on different dates, of the same drive-thru store. Following a jury trial, Pugh was convicted on all three Aggravated Robbery counts and their attached firearm specifications. From our record, the disposition of the Engaging in a Pattern of Corrupt Activity count is not clear, but it appears that Pugh was not convicted on that count. Pugh was sentenced to an aggregate prison term of eighteen years, with at least some of the individual prison terms to be served consecutively.

{¶ 3} Pugh appealed. We affirmed. *State v. Pugh*, 2d Dist. Montgomery No. 25223, 2013-Ohio-1238. Later, we re-opened Pugh's appeal and reversed his sentence, upon the ground that the trial court did not make the statutory findings required for the imposition of consecutive sentences. *State v. Pugh*, 2d Dist. Montgomery No. 25223, 2014-Ohio-3359, ¶ 4. We remanded this cause "for the trial court to consider

whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) and, if so, to enter the necessary findings on the record.”

{¶ 4} At the re-sentencing hearing, the trial court made the following findings:

Well, before we get there, the Court finds in making these consecutive sentences that consecutive sentences are necessary to protect the public from future crime for the following reasons, it's the second – this had been the second aggravated robbery committed then convicted by this Defendant in a three-and-a-half to four year period. The consecutive sentences are not disproportionate to the seriousness of the offenders [sic] conduct, and to the danger the offender poses to the public because this Defendant has shown a propensity to use firearms and to carry out his various offenses of violence. At least two of the multiple offenses were committed as part of one or more course [sic] of conduct and the harm caused by two or more of the multiple offenses was so great and unusual that no single prison term can adequately reflect the seriousness of the offender's conduct. For the following reason it was a continuous pattern of robbery as to a single victim, which the Court finds was warranting – finds warrants a consecutive sentence.

The Court finds that the Defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender, as he has established a consistent pattern of aggravated robbery.

{¶ 5} The trial court sentenced Pugh to six years of prison on each Aggravated

Robbery Count, with the sentences on counts two and three to be served concurrently with one another, but consecutively with the sentence on count one. The trial court merged the firearm specifications on counts two and three, and ordered the three-year sentence on the surviving firearm specification, and the three-year sentence on the firearm specification on count one, to be served consecutively, for a total prison sentence of eighteen years. From his sentence, Pugh appeals.

{¶ 6} Pugh's appellate counsel filed a brief pursuant to *Anders v. California*, supra, indicating that he could find no potential assignments of error having arguable merit. By entry dated February 25, 2015, we afforded Pugh 60 days within which to file his own, pro se brief. He has not done so.

II. The Record Supports the Trial Court's Findings

{¶ 7} At the 2014 re-sentencing hearing, the trial court considered the original pre-sentence investigation report, which is part of our record. It supports the trial court's findings relating to consecutive sentences. Pugh has five juvenile delinquency adjudications, including a three-count Burglary adjudication and a Robbery adjudication, and has been committed to the Department of Youth Services twice, with an additional suspended commitment. As an adult, Pugh had four felony convictions before the offenses involved in this appeal, including Aggravated Robbery and a Disorderly Conduct misdemeanor conviction. Pugh was 32 years old at the time of the offenses with which this appeal is concerned.

{¶ 8} The trial court complied with the mandate of this court by making the statutory findings for consecutive sentences, and the record supports those findings.

III. The Trial Court Properly Merged Only

Two of the Three Firearm Specifications

{¶ 9} The trial court merged the firearm specifications on counts two and three, but did not merge them with the firearm specification on count one. This was in accordance with R.C. 2929.14(B)(1)(g), which requires the trial court to impose prison terms for each of the two most serious firearm specifications of which the offender is convicted when they are attached to Aggravated Robbery convictions.

IV. Although the Trial Court Did Not Include the Consecutive-Sentence

Findings in its Judgment Entry, that Is Not a Basis for Reversal

{¶ 10} The sentencing entry does not include the statutory consecutive-sentence findings. “A trial court’s inadvertent failure to incorporate the statutory findings [for consecutive sentences] in the sentencing entry after properly making those findings at the sentencing hearing does not render the sentence contrary to law; rather, such a clerical mistake may be corrected by the court through a nunc pro tunc entry to reflect what actually occurred in open court.” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 30. Accordingly, the failure to incorporate the findings, made at the sentencing hearing, into the sentencing entry, is not a basis for reversal of the judgment. *State v. Snowden*, 2d Dist. Montgomery No. 26329, 2015-Ohio-1049, ¶ 13, 18.

V. We Find No Potential Assignments of Error Having Arguable Merit

{¶ 11} After an independent review of the record, we find no potential assignments

of error having arguable merit. Therefore, in accordance with *Snowden*, supra, we affirm the judgment from which this appeal is taken and remand this cause to the trial court for the issuance of a nunc pro tunc entry correcting the clerical error in the sentencing entry we have noted.

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FROELICH, P.J., and WELBAUM, J., concur.

Copies mailed to:

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