

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

RONALD L. MCELFRISH

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 14-CA-77

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Case No.12-CR-0487

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

May 14, 2015

APPEARANCES:

For Plaintiff-Appellee

JUSTIN T. RADIC
20 South Second Street
4th Floor
Newark, OH 43055

For Defendant-Appellant

ROBERT C. BANNERMAN
P.O. Box 77466
Columbus, OH 43207-0098

Farmer, J.

{¶1} On September 21, 2012, the Licking County Grand Jury indicted appellant, Ronald McElfresh, on one count of intimidation in violation of R.C. 2921.03. Said charge arose after appellant, while out on pretrial bond on another criminal case, called and threatened his probation officer.

{¶2} A bench trial commenced on June 11, 2013. The trial court found appellant guilty. By judgment entry filed same date, the trial court sentenced appellant to two years in prison, to be served consecutively to the sentence imposed in the other case.

{¶3} Appellant filed an appeal, challenging in part the consecutive service of the sentence without statutorily-required findings. This court agreed, vacated the sentence, and remanded the matter to the trial court for resentencing. *State v. McElfresh*, 5th Dist. Licking No. 13-CA-74, 2014-Ohio-2947.

{¶4} A resentencing hearing was held on August 11, 2014. By judgment entry filed same date, the trial court resentenced appellant to two years in prison, to be served consecutively to the sentence imposed in the other case, and included the requisite findings.

{¶5} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶6} "DID THE TRIAL COURT ERR BY SENTENCING APPELLANT TO CONSECUTIVE PRISON TERMS BASED UPON CONVICTIONS AND A PSI THAT WAS NOT PART OF THE RECORD?"

I

{¶7} Appellant claims the trial court erred in sentencing him to consecutive prison terms based upon prior convictions and a presentence investigation report that was not a part of the record. We disagree.

{¶8} R.C. 2929.14 governs prison terms. Subsection (C)(4) states the following:

(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.

{¶9} Upon remand, the trial court held a resentencing hearing wherein the following was stated (August 11, 2014 T. at 9-10 and 13-14, respectively):

THE COURT: Well, Mr. McElfresh, the Court's considered the purposes and principles of sentencing set out under Section 2929.11, as well as the seriousness and recidivism factors set out under Section 2929.12.

On that basis, I'll impose the sentence of two years in the state penitentiary on the single count set out in the indictment of intimidation. I will order that the sentence in this case, 2012 CR 487, run consecutively with that sentence set out on 2012 CR - -

THE DEFENDANT: Fuck it.

THE COURT: - - 417 - -

THE DEFENDANT: Thanks again, Marcelain, you're good people.

THE COURT: - - finding the crimes were committed while awaiting a trial or sentencing, and further that the offender's criminal history shows consecutive terms are necessary to protect the public, I'd find they're not disproportionate to those sentences received by others for similar

circumstances, and they are necessary to protect the public and punish the Defendant.

MR. WALTZ: Yes, Your Honor. Just so we can avoid the - - the issue. I believe you made the finding that it's - - consecutive sentences are necessary to protect the public from future crime or to punish the offender, and that they're not - - I think you said are not disproportionate to the seriousness of the conduct, but it actually needs to say to the - - disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public.

THE COURT: I'll so find. I'll also find they're not disproportionate to other sentences imposed on people for similar circumstances.

{¶10} We find these findings to be consistent with the mandate of R.C. 2929.14(C)(4) and *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, ¶ 36 (requiring findings that "consecutive sentences were not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public.") While awaiting trial on drug and weapons charges, appellant called and threatened his probation officer, his family, and others. July 31, 2013 T. at 10-11, 15-16. The intimidation charge sub judice was committed while appellant was "awaiting trial or sentencing" in the other case. R.C. 2929.14(C)(4)(a).

{¶11} The sole assignment of error is denied.

{¶12} Upon review, we find the trial court did not err in sentencing appellant to consecutive sentences.

{¶13} The judgment of the Court of Common Pleas of Licking County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Delaney, J. concur.