

COURT OF APPEALS  
HOLMES COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

NATHAN O. POWER

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 15 CA 1

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common  
Pleas, Case No. 14 CR 60

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 24, 2015

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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*Wise, J.*

{¶1} Appellant Nathan O. Power appeals the December 10, 2014, Judgment Entry of Sentence entered in the Holmes County Common Pleas Court denying his motion to dismiss.

### STATEMENT OF THE FACTS AND CASE

{¶2} The following facts are taken from the Change of Plea hearing:

{¶3} On September 5, 2014, Appellant Nathan O. Power drove to the Myers Gas Station in Clark, Ohio, in a stolen 2007 Jeep Liberty. (T. at 12-13). Appellant went into the station dressed in a black hoodie and gloves with only his eyes visible. Appellant brandished a bolt action rifle and demanded money. (T. at 13). Inside the store were the owner; Leslie Reigle, a store clerk, and a customer. Appellant ordered all three, at gunpoint, to go over to the other side of the store and sit “indian style” on the floor. (T. at 13).

{¶4} Approximately an hour and a half later, Appellant drove the stolen jeep to Troyer's Trail Bologna in Holmes County, Ohio, walked into the store, told everyone to “freeze”, again brandishing the bolt-action rifle, and demanded money. (T. at 13). The clerks were having trouble opening one of the cash registers, so Appellant told them that if they did not give him the money, he would shoot a customer. (T. at 14). When the clerks were unable to open the second cash register after a countdown, he fired the gun. The bullet was found lodged in the wooden counter behind which the women were trying to unload the cash registers. (T. at 14).

{¶5} Appellant left both Holmes County businesses with stolen cash. (T. at 13-14). Over the next several hours, an on-again, off-again high speed chase occurred with

Appellant driving the stolen vehicle through farm fields, fences and yards, on both dirt roads and public roads. (T. at 14-15). After Appellant crashed the vehicle in a cornfield, he took off on foot. (T. at 15).

**{¶6}** The 2007 Jeep Liberty was owned by Ms. Lifer and was stolen from Bishop's Body Shop in Holmes County, Ohio. It was one of two vehicles stolen just prior to the robberies. The other vehicle was found crashed down the road from the body shop.

**{¶7}** Appellant's own vehicle was later found within a half mile of the body shop. Following Appellant's arrest, it was reported to the Sheriff's Department by Appellant's father that a firearm had been stolen from his house. This firearm was later identified as the weapon used in the Clark and Trail robberies. Also found were a stolen bow and credit cards for which Appellant was not charged as part of the plea agreement. (T. at 15).

**{¶8}** On September 22, 2014, the Holmes County Grand Jury Indicted Appellant on the following Counts:

1. Aggravated Robbery in violation of R.C. §2911.01(A)(I) and §2911.01(c) a Felony of the First Degree, with a Firearm Specification in violation of R.C. §2941.145(A);
2. Kidnapping in violation of R.C. §2905.01(A)(2) and §2905.01(C)(1) a Felony of the First Degree, with a Firearm Specification in violation of R.C. §2941.145(A);
3. Kidnapping in violation of R.C. §2905.01(A)(2) and §2905.01(C)(1) a Felony of the First Degree, with a Firearm Specification in violation of R.C. §2941.145(A);

4. Kidnapping in violation of R.C. §2905.01(A)(2) and §2905.01(C)(1) a Felony of the First Degree, with a Firearm Specification in violation of R.C. §2941.145(A);
5. Petty Theft in violation of R.C. §2913.02(A)(4) and §2913.02(B)(2) a Misdemeanor of the First Degree;
6. Aggravated Robbery in violation of R.C. §2911.01(A)(1) and §2911.01(c), a Felony of the First Degree, with a Firearm Specification in violation of R.C. §2941.145(A);
7. Petty Theft in violation of R.C. §2913.02(A)(4) and §2913.02(B)(2) a Misdemeanor of the First Degree;
8. Grand Theft When the Property is a Firearm in violation of R.C. §2913.02(A)(1) and §2913.02(B)(4) a Felony of the Third Degree, with a Firearm Specification in violation of R.C. §2941.145(A);
9. Receiving Stolen Property in violation of R.C. §2913.51(A) and §2913.51(c), a Felony of the Fourth Degree.

**{¶9}** On September 26, 2014, Appellant appeared before the trial court for arraignment and pled not guilty to all nine counts.

**{¶10}** On November 5, 2014, Appellant appeared before the trial court for a pre-trial.

**{¶11}** On November 13, 2014, Appellant appeared before the trial court for a change of plea and entered a plea of guilty to Counts One, Six, Eight and Nine. The remaining Counts, being Two, Three, Four, Five and Seven, were dismissed pursuant to a negotiated plea agreement.

**{¶12}** On December 9, 2014, Appellant appeared before the trial court for sentencing on the four remaining Counts.

{¶13} The trial court sentenced Appellant to six (6) years in prison on Count 1, six (6) years on Count 6, twelve (12) months on Count 8, and twelve (12) months on Count 9. The trial court further ordered the two six (6) year prison sentences to be served consecutively with each other for a total sentence of twelve (12) years on those two charges. The two twelve (12) month sentences were ordered to be served concurrently to each other and concurrently with the two six (6) year sentences. The trial court further sentenced Appellant to seven (7) years total on the gun specifications, to be served consecutively, for a total prison sentence of nineteen (19) years. (Sent. T. at 17).

{¶14} It is from this judgment entry that Appellant now appeals, assigning the following errors for review:

ASSIGNMENTS OF ERROR

{¶15} "I. THE TRIAL COURT ERRED IN SENTENCING APPELLANT TO CONSECUTIVE SENTENCES FOR HIS FELONY CONVICTIONS.

{¶16} "II. IMPROPER STATEMENTS BY THE TRIAL JUDGE DURING SENTENCING INDICATE PREJUDICE ON THE PART OF THE JUDGE MAKING THE SENTENCE CONTRARY TO LAW,"

I.

{¶17} In Appellant's First Assignment of Error he argues that the trial court erred in imposing consecutive sentences. We disagree.

{¶18} 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 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.

**{¶19}** In the case *sub judice*, trial court made the following findings at the sentencing hearing:

The Court finds that consecutive sentences are necessary to protect the public from future crimes or to punish the Offender. At least

two (2) of these multiple offenses were committed as part of one or more course of conduct and the harm caused by one or more of the multiple (unintelligible) is so committed is so great or unusual that no single prison term for any of the offenses committed as part of any of the course of conduct adequately reflects the seriousness of the Offender's conduct. The Offender's history of criminal conduct demonstrates that the consecutive sentences are necessary to protect the public from future crimes by the Offender and the consecutive sentences are not disproportionate to seriousness of the Offender's conduct and to the danger the Offender opposes [sic] to the public.

{¶20} The trial court also stated that "... this is the most serious thing I've seen in this county." Sent. T. at 14.

{¶21} Additionally, the trial court, in analyzing the seriousness of the offenses, found that victims suffered serious, physical, psychological and economic harm; that Appellant had a history of criminal convictions including at least prior felony convictions; that Appellant had not been rehabilitated to a satisfactory degree after having previously been adjudicated; that Appellant had not responded favorably to sanctions imposed for similar convictions; that Appellant had been on probation numerous times and that recidivism was likely. Sent. T. at 15-16.

{¶22} 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.")

{¶23} Based on the foregoing, and the fact that Appellant herein committed four separate crimes, with multiple victims, we find that the trial court did not err in imposing consecutive sentences.

{¶24} Appellant's First Assignment of Error is overruled.

## II.

{¶25} In his Second Assignment of Error, Appellant argues that his sentence was contrary to law. Specifically, Appellant argues that comments made by the trial court at both the Change of Plea hearing and the Sentencing hearing show "prejudice or an unbiased position." We disagree.

{¶26} Appellant cites this Court to the trial court's comments that he had a "friend that had been" robbed at the local bank and that these types of crimes are not common occurrences in Holmes County.

{¶27} Initially we note that when a defendant or a litigant wishes to raise a challenge to a trial judge's objectivity, he or she must utilize the procedure set forth in R.C. §2701.03. See *In re Baby Boy Eddy* (Dec. 6, 1999), Fairfield App.No. 99 CA 22, 2000 WL 1410. However, in the case *sub judice*, as Appellant is challenging comments made from the bench during sentencing, we will review the issue in the interest of judicial economy.

{¶28} In considering whether comments made by a trial judge at sentencing are indicative of bias, prejudice, or a failure to exercise proper discretion, an appellate court must view the remarks in the context of the entire record and determine whether



improper or indiscriminate considerations brought to bear upon the judge's decision-making process. See *State v. Arnett*, 88 Ohio St.3d 208, 218, 724 Ohio St.3d 793 (2000); *State v. Lundgren*, 73 Ohio St.3d 474, 493, 653 N.E.2d 304 (1995); *State v. Brown*, 5th Dist. No. 11 CA 42, 2012–Ohio–2672, ¶ 86; *State v. Vaughn Hardware*, 8th Dist. No. 93639, 2010–Ohio–4346, ¶ 18; *State v. Moore*, 7th Dist. No. 05 MA 178, 2007–Ohio–7215, ¶ 24.

{¶29} Upon review, we find no bias or prejudice on the part of the trial court herein. The trial court heard statements from the victims in this case regarding the impact of Appellant's crimes on their lives. The trial court, in response, was in effect letting the victims know that he understood, having been acquainted with others who had been in similar situations.

{¶30} In addition, we do not find that the sentence imposed shows prejudice. The sentencing court did not impose the maximum sentence on any one of the four counts to which Appellant pled guilty. The maximum possible sentence for each of the Aggravated Robbery counts was eleven (11) years. The trial court only sentenced Appellant to six (6) years on each count. The maximum possible sentence for the Theft of a Firearm count was thirty-six (36) months and eighteen (18) months for the Receiving Stolen Property count, but the trial court only imposed a twelve (12) month sentence on each, to run concurrent with the Aggravated Robbery counts. As the court imposed only a twelve (12) year sentence plus seven (7) years for the firearm specifications despite the State's recommendation and request for the court to impose a 24½ year sentence, in addition to the firearm specifications, allegations of bias are even further diminished.



{¶31} Appellant's Second Assignment of Error is overruled.

{¶32} For the foregoing reasons, the judgment of the Court of Common Pleas, Holmes County, Ohio, is affirmed.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.

JWW/d 0716