

COURT OF APPEALS
MORGAN COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

GOLDIE J. FRYE

Defendant-Appellant

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JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. Sheila G. Farmer, J.

Case No. 15AP0002

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Case No. 14CR0029

JUDGMENT:

Reversed, Sentence Vacated, and
Remanded

DATE OF JUDGMENT:

September 28, 2015

APPEARANCES:

For Plaintiff-Appellee

MARK J. HOWDYSHELL
19 East Main Street
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For Defendant-Appellant

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Farmer, J.

{¶1} On July 29, 2014, the Morgan County Grand Jury indicted appellant, Goldie Frye, on one count of forgery in violation of R.C. 2913.31.

{¶2} On October 1, 2014, appellant filed an Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Information or Complaints pursuant to R.C. 2941.401. At the time of this filing, appellant was serving a five year sentence at the Ohio Reformatory for Women for a commitment out of Wayne County, Ohio.

{¶3} On January 28, 2015, appellant appeared in court for arraignment and pled guilty to the charge. The trial court accepted the guilty plea and sentenced appellant to six months in prison, to be served consecutively to the Wayne County sentence.

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

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{¶5} "THE TRIAL COURT ERRED IN SENTENCING MS. FRYE TO A PRISON TERM TO BE SERVED CONSECUTIVELY WITH ANY OTHER SENTENCE IMPOSED ON HER."

I

{¶6} Appellant claims the trial court erred in sentencing her to consecutive sentences because it failed to make the necessary findings under R.C. 2929.14(C) and failed to include them in the sentencing entry. We agree.

{¶7} 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.

{¶8} During the sentencing hearing held on January 28, 2015, the trial court noted appellant was currently residing at the Ohio Reformatory for Women in Marysville on a commitment out of Wayne County. T. at 12. The commitment involved seven cases, three of which were for forgery, one for passing bad checks, and one for theft. See, Document from Department of Rehabilitation & Correction filed October 1, 2014. The trial court found "the offender has a history of criminal convictions" and drugs are related to the offense. T. at 25. In sentencing appellant to a six month term to be served consecutively to the term she was currently serving out of Wayne County, the trial court stated, "your criminal history indicates that consecutive terms are appropriate in this particular instance." T. at 27.

{¶9} We can conclude that the trial court found appellant's criminal record related to a history of criminal conduct that demonstrated the need for consecutive sentences to protect the public from future crime. However, the trial court never addressed the proportionality of consecutive sentences to the seriousness of appellant's conduct and the danger she posed to the public. In addition, the sentencing entry is silent on the R.C. 2929.14(C) factors.

{¶10} Upon review, we find the trial court's findings are inconsistent 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.") We cannot glean from the record sub judice that the trial court found consecutive sentences were not disproportionate to the seriousness of appellant's

conduct and to the danger appellant posed to the public. The imposition of a consecutive sentence in this case is contrary to law.

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

{¶12} The judgment of the Court of Common Pleas of Morgan County, Ohio is hereby reversed, the sentence is vacated, and the matter is remanded to said court for resentencing.

By Farmer, J.

Gwin, P.J. and

Hoffman, J. concur.

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