

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-03-1155
L-03-1156

Appellee

Trial Court No. CR-03-1128
CR-02-3063

v.

James Ball

DECISION AND JUDGMENT ENTRY

Appellant

Decided: February 11, 2005

* * * * *

Catherine H. Killam, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This matter is before the court following appellant James Ball's conviction and sentence for two robberies, following pleas pursuant to *North Carolina v. Alford* (1970), 400 U.S. 25. Following appellant's *Alford* pleas, the Lucas County Court of Common Pleas ordered that appellant consecutively serve the sentences. Since the trial court failed to make the requisite findings on the record, we remand the case to the trial court and instruct it to state the required findings on the record.

{¶ 2} Appellant raises the following assignment of error:

{¶ 3} “The trial court erred by failing to make the requisite findings for imposition of consecutive sentences.”

{¶ 4} On April 3, 2003, appellant entered *Alford* pleas to two charges of robbery, in violation of R.C. 2911.02(A)(3), a third degree felony. At the sentencing hearing, the trial court sentenced appellant to three years in prison for the first robbery and four years in prison for the second robbery. The trial court ordered that appellant consecutively serve the sentences for a total of seven years. On appeal, appellant argues that his sentencing was contrary to law because the trial court neither made the requisite findings on the record nor gave reasons supporting its findings when it imposed consecutive sentences. We agree.

{¶ 5} A person who "pleads guilty to a felony may appeal as a matter of right the sentence imposed * * * [when the] sentence is contrary to law." R.C. 2953.08(A)(4). On appeal, the appellate court "shall review the record, including the findings underlying the sentence * * * given by the sentencing court." R.C. 2953.08(G)(2). Where the sentencing court fails to state the requisite R.C. 2929.14(E)(4) findings on the record, the appellate court "shall remand the case to the sentencing court and instruct the sentencing court to state, on the record, the required findings." R.C. 2953.08(G)(1).

{¶ 6} Before imposing consecutive sentences, a trial court must: (1) make statutorily enumerated findings and (2) give reasons supporting those findings. *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, at paragraph one of the syllabus. At a sentencing hearing, a "trial court must first consider the factors set forth in R.C. 2929.12(B) and (C) to determine how to accomplish the overriding purposes of felony sentencing embraced in R.C. 2929.11." *State v. Adkins*, 6th Dist. No. L-02-1190, 2003-Ohio-7250, at ¶64, citing *Comer* at ¶13.

{¶ 7} After considering the R.C. 2929.12 factors, a trial court may impose consecutive sentences when the sentences are both (1) necessary either to protect the public from future crime or to punish the offender and (2) not disproportionate to the seriousness of the offender's conduct and the danger posed to the public by such offender. R.C. 2929.14(E)(4). The trial court must also find one of the following three enumerated circumstances:

{¶ 8} "(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.

{¶ 9} "(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

{¶ 10} 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.

{¶ 11} "(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender." R.C. 2929.14(E)(4)(a)-(c).

{¶ 12} Accordingly, if a trial court, at the sentencing hearing, considers the R.C. 2929.12(B) and (C) factors, makes all necessary findings under R.C. 2929.14(E)(4), and supports those findings with its reasoning, then it may impose consecutive sentences on a defendant.

{¶ 13} During the May 7, 2003 sentencing hearing, the trial court stated that, prior to sentencing, it considered the record, oral statements, and the principles and purposes of sentencing under R.C. 2929.11. Additionally, the trial court stated that it balanced seriousness and recidivism factors pursuant to R.C. 2929.12. The trial court found that appellant had six prior felony convictions and a number of misdemeanor convictions, that he was on parole at the time of the offenses, and that the victim sustained injury. These three reasons appear to fall under R.C. 2929.14(E)(4)(a)-(c), only one of which need be found by a court to impose consecutive sentences. Appropriately, appellant concedes that R.C. 2929.14(E)(4)(a) has been satisfied because appellant committed both offenses while on parole. However, satisfaction of one of the circumstances in R.C. 2929.14(E)(4)(a)-(c) is only one of the steps necessary to impose consecutive sentences.

{¶ 14} The trial court neither made findings nor supported its findings that the imposition of consecutive sentences was both (1) necessary either to protect the public from future crime or to punish the offender and (2) not disproportionate to the seriousness of the offender's conduct and the danger posed to the public by such offender. R.C. 2929.14(E)(4). In other words, the trial court failed to make two findings necessary to impose consecutive sentences. Accordingly, we find that the trial court failed to state the requisite findings on the record. R.C. 2953.08(G)(1). Appellant's assignment of error is well-taken.

{¶ 15} On consideration whereof, we reverse the judgment of the trial court and remand the matter for resentencing. Pursuant to App.R. 24, costs of this appeal are assessed to appellee.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

George M. Glasser, J.
CONCUR.

JUDGE

Judge George M. Glasser sitting by assignment of the Chief Justice of the Supreme
Court of Ohio.