

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

State of Ohio

Court of Appeals Nos. L-12-1219  
L-12-1220

Appellee

Trial Court Nos. CR0201202025  
CR0201201483

v.

Milton Earl Bratton, II

**DECISION AND JUDGMENT**

Appellant

Decided: July 26, 2013

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Claudia A. Ford, Assistant Prosecuting Attorney, for appellee.

Bruce W. Boerst, Jr., for appellant.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This is an appeal brought by appellant, Milton Earl Bratton, II, from the sentence imposed on him by the Lucas County Court of Common Pleas after a plea of guilty to violating a protection order in violation of R.C. 2929.27(A)(1) and (B)(3), a

felony of the fifth degree and domestic violence, a violation of R.C. 2929.25, a felony of the fourth degree.

{¶ 2} In his single assignment of error, appellant contends that the trial court abused its discretion in its sentence of 11 months on the charge of violation of a protection order, a fifth degree felony and 17 months on the charge of domestic violence, a fourth degree felony, to be served consecutively.

{¶ 3} Appellant asserts that the trial court expressed a “mundane recital” that it considered the record, oral statements and the presentence report and the principles and purposes of sentencing under R.C. 2929.11.

### **Facts and Procedural History**

{¶ 4} On March 27, 2012, appellant was indicted by the Lucas County Grand Jury for a violation of R.C. 2905.02(A)(2) and (C), abduction, a felony of the third degree, a violation of R.C. 2911.02(A)(2), robbery, a felony of the second degree and R.C. 2919.27(A)(1) and (B)(3), violation of a protection order, a felony of the fifth degree.

{¶ 5} On June 26, 2012, while those cases were pending, a prosecutor’s information was filed against appellant, alleging that he violated R.C. 2919.25(A) and 2929.25(D)(3), domestic violence, a felony of the fourth degree.

{¶ 6} On June 26, 2012, appellant entered a plea of guilty to R.C. 2929.27(A)(1) and (B)(3), violation of a protection order, a felony of the fifth degree and to a violation of R.C. 2929.25, domestic violence, a felony of the fourth degree. In exchange for these

pleas, the state dismissed the remaining counts of the indictments, and agreed not to pursue additional charges against appellant for other incidents involving the same victim.

### **Felony Sentence Review**

{¶ 7} Appellant presents a single assignment of error:

The trial court erred in imposing a sentence of eleven (11) months in prison in Lucas County Court of Common Pleas No.: G-4801-CR-0201201483-000 and seventeen (17) months in Court of Common Pleas Case No.: G-4801-CR-0201202025-000, to be served consecutively, for a total period of incarceration of twenty-eight (28) months.

{¶ 8} In reviewing sentencing decisions of a trial court, an appellate court conducts a meaningful review of the sentencing decision. *State v. Carter*, 11th Dist. Portage No. 2003-P-0007, 2004-Ohio-1181. “Meaningful review” means that an appellate court reviewing an appeal of a felony sentence may modify or vacate the sentence and remand the matter to the trial court for resentencing if the court clearly and convincingly finds that the record does not support the sentence or that the sentence is otherwise contrary to law. *Id.* at ¶ 44, citing *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473; R.C. 2953.08.

{¶ 9} A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing which are to protect the public from future crime by the offender and others and to punish the offender. R.C. 2929.11(A). To achieve those purposes, the sentencing court shall consider the need for incapacitating the

offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both. *Id.*

{¶ 10} We review felony sentences pursuant to the two-step analysis set forth in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124. First, our obligation is to examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. *Id.* at ¶ 4.

{¶ 11} Should the court be satisfied upon completion of this examination, the decision of the trial court is then reviewed for an abuse of discretion. *Id.* An abuse of discretion means more than an error of law or judgment, but rather implies that the court's attitude is unreasonable, arbitrary or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

{¶ 12} Our review commences with an examination of the sentencing statutes that apply in this case. R.C. 2929.14 establishes prison sentences for a fourth and fifth-degree felony. Specifically, R.C. 2929.14(A)(4) and (5) states:

(4) For a felony of the fourth degree, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.

(5) For a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

{¶ 13} Appellant's sentences of 11 months and 17 months respectively were clearly within the statutory range provided for fourth and fifth degree felonies.

{¶ 14} The sentences were ordered to be served consecutively. R.C. 2929.14(C)(4) sets forth the findings that must be made by the court prior to the imposition of consecutive sentences. That section states:

(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.

{¶ 15} With respect to appellant, the trial court specifically found that it was necessary to protect the public from future crimes that could be committed by appellant and that the imposition of consecutive sentences were not disproportionate to the seriousness of appellant's conduct or the danger that appellant posed to the public. The court then made additional findings that at least one the offenses was committed while awaiting sentencing (although the record reveals that the allegations contained in the prosecutor's information occurred while awaiting trial and not while awaiting sentencing), that the offenses were committed as part of a course of conduct, the harm caused was great or unusual and the defendant's criminal history demonstrated that it was necessary to protect the public from future crimes by appellant.

{¶ 16} At the sentencing hearing, the court pointed out that appellant's first assaultive case occurred 14 years prior to the sentencing and that, since then, he had convictions for assault in 2001 and felonious assault in 2002, and had spent two years in the penitentiary in 2009. He also had been convicted of a violation of a protection order in 2010, as well as a conviction for domestic violence in 2011. The court also noted that in the cases before the court, appellant held the victim in her car for three hours. He struck her and she had a cut lip and appellant had to be maced by police officers on two occasions. The consideration of appellant's record can hardly be considered a "mundane

recital” as counsel has characterized the court’s findings. This is in fact appellant’s record.

{¶ 17} Under R.C. 2929.14(C)(4), the trial court must state its findings in support of consecutive sentences on the record at the sentencing hearing. *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473, paragraph one of the syllabus. However, it is not required to recite any “magic” or “talismanic” words when imposing consecutive sentences provided it is “clear from the record that the trial court engaged in the appropriate analysis.” *State v. Murrin*, 8th Dist. Cuyahoga No. 83714, 2004-Ohio-3962, ¶ 12.

{¶ 18} We note that the requirement that a sentencing court must give reasons for imposing consecutive sentences, which existed under former R.C. 2929.19(B)(2), was not reenacted by the legislature when the statute was amended effective September 31, 2011. Nevertheless, the court in this instance articulated its reasons at the sentencing hearing.

{¶ 19} Upon review, we find that the trial court made the requisite findings under R.C. 2929.14(C)(4). These findings were incorporated in the trial court’s judgment entry of sentencing.

{¶ 20} Given the trial court’s consideration of the record, oral statements of appellant and his counsel, the presentence report and its findings as well as our independent review, we cannot find that imposition of consecutive sentences was clearly and convincingly contrary to law, unreasonable, arbitrary or unconscionable. Appellant’s sole assignment of error is found not well-taken.

## Conclusion

{¶ 21} The judgment of the Lucas County County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

James D. Jensen, J.  
CONCUR.

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JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
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