

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

State of Ohio

Court of Appeals No. L-12-1357

Appellee

Trial Court No. CR0201201622

v.

Dontae Cunningham

DECISION AND JUDGMENT

Appellant

Decided: January 17, 2014

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Matthew D. Simko, Assistant Prosecuting Attorney, for appellee.

Patricia Horner, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, which, pursuant to a voluntary plea agreement, found appellant guilty of one amended count of attempted carrying a concealed weapon, in violation of R.C. 2923.12, a

felony of the fifth degree. Appellant was sentenced to an 11-month term of incarceration, ordered to be served consecutively with a felony sentence that appellant was serving in a separate matter. For the reasons set forth below, this court affirms the judgment of conviction and remands the case for resentencing.

{¶ 2} Appellant, Dontae Cunningham, sets forth the following two assignments of error:

I. THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS.

II. THE TRIAL COURT ABUSED ITS DISCRETION IN SENTENCING DEFENDANT TO CONSECUTIVE SENTENCES.

{¶ 3} The following undisputed facts are relevant to this appeal. On March 27, 2012, an officer from the Toledo Police Department was conducting routine patrol in an area of central Toledo known for unlawful drug activity. During this patrol, the officer observed appellant engaging in a suspicious hand to hand transaction with the driver of a motor vehicle.

{¶ 4} Based upon these observations, the officer approached the parties. As the officer approached, the motor vehicle fled and appellant furtively concealed something in his pants, made suspicious gestures, and ran on foot away from the officer. The officer commenced a foot pursuit, following appellant into a nearby dwelling. The officer chased appellant upstairs to the second floor of the dwelling. The officer observed

appellant remove a handgun from his person and attempt to conceal it under a bed. The weapon was recovered and appellant was arrested.

{¶ 5} On April 25, 2012, appellant was indicted on one count of carrying a concealed weapon, in violation of R.C. 2923.12, a felony of the fourth degree. On September 21, 2012, appellant filed a motion to suppress. On October 1, 2012, the trial court conducted a hearing on the motion to suppress. The court heard testimony and arguments from both sides and considered the matter. The motion was denied.

{¶ 6} On October 17, 2012, subsequent to the denial of appellant's motion to suppress, appellant entered into a voluntary plea agreement. Appellant pled guilty to an amended, lesser offense of attempted carrying a concealed weapon, in violation of R.C. 2923.12 and R.C. 2923.02, a felony of the fifth degree. On November 20, 2012, appellant was sentenced to an 11-month term of incarceration. The sentence was ordered to be served consecutively to a felony sentence appellant was serving in connection to a separate felony conviction. This appeal ensued.

{¶ 7} In appellant's first assignment of error, appellant asserts that the trial court erred in denying the motion to suppress. Given the facts of this case, this assertion is not properly before this court. Appellant's voluntary plea agreement while represented by competent counsel constituted a waiver of any alleged non-jurisdictional defects. It is well-recognized by this court that the voluntary entry of a guilty plea waives the raising of alleged errors in the course of a prior motion to suppress. *State v. Leasure*, 6th Dist.

Lucas No. L-05-1260, 2007-Ohio-100, ¶ 7. Accordingly, we find appellant's first assignment of error not well-taken.

{¶ 8} In appellant's second assignment of error, appellant maintains that the trial court did not properly impose a consecutive sentence in this matter. Notably, the record reflects that both parties concur in the merits of the second assignment.

{¶ 9} It is well-established that in order to properly impose consecutive prison terms on convictions of multiple felony offenses, the trial court must fully engage in the findings required and set forth in R.C. 2929.14(C)(4). That section establishes that prior to imposing consecutive sentences the court must find that a consecutive sentence is necessary to protect the public from future crime or to punish the offender, that a consecutive sentence is not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and the court must also find that the offender either committed one or more of the offenses while awaiting trial or sentencing, was under a sanction imposed pursuant to R.C. 2929.16, 2929.17 or 2929.18, or was under post-release control in connection to a prior offense. *State v. Bratton*, 6th Dist. Lucas No. L-12-1220, 2013-Ohio-3293, ¶ 14.

{¶ 10} The parties concur, and the record consistently reflects, that the trial court did not engage in the requisite statutory findings mandated to properly impose a consecutive sentence in this case. Accordingly, this case must be remanded for resentencing. Wherefore, we find appellant's second assignment of error well-taken.

{¶ 11} The judgment of conviction in this matter is hereby affirmed. The matter is remanded for resentencing in conformity with this decision. The parties are ordered to each pay one-half of the cost of this appeal pursuant to App.R. 24.

Judgment affirmed, in part,
and reversed, in part.

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

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

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:
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