

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

State of Ohio

Court of Appeals No. L-13-1166

Appellee

Trial Court No. CR0200602712

v.

Antoine Maurice Moore

DECISION AND JUDGMENT

Appellant

Decided: May 16, 2014

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Neil S. McElroy, for appellant.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This is an appeal of a criminal sentence. Appellant, Antoine Moore, argues that the Lucas County Court of Common Pleas erred when it sentenced him to

consecutive prison terms without making the required findings of fact under R.C. 2929.14(C)(4). We reverse.

A. Factual and Procedural Background

{¶ 2} On October 31, 2006, appellant was convicted of burglary, and was ordered to serve a six-year prison sentence. On August 15, 2011, the trial court granted appellant judicial release and placed him on community control. Subsequently, appellant was convicted on a separate charge of attempted burglary in case No. CR0201301478, and was sentenced to a nine-month prison term on that charge. Because of his separate felony conviction, appellant admitted that he violated the terms of his community control. On the community control violation, the trial court ordered appellant to serve the remaining balance of his original six-year sentence consecutive to the sentence in case No. CR0201301478.

B. Assignment of Error

{¶ 3} Appellant has timely appealed the sentence on the community control violation, raising one assignment of error for our review:

1. The trial court failed to make the necessary, statutory findings when it sentenced Mr. Moore to consecutive sentences.

II. Analysis

{¶ 4} We review consecutive sentences using the standard of review set forth in R.C. 2953.08. *State v. Banks*, 6th Dist. Lucas No. L-13-1095, 2014-Ohio-1000, ¶ 10. Under R.C. 2953.08(G)(2), we may either increase, reduce, or otherwise modify a

sentence, or vacate the sentence and remand the matter for resentencing where we clearly and convincingly find that either the record does not support the trial court's findings under R.C. 2929.14(C)(4), or the sentence is otherwise contrary to law.

{¶ 5} In his assignment of error, appellant argues that the trial court failed to make the required findings under R.C. 2929.14(C)(4) before it sentenced him to consecutive sentences. The state concedes this issue, and requests that we remand the matter for resentencing. R.C. 2929.14(C)(4) provides:

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 sentence 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.

{¶ 6} Because it is clear from the sentencing transcript and judgment entry that the trial court failed to make any of the statutorily required findings before imposing consecutive sentences, we clearly and convincingly find that appellant's sentence is contrary to law. Accordingly, appellant's assignment of error is well-taken.

III. Conclusion

{¶ 7} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is reversed and the sentence is vacated. The matter is remanded to the trial court for resentencing and for the court to make a determination if any of the findings under R.C. 2929.14(C)(4) apply. The state is ordered to pay the costs of this appeal pursuant to App.R. 24.

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.

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, P.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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.