

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

State of Ohio

Court of Appeals No. L-13-1201

Appellee

Trial Court No. CR0201301073

v.

Darrell Washington

DECISION AND JUDGMENT

Appellant

Decided: June 13, 2014

* * * * *

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

Tim A. Dugan, for appellant.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This is an appeal of a criminal sentence from the Lucas County Court of Common Pleas. Appellant, Darrell Washington, argues that the trial court failed to make

the requisite findings under R.C. 2929.14(C)(4) before ordering his sentence to run consecutive to an existing term of incarceration. We affirm.

A. Facts and Procedural Background

{¶ 2} While serving a seven-year prison sentence in the Toledo Correctional Institute for felonious assault, appellant participated in an altercation during which he punched a corrections officer in the face, bloodying the officer's nose. Consequently, appellant was indicted on one count of assault in violation of R.C. 2903.13(A) and (C)(4)(a), a felony of the fifth degree. Appellant entered an initial plea of not guilty, but later changed his plea to no contest pursuant to an agreement with the state that the state would recommend that any prison time be ordered to be served concurrently with the remainder of appellant's original sentence.

{¶ 3} At the change of plea hearing, the trial court was prepared to proceed immediately to sentencing. However, as the trial court was questioning appellant regarding his current situation at the Ohio State Penitentiary, appellant indicated that he had been involved in ten other altercations with inmates while in prison. Upon learning this, the trial court continued the sentencing hearing to a later date.

{¶ 4} At the later sentencing hearing, the trial court stated that it had received appellant's institutional summary report, and commented that it had never seen one with as many infractions as appellant had. Based on appellant's "horrific record of infractions," the trial court sentenced appellant to 11 months in prison, and ordered that time to be served consecutively to appellant's existing prison sentence. In its subsequent

judgment entry, the trial court specifically found, “Being necessary to fulfill the purposes of R.C. 2929.11, and not disproportionate to the seriousness of the offender’s conduct or the danger the offender poses, the court further finds the defendant’s criminal history requires consecutive sentences.”

B. Assignment of Error

{¶ 5} Appellant has timely appealed his conviction, raising one assignment of error for our review:

The Trial Court abused its discretion in sentencing Appellant to a consecutive prison term.

II. Analysis

{¶ 6} We review the imposition of 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 2929.14(C)(4), or the sentence is otherwise contrary to law. Notably, we do not review the trial court’s sentence for an abuse of discretion. R.C. 2953.08(G)(2).

{¶ 7} Under R.C. 2929.14(C)(4), a trial court may sentence an offender to consecutive prison terms 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} The trial court “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. Wright*, 6th Dist. Lucas Nos. L-13-1056, 1057, 1058, 2013-Ohio-5903, ¶ 33, quoting *State v. Murrin*, 8th Dist. Cuyahoga

No. 83714, 2004-Ohio-3962, ¶ 12. “While the trial court need not quote the statute verbatim, [the R.C. 2929.14(C)(4)] findings must be made in the sentencing entry.” *State v. Jude*, 6th Dist. Wood No. WD-13-055, 2014-Ohio-2437, ¶ 10. “Furthermore, the findings that the trial court makes in its sentencing entry must be supported by the record from the sentencing hearing.” *Id.*; R.C. 2953.08(G)(2)(a).

{¶ 9} R.C. 2929.14(C)(4) plainly requires that the trial court find (1) that the consecutive sentence is necessary to protect the public from future crime or to punish the offender, (2) that consecutive sentences are not disproportionate to the seriousness of the offender’s conduct, and (3) that one of the circumstances listed in R.C. 2929.14(C)(4)(a)-(c) applies. Here, the trial court’s sentencing entry makes each finding.

{¶ 10} As to the first required finding, the sentencing entry states, “Being necessary to fulfill the purposes of R.C. 2929.11.” R.C. 2929.11 provides that the overriding principles and purposes of sentencing are to “protect the public from future crime by the offender and others and to punish the offender.” Thus, because the court found that consecutive sentences were necessary to protect the public from future crime and to punish the offender, the first required finding is satisfied. As to the remaining two findings, the trial court expressly found that consecutive sentences were “not disproportionate to the seriousness of the offender’s conduct,” thereby satisfying the second required finding, and that consecutive sentences were necessary based on “[appellant’s] criminal history,” implicating R.C. 2929.14(C)(4)(c), and thereby satisfying the third required finding. We also note that the findings made by the trial

court are supported by the record from the sentencing hearing, in particular appellant's admission that while in prison for felonious assault he had been involved in ten other altercations with inmates. Therefore, we do not clearly and convincingly find that the trial court's findings are unsupported by the record or that the sentence is otherwise contrary to law.

{¶ 11} As a final matter, appellant argues that the trial court erred in sentencing him to consecutive sentences where the state and the victim both recommended that the sentence be ordered to be served concurrently. Notably, the Ohio Supreme Court has held, "A trial court does not err by imposing a sentence greater than 'that forming the inducement for the defendant to plead guilty when the trial court forewarns the defendant of the applicable penalties, including the possibility of imposing a greater sentence than that recommended by the prosecutor.'" *State ex rel. Duran v. Kelsey*, 106 Ohio St.3d 58, 2005-Ohio-3674, 831 N.E.2d 430, ¶ 6, quoting *State v. Buchanan*, 154 Ohio App.3d 250, 2003-Ohio-4772, 796 N.E.2d 1003, ¶ 13 (5th Dist.). Here, the trial court expressly warned appellant that he was subject to up to 12 months in prison, which could be ordered to be served consecutively, and that the trial court was not bound to follow the state's recommendation of a concurrent sentence. Therefore, we do not find that the trial court's imposition of consecutive sentences in contravention of the state's recommendation is contrary to law.

{¶ 12} Accordingly, appellant's assignment of error is not well-taken.

III. Conclusion

{¶ 13} For the foregoing reasons, the judgment of the Lucas 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.

Arlene Singer, 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>.