

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

State of Ohio

Court of Appeals No. WD-13-055

Appellee

Trial Court No. 2012CR0205

v.

Wesley Jude

DECISION AND JUDGMENT

Appellant

Decided: June 6, 2014

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Gwen Howe-Gebbers and David E. Romaker, Jr., Assistant
Prosecuting Attorneys, for appellee.

Steven T. Casiere, for appellant.

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YARBROUGH, P.J.

I. Introduction

{¶1} Appellant, Wesley Jude, appeals from the judgment of the Wood County
Court of Common Pleas, which imposed consecutive prison sentences on his convictions

for two counts of grand theft of a motor vehicle and three counts of complicity to burglary. We reverse.

A. Factual and Procedural Background

{¶2} Pursuant to a negotiated plea agreement, appellant pleaded guilty to two counts of grand theft of a motor vehicle in violation of R.C. 2913.02(A)(1) and (B)(5), felonies of the fourth degree, and three counts of complicity to burglary in violation of R.C. 2923.03(A)(2) and (3) and R.C. 2911.12(A)(3), felonies of the third degree. At sentencing, the trial court noted appellant’s lengthy juvenile criminal history, stating, “[F]or a young man you have been before the courts for years, and because of that record the Juvenile Court was able to bind you over as an adult. * * * Your criminal activity has been about the only thing that you have managed to excel in [sic] your life. You don’t seem to have any motivation to change your behavior or to stop committing serious crimes.” The court then proceeded to sentence appellant to six months each on the two counts of grand theft of a motor vehicle, to be served concurrently. On the counts of complicity to burglary, the trial court ordered appellant to serve 30 months in prison on each count, “in order to protect the public.” The court ordered those 30-month sentences to be served consecutively to each other and consecutively to the six months for the grand thefts, for a total prison term of eight years.

{¶3} In the subsequent judgment entry, before listing the sentences, the trial court found “that the Defendant has a lengthy history of criminal convictions and has shown no

motivation to change his behavior. These offenses were also part of organized criminal activity.” In the portion of the judgment entry ordering the sentences to be served consecutively, the court found “that consecutive sentences are necessary to protect the public and to punish the Defendant.”

B. Assignment of Error

{¶4} Appellant now appeals, asserting one assignment of error:

1. THE TRIAL COURT ERRED WHEN IT IMPOSED CONSECUTIVE SENTENCES IN VIOLATION OF OHIO REVISED CODE SECTIONS 2929.14(C)(4) AND 2929.41(A).

II. Analysis

{¶5} 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.

{¶6} 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. 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 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.

{¶7} Notably, 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, L-13-1057, L-13-1058, 2013-Ohio-5903, ¶ 33, quoting *State v. Murrin*, 8th Dist. Cuyahoga No. 83714, 2004-Ohio-3962, ¶ 12.

{¶8} Appellant argues that the court did not specifically make any of the required findings at the sentencing hearing. The state, on the other hand, notes that the trial court stated that the 30-month sentences were necessary to protect the public, thus satisfying the first part of R.C. 2929.14(C)(4). In addition, the state argues that the trial court’s recitations regarding appellant’s lengthy criminal history are sufficient to satisfy R.C. 2929.14(C)(4)(c). Therefore, the state concludes that the record clearly demonstrates that the trial court engaged in the appropriate analysis, and thus complied with R.C. 2929.14(C)(4).

{¶9} While we agree with appellant that the trial court did not comply with R.C. 2929.14(C)(4), we take this opportunity to clarify what is required of a trial court before imposing consecutive sentences. Appellant argues that the court must make specific findings at the sentencing hearing. Indeed, in *State v. Comer*, the Ohio Supreme Court held “Pursuant to R.C. 2929.14(E)(4) and 2929.19(B)(2)(c), when imposing consecutive sentences, a trial court is required to make its statutorily enumerated findings and give reasons supporting those findings 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. At the time, former R.C. 2929.19(B)(2)(c) required that at the sentencing hearing, the trial court “shall make a finding that gives its reasons for selecting the sentence imposed in any of the following circumstances: * * * (c) If it imposes consecutive sentences under section 2929.14 of the Revised Code, its reasons for imposing the consecutive sentences.” However, in 2011, the legislature amended R.C. 2929.19 as part of the sentencing overhaul in H.B. 86, and in so doing, removed the original language under subsection (B)(2)(c). Thus, there is no longer a statutory requirement that the trial court expressly make the R.C. 2929.14(C)(4) findings at the sentencing hearing.

{¶10} This, however, does not absolve the trial court from making the findings in its judgment entry. 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. While the trial court need not quote the statute verbatim, these findings must be made in the sentencing entry. *See State v. Payne*, 6th Dist. Lucas Nos. L-13-1024, L-13-1025, 2014-Ohio-1147, ¶ 13-16 (trial court made appropriate findings at the sentencing hearing before imposing consecutive sentences, but matter remanded for the court to amend its judgment entry to reflect those findings).

Furthermore, the findings that the trial court makes in its sentencing entry must be supported by the record from the sentencing hearing. R.C. 2953.08(G)(2)(a).

{¶11} Here, the trial court simply did not make the findings required under R.C. 2929.14(C)(4) in its sentencing entry. Thus, we hold that the trial court's imposition of consecutive sentences without making those findings is clearly and convincingly contrary to law. Furthermore, unlike *Payne*, supra, the trial court also did not make the required findings at the sentencing hearing. As a result, remand for the trial court to amend its judgment entry to reflect its findings, as we did in *Payne*, is not appropriate. Instead, the matter must be remanded for a new sentencing hearing. See, e.g., *Wright*, 6th Dist. Lucas Nos. L-13-1056, L-13-1057, L-13-1058, 2013-Ohio-5903 at ¶ 35-37; *State v. Jones-Bateman*, 6th Dist. Wood Nos. WD-11-074, WD-11-075, 2013-Ohio-4739, ¶ 23-24.

{¶12} In so holding, we agree with the reasoning of the Eighth District in *State v. Venes*, 2013-Ohio-1891, 992 N.E.2d 453, ¶ 18 (8th Dist.):

We recognize that this strict approach will likely cause the reversal of some consecutive sentences. However, a long-view approach will ultimately result in far fewer appeals of consecutive sentences. And it should go without saying that if the court has to struggle to make the necessary findings for imposing consecutive sentences, it may be that consecutive sentences are unwarranted in the first place.

{¶13} Accordingly, appellant's assignment of error is well-taken.

III. Conclusion

{¶14} For the foregoing reasons, the judgment of the Wood 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

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, P.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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