

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

State of Ohio

Court of Appeals No. L-14-1194

Appellee

Trial Court No. CR0201401811

v.

Erik Starr

DECISION AND JUDGMENT

Appellant

Decided: July 17, 2015

* * * * *

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

Tim A. Dugan, for appellant.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This is an appeal from the judgment of the Lucas County Court of Common Pleas, sentencing appellant, Erik Starr, to a total of 20 years in prison following his plea

of guilty to three counts of aggravated robbery with attendant firearms specifications as to each count. Finding no error in the trial court's imposition of consecutive sentences, we affirm.

A. Facts and Procedural Background

{¶ 2} On May 19, 2014, appellant was indicted on three counts of robbery in violation of R.C. 2911.02(A)(2), felonies of the second degree, and three counts of aggravated robbery in violation of R.C. 2911.01(A)(1), felonies of the first degree. In addition, firearms specifications were attached to the three aggravated robbery counts pursuant to R.C. 2941.145. The charges stemmed from robberies that occurred in Lucas County on April 29, May 6, and May 9, 2014.

{¶ 3} On May 27, 2014, appellant appeared before the trial court for arraignment and entered pleas of not guilty to the foregoing charges. On August 18, 2014, appellant withdrew his not guilty pleas and entered pleas of guilty to the aggravated robbery counts, along with amended firearms specifications as to each count under R.C. 2941.141. The state dismissed the robbery counts. After a thorough Crim.R. 11 colloquy, the court accepted appellant's pleas, ordered the preparation of a presentence investigation report, and continued the matter for sentencing.

{¶ 4} Appellant's sentencing hearing was ultimately conducted on September 4, 2014. At the hearing, the trial court imposed a sentence of five years in prison as to two of the three aggravated robbery counts, seven years for the remaining aggravated robbery count, and one year as to each of the firearms specifications. Additionally, the trial court

examined appellant's lengthy criminal record, which began while appellant was a juvenile and involved "some of the most serious types of criminal conduct," including burglary and four counts of aggravated robbery. The court also emphasized the severity of appellant's conduct in this case, noting that appellant brandished a firearm and, in one instance, pointed it at the clerk whom he robbed. In light of appellant's criminal history and the nature of his conduct in this case, and because appellant was on post-release control at the time the robberies were committed, the trial court ordered the prison sentences to be served consecutively for an aggregate prison sentence of 20 years. Appellant's timely appeal followed.

B. Assignment of Error

{¶ 5} On appeal, appellant asserts the following assignment of error for our review:

- 1) Appellant's sentence was contrary to R.C. 2929.14(C)(4).

II. Analysis

{¶ 6} In his sole assignment of error, appellant contends that the sentence imposed in this case was contrary to R.C. 2929.14(C)(4).

{¶ 7} We review felony sentences under the two-prong approach set forth in R.C. 2953.08(G)(2). R.C. 2953.08(G)(2) provides that an appellate court may increase, reduce, modify, or vacate and remand a disputed sentence if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

{¶ 8} R.C. 2929.14(C)(4) provides, in relevant part:

(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.

* * *

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶ 9} 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, 1057, 1058, 2013-Ohio-5903, ¶ 33, quoting *State v. Murrin*, 8th Dist. Cuyahoga No. 83714, 2004-Ohio-3962, ¶ 12; *see also State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29 (“[A] word-for-word recitation of the language of [R.C. 2929.14(C)(4)] is not required, and as long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld.”).

{¶ 10} Here, appellant argues that the record in this case does not support consecutive sentences under R.C. 2929.14(C)(4). Specifically, appellant asserts that consecutive sentences were unnecessary in light of the evidence contained in the record, namely appellant’s admission of guilt and recognition of his heroin addiction. Additionally, appellant contends that the trial court failed to make the requisite findings in its sentencing entry. Thus, appellant insists that this case must be remanded to the trial court for correction of its sentencing entry even if we conclude that consecutive sentences were appropriately imposed.

{¶ 11} Upon examination of the record before us, we find that the trial court, in both its sentencing entry and at the sentencing hearing, made the requisite findings to support its imposition of consecutive sentences under R.C. 2929.14(C)(4).

{¶ 12} At sentencing, the trial court stated:

I find that consecutive sentences are necessary both to protect the public from future crime and to punish you, and I find that it's not disproportionate to the seriousness of your conduct in terms of the danger that you presented to the public in the use of the firearm.

I find further that your criminal history justifies consecutive sentences and requires consecutive sentences. Further, that you were under a post-release control sanction at the time of the offenses.

{¶ 13} In reviewing the trial court's statements, we note that the court specifically found that consecutive sentences were necessary to protect the public and punish appellant, and were not disproportionate to the seriousness of appellant's conduct. The court went on to find that the offenses were committed while appellant was on post-release control for a prior offense. Finally, the court examined appellant's lengthy criminal history and found that it also supported the imposition of consecutive sentences. In light of these findings, we cannot agree with appellant's assertions that the trial court's sentence was contrary to R.C. 2929.14(C)(4).

{¶ 14} Additionally, we find no merit to appellant's argument that the trial court failed to reflect its findings under R.C. 2929.14(C)(4) in its sentencing entry.

{¶ 15} In order to support the imposition of consecutive sentences under R.C. 2929.14(C)(4), a trial court's sentencing entry must include findings "(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.” *State v. Jude*, 6th Dist. Wood No. WD-13-055, 2014-Ohio-2437, ¶ 10.

{¶ 16} In the present case, the trial court's sentencing entry states the following in relevant part:

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 was under post release control when the offense was committed and the defendant's criminal history requires consecutive sentences, therefore the sentences * *

* are ordered to be served consecutively.

{¶ 17} As with the trial court's statements at the sentencing hearing, the sentencing entry includes the requisite findings to support the imposition of consecutive sentences under R.C. 2929.14(C)(4). Thus, we find no merit to appellant's contention that this case should be remanded to the trial court for correction of its sentencing entry.

{¶ 18} Having examined the entire record, including the sentencing hearing transcript and the sentencing entry, we find that the trial court's imposition of consecutive sentences in this case was not clearly and convincingly contrary to law. Accordingly, appellant's sole assignment of error is not well-taken.

III. Conclusion

{¶ 19} 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.

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, J.
CONCUR.

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: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
