

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

State of Ohio

Court of Appeals Nos. L-15-1038
L-15-1057

Appellee

Trial Court No. CR0201402776

v.

Oscar Price

DECISION AND JUDGMENT

Appellant

Decided: November 17, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brad Smith, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

SINGER, J.

{¶ 1} This an appeal from appellant's consecutive sentences given by the Lucas County Court of Common Pleas. For reasons below, we remand for further sentencing.

{¶ 2} Appellant sets forth one assignment of error:

1. The trial court failed to follow all of the mandates of R.C.

2929.14(C)(4) in sentencing appellant to consecutive sentences.

{¶ 3} On August 4, 2014, police received a tip that drugs were being sold in Toledo, Ohio. The tip identified appellant, Oscar Price, as the person selling drugs. Following the tip, police observed appellant have a hand-to-hand transaction with a pedestrian. Appellant then went to a nearby trash can and pulled out a plastic grocery bag. Appellant and the pedestrian had another hand-to-hand transaction. These transactions took place within 1,000 feet of two schools.

{¶ 4} Following their observations police searched the area. A K-9 unit found a bag dropped by the pedestrian which contained one-tenth of a gram of heroin. After searching the trash can, police found multiple bags of crack cocaine, weighing less than three-tenths of a gram, and three grams of marijuana.

{¶ 5} The Lucas County Grand Jury indicted appellant with five felonies. He was charged with trafficking heroin, cocaine, and marijuana, all felonies in the fourth degree. He was also charged with possession of heroin and cocaine, felonies of the fifth degree.

{¶ 6} On January 26, 2015, appellant entered an *Alford* plea to trafficking heroin and amended charges for trafficking cocaine and marijuana. The amended charges were made fifth degree felonies, according to the plea agreement reached between appellee and appellant. The possession charges were dismissed pursuant to the plea agreement.

{¶ 7} After hearing statements from appellant’s trial counsel and appellant, the trial court sentenced appellant to 17 months for the trafficking heroin charge and 11 months for both the amended trafficking cocaine and the trafficking marijuana charges. The trial court determined the sentences should be served consecutively.

{¶ 8} After finding appellant violated his community control, the trial court stated during the sentencing hearing, “And that pursuant to Revised Code 2929.14(E) as a consequence of you having been on community control while the offenses were committed and given your substantial criminal record, the law compels that those sentences be served consecutive to each other, which means it’s thirty nine months.” The court’s judgment entry states the imposition of consecutive sentences is not disproportionate to the seriousness of appellant’s conduct and found appellant was under community control at the time of the offense. The trial court also found “the defendant’s criminal history requires consecutive sentences.” The trial court did not give any reasoning as to why appellant’s criminal history warranted consecutive sentences.

{¶ 9} An appellate court reviews 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 that section, an appellate court “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.” *State v. Jude*, Wood No. WD-13-055, 2014-Ohio-2437, ¶ 5.

{¶ 10} R.C. 2929.14(C)(4) requires the court to make three findings:

(1) consecutive sentences are necessary to protect the public from future harm or to punish the offender, (2) consecutive sentences are not disproportionate to the seriousness of the offense, and (3) one of the conditions in R.C. 2929.14(C)(4)(a-c) exists. R.C. 2929.14(C)(4); *Jude* at ¶ 10. The conditions in R.C. 2929.14(C)(4)(a-c) are: whether the offender was awaiting trial at the time of the offense or on postrelease control, the offenses when performed as one course of conduct caused a harm so great and unusual a single sentence would not be adequate, or the offender's history demonstrates consecutive sentences are necessary to protect the public. R.C. 2929.14(C)(4)(a-c).

{¶ 11} The trial court is not required to state specific words or phrases when the record shows the trial court engaged in the appropriate analysis. *Jude* at ¶ 7, quoting *State v. Wright*, 6th Dist. Lucas No. L-13-1058, 2013-Ohio-5903, ¶ 33. The findings required under R.C. 2929.14(C)(4) must be made in the sentencing entry and supported by the record. *Jude* at ¶ 10.

{¶ 12} Here, the trial court failed to make the required findings under R.C. 2929.14(C)(4). The sentencing entry finds the imposition of consecutive sentences is not disproportionate to the offenses committed by appellant and the offense took place while appellant was on community control.

{¶ 13} However, the trial court did not make the required finding that consecutive sentences were necessary to protect the public from future harm or to punish the offender. Though the trial court referenced appellant's substantial criminal history at both the

sentencing hearing and in its judgment entry, the trial court did not find appellant's criminal history required the imposition of consecutive sentences in order to protect the public from future harm or to punish appellant. The record does not clearly and convincingly show the court found appellant's consecutive sentences to be necessary to protect the public or to punish appellant. Therefore, the trial court did not make the required findings under R.C. 2929.14(C)(4).

{¶ 14} We reverse the judgment of the Lucas County Court of Common Pleas and vacate appellant's sentence. The matter is remanded to the trial court for resentencing. 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.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.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>
