

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

State of Ohio

Court of Appeals Nos. WD-13-077
WD-13-078

Appellee

Trial Court Nos. 2013CR0297
2013CR0017

v.

Christopher James Holloway

DECISION AND JUDGMENT

Appellant

Decided: March 6, 2015

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney,
Thomas A. Matuszak and David T. Harold, Assistant
Prosecuting Attorneys, for appellee.

Lawrence A. Gold, for appellant.

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PIETRYKOWSKI, J.

{¶ 1} These consolidated appeals are before the court from judgments entered by the Wood County Court of Common Pleas, which sentenced defendant-appellant, Christopher J. Holloway, to a total prison term of 36 months following appellant's pleas

of guilty to possession of cocaine and attempted possession of heroin, in Wood County Common Pleas case No. 2013CR0017, and failure to appear, in Wood County Common Pleas case No. 2013CR0297. Appellant now challenges the consecutive nature of his sentences in a single assignment of error:

The trial court erred to the prejudice of appellant by not making the required judicial findings before imposing consecutive sentences.

{¶ 2} On February 7, 2013, appellant was indicted in Wood County Common Pleas case No. 2013CR0017 and charged with one count of trafficking in cocaine in violation of R.C. 2925.03(A)(2) and (C)(4)(f), a first degree felony, one count of possession of cocaine in violation of R.C. 2925.11(A) and (C)(4)(e), a first degree felony, one count of trafficking in heroin in violation of R.C. 2925.03(A)(2) and (C)(6)(d), a third degree felony, and one count of possession of heroin in violation of R.C. 2925.11(A) and (C)(6)(c), a third degree felony. At arraignment, appellant entered pleas of not guilty to all charges and the case was set for trial. On May 29, 2013, the day that the trial was to begin, appellant failed to appear. The lower court issued a warrant for his arrest, and on June 6, 2013, appellant was indicted and charged in Wood County Common Pleas case No. 2013CR0297 with failure to appear in violation of R.C. 2937.29 and 2937.99(A) and (B), a fourth degree felony. Appellant was subsequently apprehended, and upon arraignment again entered a plea of not guilty.

{¶ 3} On August 23, 2013, the parties appeared in court on both cases. Appellant then withdrew his prior not guilty pleas and entered pleas of guilty to the amended

charges of possession of cocaine (Count 2), a fifth degree felony, and attempted possession of heroin (Count 4), a fourth degree felony, in case No. 2013CR0017, and to the crime charged, failure to appear, a fourth degree felony, in case No. 2013CR0297. In exchange for appellant's plea, the state agreed to request a dismissal of Counts 1 and 3 in case No. 2013CR0017 at sentencing.

{¶ 4} The case proceeded to the sentencing hearing on October 11, 2013. In case No. 2013CR0017, the court sentenced appellant to terms of 11 months incarceration for the possession of cocaine conviction and 18 months for the attempted possession of heroin conviction, and ordered that those terms be served concurrently to each other. In case No. 2013CR0297, the court sentenced appellant to a term of 18 months incarceration, and ordered that term to be served consecutively to the terms imposed in case No. 2013CR0017. On October 15, 2013, the court filed its judgment entries of sentence in both cases.

{¶ 5} In his sole assignment of error, appellant asserts that the lower court erred in imposing a consecutive sentence upon him without making the judicial findings required by R.C. 2929.14(C).

{¶ 6} We review consecutive sentences under 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 increase, reduce, or modify a sentence, or vacate the sentence and remand the matter to the sentencing court for resentencing, if 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.

{¶ 7} 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.

{¶ 8} Appellant asserts that at the sentencing hearing below, the trial court did not make any of the judicial findings required by R.C. 2929.14(C)(4), or reference the statute in any way, and that the court's written judgment entries of sentence are further void of the required findings.

{¶ 9} In *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus, the Supreme Court of Ohio recently clarified the responsibilities of a trial court when imposing consecutive sentences:

In order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings.

{¶ 10} The court further explained:

[A] word-for-word recitation of the language of the statute 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.

Id. at ¶ 29.

{¶ 11} At the sentencing hearing below, the court stated that it had reviewed the presentence investigation report and noted appellant's prior record, which included incarceration in both state and federal prisons. The court further emphasized appellant's failure to appear for trial on the drug charges and appellant's violation of the terms of his bond in that case. Then, prior to imposing sentence, the court stated it was basing the sentences on appellant's prior prison sentences, the nature of these offenses, and what the court determined was appellant's lack of remorse by continuing to lie to the probation department. The court did not specifically address any of the factors required for imposing consecutive sentences.

{¶ 12} From our review of the sentencing hearing transcript, we can conclude from the court's emphasis on appellant's prior record that the court found consecutive service was necessary to protect the public from future crime or to punish appellant. *See Bonnell, supra*, at ¶ 33. We can also discern that the court found that appellant committed the offense of failure to appear while awaiting trial on the drug charges, thereby satisfying making a finding under R.C. 2929.14(C)(4)(a). There is nothing in the record, however, from which we can conclude that the court addressed the proportionality of consecutive sentences to the seriousness of appellant's conduct and to the danger he poses to the public. The judgment entry of sentence in case No. 2013CR0297, the only sentencing entry which imposed a consecutive sentence, is similarly void of the required findings. Rather, that entry simply states: "This court finds that no one sentence is adequate to punish the Defendant and to protect the public from future crimes."

{¶ 13} Accordingly, we must conclude that the imposition of a consecutive sentence in case No. 2013CR0297 is contrary to law and the sole assignment of error is well-taken.

{¶ 14} On consideration whereof, the judgment of the Wood County Court of Common Pleas in case No. 2013CR0017 is affirmed. The judgment in case No. 2013CR0297 is affirmed in part and reversed in part and that case is remanded to the trial court for resentencing. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgments affirmed in part
and reversed in part.

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:
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