

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

State of Ohio

Court of Appeals No. WD-14-042
WD-14-043

Appellee

Trial Court No. 2013CR291
2013CR330

v.

James K. Long

DECISION AND JUDGMENT

Appellant

Decided: March 13, 2015

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney,
Gwen Howe-Gebers and David T. Harold, Assistant
Prosecuting Attorneys, for appellee.

Lawrence A. Gold, for appellant.

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YARBROUGH, P.J.

I. Introduction

{¶ 1} Appellant, James Long, appeals from the judgment of the Wood County Court of Common Pleas, which imposed a six-month prison sentence and ordered it to be served consecutively to a prison term out of the Fulton County Court of Common Pleas. We reverse.

II. Facts and Procedural Background

{¶ 2} On January 10, 2014, appellant pleaded guilty to the indicted charges of possession of heroin, in violation of R.C. 2925.11(A) and (C)(6)(a), and possession of cocaine, in violation of R.C. 2925.11(A) and (C)(4)(a), both felonies of the fifth degree. The matter proceeded to sentencing on March 21, 2014. At the sentencing hearing, the trial court noted appellant's lengthy criminal history. Following that, the trial court sentenced appellant to six months in prison on each count, to be served concurrently. The court further ordered those sentences to be served consecutively to a prison term out of Fulton County. In imposing the consecutive sentence, the trial court stated,

I'm going to order those two sentences to be concurrent, but consecutive to the Fulton County sentence, so for a total of six months here added to your remaining 12 months there, hoping that an extended period of time away from your co-dependent friend and in a place where you can't steal and get drugs will help you make that clean break that you claim that you're wanting to make at this time.

{¶ 3} In the subsequent judgment entry, the trial court stated only, "IT IS FURTHER ORDERED that the sentence shall run consecutive with the sentencing of Fulton County, Ohio."

B. Assignment of Error

{¶ 4} Appellant's motion for a delayed appeal from the judgment of conviction has been granted, and appellant now asserts one assignment of error for our review:

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

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

{¶ 8} We have held that while the trial court need not quote the statute verbatim, the 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. Failure to do so renders the trial court's imposition of consecutive sentences clearly and convincingly contrary to law. *Id.* at ¶ 11.

{¶ 9} Here, the trial court failed to include those findings in its sentencing entry. Furthermore, the trial court failed to make those findings at the sentencing hearing, thus a remand to correct the sentencing entry is not appropriate. Rather, the matter must be remanded for a new sentencing hearing. *Id.* Notably, the state concedes that the matter should be remanded for resentencing.¹

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

III. Conclusion

{¶ 11} 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.

¹ The state posits that sufficient evidence is in the record to support a conclusion under R.C. 2929.14(C)(4)(c) that appellant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. Because the trial court did not make such a finding, we decline to address whether such a finding would be supported by the record from the sentencing hearing.

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, 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>
