

[Cite as *State v. Blackshear*, 2016-Ohio-5687.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO

)

PLAINTIFF-APPELLEE

)

VS.

)

CASE NO. 15 MA 0149

)

WESLEY BLACKSHEAR

)

OPINION

)

DEFENDANT-APPELLANT

)

)

CHARACTER OF PROCEEDINGS:

Criminal Appeal from the Court of  
Common Pleas of Mahoning County,  
Ohio

Case No. 2014 CR 849

JUDGMENT:

Reversed and remanded.

APPEARANCES:

For Plaintiff-Appellee

Attorney Paul Gains  
Mahoning County Prosecutor  
Attorney Ralph Rivera  
Assistant County Prosecutor  
21 West Boardman Street, 6th Floor  
Youngstown, Ohio 44503

For Defendant-Appellant

Attorney Ronald Yarwood  
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JUDGES:

Hon. Mary DeGenaro

Hon. Cheryl L. Waite

Hon. Carol Ann Robb

Dated: August 29, 2016

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DeGENARO, J.

{¶1} Defendant-Appellant Wesley Blackshear appeals the trial court's judgment arguing it was error to impose consecutive sentences without first making the findings mandated by R.C. 2929.14(C)(4), which the State concedes. Because the trial court failed to make the required statutory findings the imposition of consecutive sentences is contrary to law.

{¶2} Blackshear was indicted on one count of aggravated murder and two counts of aggravated robbery, all first-degree felonies and each with a firearm specification; and one count of having a weapon under disability, a third-degree felony. In a Crim. R. 11(F) plea agreement accepted by the trial court, the State amended the aggravated murder charge to involuntary manslaughter and dismissed the weapon-under-disability charge; Blackshear entered a guilty plea to the amended charge, both robbery charges and all the specifications.

{¶3} Following a sentencing hearing, the trial court merged the robbery counts; sentenced Blackshear to ten years for involuntary manslaughter and ten years for aggravated robbery to be served consecutively; three years on the merged firearm specifications imposed as a mandatory and consecutive term for a total of 23 years; and a mandatory five-year period of post-release control under R.C. 2967.28.

{¶4} In his sole assignment of error, Blackshear asserts:

Appellant's sentence is both contrary to law and an abuse of discretion as the trial court failed to make any of the findings required by R.C. 2929.14(C)(4) prior to imposing the consecutive sentences.

{¶5} The Ohio Supreme Court recently articulated the appropriate standard of review for felony sentencing appeals. "Applying the plain language of R.C. 2953.08(G)(2), \* \* \* an appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court's findings under relevant statutes or that the sentence is otherwise contrary to law." *State v. Marcum*, Slip Opinion 2016-Ohio-1002, ¶ 1. The abuse-of-discretion standard is no longer applied. *Marcum* at ¶ 10.

{¶6} R.C. 2929.14(C)(4) requires three findings before a trial court imposes consecutive sentences: that consecutive sentences are 1) necessary to protect the public from future crime or to punish the defendant; 2) not disproportionate to the seriousness of the defendant's conduct and the danger the defendant poses to the public; and 3) one of three alternative findings set out in subsections: a) the defendant was under post-release control, specified statutory community control, or awaiting trial/sentencing; b) the offenses were committed during a course of conduct and the harm was so great/unusual that a single term does not reflect the seriousness of the defendant's conduct; or c) the defendant's criminal history demonstrates the need to protect the public from future crime by the defendant. R.C. 2929.14(C)(4).

{¶7} In *State v. Bonnell*, 140 Ohio St.3d 209, 2014–Ohio–3177, 16 N.E.3d 659, the Ohio Supreme Court held the findings supporting consecutive sentences must be made both at the sentencing hearing and in the entry. *Bonnell* at ¶ 37. But a trial court is not required to state reasons supporting its findings or use magic or talismanic words, so long as it is apparent the court conducted the proper analysis. *State v. Jones*, 7th Dist. No. 13 MA 101, 2014–Ohio–2248, ¶ 6; see also *Bonnell* at ¶ 37. Post-*Bonnell*, we may liberally review the entire sentencing transcript to discern whether the trial court made the requisite findings. *Bonnell* at ¶ 29. However, as demonstrated by the outcome in *Bonnell*—the Supreme Court reversed and remanded Bonnell's sentence because the trial court failed to make a proportionality finding—there are limits to that deference. *Bonnell* at ¶ 33–34. After a reviewing court determines the findings have been made, the court "must also determine whether the record contains evidence in support of the trial court's findings." *State v. Correa*, 7th Dist. 13 MA 23, 2015–Ohio–3955, ¶ 76, citing *Bonnell* at ¶ 29.

{¶8} After hearing from Blackshear, counsels' arguments and a statement from a member of the victim's family the trial court stated:

THE COURT: \* \* \* The court has considered the record, the oral statements made, and the principles and purposes of sentencing under

Ohio Revised Code 2929.11, has balanced the seriousness and recidivism factors under Ohio Revised Code 2929.12.

The court finds the defendant did plead guilty to one count of involuntary manslaughter, a violation of Ohio Revised Code 2903.04(A)(C), a felony of the first degree, and to one firearm specification in violation of Ohio Revised Code 2941.145(A).

The court has also considered the pre-sentence investigation report that was prepared in this matter.

The court finds that the defendant is not amenable to community control and prison is consistent with the purposes and principles of sentencing. Therefore, the defendant will be sentenced to ten years on Count One, the involuntarily [sic] manslaughter, ten year on Count Two, the aggravated robbery, to run consecutive to one another, finding that Counts Two and Three merge for purposes of sentencing. There is a three-year mandatory gun specification that must be served consecutive to those, for a total of 23 years.

{¶9} The trial court made no reference to 2929.14(C)(4) nor any of the statutorily required findings at the sentencing hearing, and similarly failed to do so in the entry. As such, Blackshear's sentence is contrary to law and his assignment of error is meritorious. The judgment of the trial court is reversed in part, and the matter remanded for a resentencing hearing for the trial court to determining the sole issue of whether to impose Blackshear's sentences concurrently or consecutively.

Waite, J., concurs.

Robb, J., concurs.