[Cite as *State v. Dedrick*, 2003-Ohio-2871.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 81852

STATE OF OHIO,	:	JOURNAL ENTRY
	:	AND
Plaintiff-Appellee	:	OPINION
	:	
-vs-	:	
	:	
JERRY DEDRICK,	:	
	:	
Defendant-Appellant	:	

DATE OF ANNOUNCEMENT OF DECISION:	JUNE 5, 2003
CHARACTER OF PROCEEDING:	Criminal appeal from Common Pleas Court Case No. CR-418252
JUDGMENT:	REVERSED AND REMANDED FOR RESENTENCING.
DATE OF JOURNALIZATION:	

APPEARANCES:

For plaintiff-appellee:	William D. Mason, Esq. Cuyahoga County Prosecutor BY: Chrisana C. Blanco, Esq. Assistant County Prosecutor The Justice Center - 8th Floor 1200 Ontario Street Cleveland, Ohio 44113
For defendant-appellant:	David L. Doughten, Esq. The Brownhoist Building 4403 St. Clair Avenue Cleveland, Ohio 44103

MICHAEL J. CORRIGAN, P.J.:

{¶1} Defendant Jerry Dedrick pleaded guilty to one count of felonious assault and one count of robbery. The court sentenced Dedrick to four years in prison, and Dedrick complains on appeal that the court did so without first considering whether, as a first-time offender, he should have been given the minimum sentence allowed by law.

{¶2} If an offender has not previously served a prison term, the court must impose the shortest prison term permitted by law unless doing so would demean the seriousness of the offender's conduct or would not adequately protect the public from future crime by the offender or others. See R.C. 2929.14(B)(2). The court must state either of these findings on the record, although it need not state any reasons for making the findings. See *State v. Edmonson* (1999), 86 Ohio St.3d 324, syllabus.

{¶3} During sentencing, the court stated, "[b]ut I do feel that in order to properly protect the public, and to punish you for the crime in this case, a prison term is appropriate. However, I will also acknowledge that this is your first offense."

{¶4} In *State v. Cvijetinovic*, Cuyahoga App. No. 81534, 2003-Ohio-563, we noted that *Edmonson* "held that no talismanic or magic words are required when deciding to give the offender who had not previously served a prison term more than the minimum, but the court nonetheless has to make a finding on the point." Id. at ¶17.

{¶5} The quoted portion of the court's sentencing remarks show that the court did not make an express finding relating to the imposition of a minimum sentence. By noting the need to protect the public and punish Dedrick, the court appeared to be invoking R.C. 2929.11 (A), which states the overriding purposes of felony sentencing are "to protect the public from future crime by the offender and others and to punish the offender." That code

section, like the court's sentencing, says nothing about imposing the minimum sentence. We are compelled to find that the court erred by failing to make the findings necessary for not imposing a minimum sentence. The assigned error is sustained.

Reversed and remanded for resentencing.

MICHAEL J. CORRIGAN
PRESIDING JUDGE

TIMOTHY E. McMONAGLE, J., CONCURS.

ANTHONY O. CALABRESE, JR., J., DISSENTS WITH SEPARATE OPINION.

ANTHONY O. CALABRESE, JR., J. DISSENTING:

{¶6} I respectfully dissent. It is clear from the record that the trial court was aware this was appellant's first offense. Thus, the court would be aware that appellant had not previously served a prison term. Under the facts of this case, the trial court's consideration of whether appellant is entitled to a minimum sentence is presumed and did not need to be explicitly discussed.

{¶7} Although the presumption is to impose the minimum sentence, the trial court found that to properly protect the public, a longer sentence was necessary. R.C. 2929.14(B)(2). The trial court need not recite the exact language of the statute, as long as it is clear from the record that the court made the required findings. *State v. Hollander* (July 5, 2001), Cuyahoga App. No. 78334. It is my opinion that the trial court made the required findings and its language was sufficient to justify the sentence imposed. See *State v. Williams*, (Feb. 7, 2002), Cuyahoga App. No. 79273.

{¶8} For the foregoing reasons, I would affirm.