

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 83926

STATE OF OHIO

Plaintiff-Appellee :

-vs-

RICARDO GRAY

Defendant-Appellant :

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JOURNAL ENTRY

and

OPINION

DATE OF ANNOUNCEMENT
OF DECISION:

NOVEMBER 4, 2004

CHARACTER OF PROCEEDING:

Criminal appeal from
Common Pleas Court
Case No. CR-369837

JUDGMENT:

Affirmed.

DATE OF JOURNALIZATION:

APPEARANCE:

For Plaintiff-Appellee:

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Cuyahoga County Prosecutor
KRISTEN LUSNIA
Assistant County Prosecutor
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For Defendant-Appellant:

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PATRICIA ANN BLACKMON, P.J.

{¶ 1} Appellant Ricardo Gray appeals the trial court’s imposition of a consecutive sentence. The historical facts of Gray are set forth sufficiently in *State v. Gray* (July 27, 2000), Cuyahoga App. No. 76170. This appeal involves Gray’s most recent attempt to overturn his sentence. Gray assigns the following errors for our review:

{¶ 2} “I. Defendant was denied due process of law when the court relied on misinformation in imposing sentence.”

{¶ 3} “II. Defendant was denied due process of law when the court did not conduct a proper resentencing hearing.”

{¶ 4} “III. Defendant was denied due process of law when the court sentenced defendant to a consecutive sentence.”

{¶ 5} Having reviewed the record and pertinent law, we affirm the judgment of the court. The apposite facts follow.

{¶ 6} On November 30, 1998, the Cuyahoga County Grand Jury indicted Gray for one count of aggravated murder and two counts of attempted aggravated murder, all with firearm specifications. On February 18, 1999, a jury found Gray guilty of the lesser included offenses of murder and felonious assault, both with firearm specifications. The trial court sentenced Gray to fifteen (15) years to life for murder, five (5) years for felonious assault and three (3) years for the firearm specifications. The court ordered the sentence be served consecutively.

{¶ 7} On March 22, 1999, Gray appealed his conviction. In an opinion journalized on August 7, 2000, this court affirmed that conviction. Thereafter, on September 11, 2000, Gray appealed to the Supreme Court of Ohio, which denied the appeal on December 7, 2000.

{¶ 8} On October 31, 2000, Gray applied to reopen his appeal in *State v. Gray* (July 27, 2000), Cuyahoga App. No. 76170. Upon review, we vacated the trial court's judgment and remanded the case to the trial court for it to resentence Gray in compliance with R.C. § 2929.14(E).¹

{¶ 9} On remand for resentencing, the trial court imposed the same sentence it had imposed before; we again remanded because the trial court had not conducted a new sentencing hearing and had not afforded Gray an opportunity to speak on his behalf before his resentencing.²

{¶ 10} On November 6, 2003, the trial court conducted Gray's resentencing hearing. At the hearing, Gray's attorney expressed reservations as to whether the hearing should go forward as to the felonious assault. He stated nobody was injured and witnesses testified several people fired shots in connection with the event. Gray addressed the court and stated witnesses testified he did not commit the crime; therefore, he should not have been convicted. The prosecutor relayed the facts of the case and asked the court to reimpose the same sentence. The prosecutor stated the murder of James Russell and felonious assault of Arthur Jackson resulted from a gang fight, which occurred in the area of East 143rd Street in Cleveland, Ohio. The prosecutor stated the fight broke up when the police arrived. Apparently, people ran in different directions and the fight appeared to have ended. Eyewitnesses testified Gray came back to the scene riding a mountain bike and firing a nine millimeter in the direction of Russell and Jackson. Russell was struck in the back and died on a

¹*State v. Gray* (July 27, 2000), Cuyahoga App. No. 76170.

²*State v. Gray* (January 30, 2003), Cuyahoga App. No. 81474.

nearby lawn. Jackson, who was not struck, testified bullets were passing his ears as if bees were passing by.³ Finally, the prosecutor stated Gray fired his gun until it was empty.

{¶ 11} The court stated the facts the prosecutor recounted were accurate and indicated the very serious nature of the crime which could have resulted in the loss of lives. The court stated in order to protect the public from future crimes and to punish the offender for the great harm caused, a single prison term would not adequately reflect the seriousness of the offense. Further, the court stated it did not believe a consecutive sentence was disproportionate to the seriousness of Gray's conduct.⁴ Finally, the court stated it found a consecutive sentence was absolutely necessary.⁵

{¶ 12} Thereafter, the trial court reimposed the same sentence. Gray now appeals.

{¶ 13} In his first assigned error, Gray argues the trial court denied him due process of law when it relied on misinformation in imposing sentence, citing the trial court incorrectly stated one person died and one had a bullet lodged in his body.

{¶ 14} We note that Gray did not correct the court. Nevertheless, we conclude the trial court's misstatement does not rise to the requisite level to invoke our review. Further, this court has previously affirmed Gray's conviction. Accordingly, Gray's first assigned error is overruled.

{¶ 15} In his second assigned error, Gray argues the trial court denied him due process when it did not conduct a proper resentencing hearing. We disagree. The record reveals the court heard arguments from the prosecutor, defense counsel, and afforded Gray the opportunity to address the court. Further, the court considered applicable facts and law, which we will discuss fully in Gray's

³Tr. at 8.

⁴Tr. at 10.

⁵Tr. at 11-12.

third assigned error. Because our remand was more procedural in scope, and the trial court substantially complied with our order, Gray’s second assigned error is overruled.

{¶ 16} In his third assigned error, Gray argues the trial court denied him due process of law when it sentenced him to a consecutive sentence. We disagree.

{¶ 17} R.C. 2929.14 authorizes the imposition of consecutive sentences only when the trial court concludes that the sentence is (1) necessary to protect the public from future crime or to punish the offender, (2) not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and (3) the court finds one of the following: (a) the crimes were committed while awaiting trial or sentencing, under sanction or under post-release control, (b) the harm caused by multiple offenses was so great or unusual that a single prison term would not adequately reflect the seriousness of the offense, or (c) the offender's criminal history demonstrates that consecutive sentences are necessary to protect the public from future crime.⁶

{¶ 18} Imposing consecutive prison terms for multiple convictions, therefore, is appropriate upon making certain findings as enumerated in this statute. When the trial court does so, however, it must state these findings, and its reasons for those findings, on the record.⁷

{¶ 19} Here, the trial court adhered to this rule. The following excerpt is from the record:

{¶ 20} **“* * * There was a potential for many, many lives to be lost that particular night. It’s only by the grace of God that only one person was killed and one person was injured.**

{¶ 21} **“I note that this did involve gang-related activity, and I think that’s a serious safety issue for the residents of that neighborhood.**

⁶R.C. 2929.14(E)(4).

⁷See R.C. 2929.19(B)(2)(c). See, also, *State v. Comer*, 99 Ohio St.3d 463, 2003 Ohio 4165 at P20.

{¶ 22} “It is necessary to protect the public from future crimes by you, and I think that for that reason you must be sentenced to consecutive sentences. I believe that’s the appropriate thing to do in this case.

{¶ 23} “I believe the evidence and the law supports a finding of consecutive sentences.

{¶ 24} “I don’t believe that consecutive sentences are dispro-portionate to the seriousness of the conduct, and I don’t think it’s disproportionate to the danger posed to the community.

{¶ 25} “This was gang-related activity. The conduct is very serious. To take a gun and shoot it where there are multiple, multiple people in the very near vicinity is one of the most dangerous things that can be done, and it was done by you, sir.

{¶ 26} “Obviously, it is extremely serious, as one person is dead and one person actually had a bullet lodged in his body.

{¶ 27} Gray argues since no gang specification existed, the trial court was precluded from using this factor to substantiate its reason for imposing a consecutive sentence. The trial court heard the evidence at trial and was in a position to make such a finding. Additionally, we are not persuaded that the trial court’s statement that “a male had a bullet lodged in his body” negates the court’s finding of a consecutive sentence. The trial court obviously was referring to the felonious assault count. The judge later stated that this person was injured. We refrain from nit-picking as to what this statement meant. Moreover, the trial court was not in error regarding its final conclusion which was that these crimes exposed the community to grave danger.

{¶ 28} Finally, Gray argues the trial court’s findings were inadequate to impose a consecutive sentence. The trial court’s findings were identical to the language in the statute. Consequently, its findings under the statute were correct. Furthermore, the trial court supported its findings by stating the crimes involved gang-related activity. Gray discharged a nine millimeter gun in a highly populated area ten or more times until it was empty, signifying a total disregard for

human life. Gray could have claimed more than the one life he took that day. Accordingly, we conclude Gray's third assigned error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Common Pleas Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., J., and

KENNETH A. ROCCO, J., CONCUR.

PATRICIA ANN BLACKMON
PRESIDING JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).