

[Cite as *State v. Bruce*, 2004-Ohio-626.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 82714

STATE OF OHIO	:	
	:	JOURNAL ENTRY
Plaintiff-Appellee	:	
	:	AND
vs.	:	
	:	OPINION
JUAN BRUCE	:	
	:	
Defendant-Appellant	:	
	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	<u>FEBRUARY 12, 2004</u>
	:	
CHARACTER OF PROCEEDINGS	:	Criminal appeal from
	:	Common Pleas Court
	:	Case No. CR-427544
	:	
JUDGMENT	:	AFFIRMED.
	:	
DATE OF JOURNALIZATION	:	

APPEARANCES:

For plaintiff-appellee:	WILLIAM D. MASON, ESQ. Cuyahoga County Prosecutor BY: MICHAEL D. HORN, ESQ. Assistant County Prosecutor The Justice Center, 9th Floor 1200 Ontario Street Cleveland, Ohio 44113
For defendant-appellant:	ROBERT L. TOBIK, ESQ. Cuyahoga County Public Defender BY: ROBERT M. INGERSOLL, ESQ. Assistant Public Defender 1200 West Third Street N.W. 100 Lakeside Place

Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J.

{¶1} Appellant, Juan Bruce, appeals the consecutive sentences imposed by the Cuyahoga County Court of Common Pleas, Criminal Division, as a result of his conviction for involuntary manslaughter and robbery. After a review of the record presented and the arguments of the parties, we affirm the decision of the trial court.

{¶2} Juan Bruce came into contact with the victim, Kelvin Woods, on or about July 7, 2002. Apparently, the two engaged in a scuffle, and appellant struck the victim, who was immediately rendered unconscious and later died from his injuries. Appellant was charged with murder and aggravated robbery, which charges were later reduced to involuntary manslaughter and robbery as a result of a plea agreement. Appellant pleaded guilty to the amended charges and was sentenced to four years on count one and three years on count two; these sentences were imposed consecutively.

{¶3} Appellant now appeals the sentence of the trial court and presents one assignment of error for our review:

{¶4} "I. JUAN BRUCE HAS BEEN DEPRIVED OF HIS LIBERTY WITHOUT DUE PROCESS OF LAW BY THE CONSECUTIVE SENTENCES IMPOSED ON HIM AS SAID SENTENCES DO NOT COMPORT WITH OHIO'S NEW SENTENCING STRUCTURE."

{¶5} As part of Senate Bill 2, R.C. 2929.11 provides certain purposes and objectives for sentencing with which all sentences must comport. R.C. 2929.11 states:

{¶6} "2929.11 Purposes of felony sentencing; discrimination prohibited.

{¶7} "(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

{¶8} "(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

{¶9} "(C) A court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender."

{¶10} The mechanism by which compliance with these goals may be obtained lies within R.C. 2929.12, et seq. R.C. 2929.12 grants trial courts the discretion to "determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code." A jurist's discretion is limited, however, by the mandatory findings which must be present on the record in order to properly impose, for example, consecutive or maximum sentences.

{¶11} The imposition of consecutive sentences is governed by R.C. 2929.14(E), which provides:

{¶12} "(4) 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:

{¶13} "(a) The offender committed 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.

{¶14} "(b) The harm caused by the multiple offenses was so great or unusual that no single prison term for any of the offenses committed as part of a single course of conduct adequately reflects the seriousness of the offender's conduct.

{¶15} "(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender."

{¶16} R.C. 2929.19(B) requires the trial court to explain its reasons for imposing consecutive sentences and provides in pertinent part:

{¶17} "(2) The court shall impose a sentence and shall make a finding that gives its reasons for selecting the sentence imposed in any of the following circumstances:

{¶18} "\*\*\*

{¶19} "(c) If it imposes consecutive sentences under section 2929.14 of the Revised Code, its reasons for imposing the consecutive sentences; \*\*\*"

{¶20} When a judge imposes consecutive terms of incarceration, but fails to comply with R.C. 2929.14(E)(4), there is reversible error. *State v. Beck* (Mar. 30, 2000), Cuyahoga App. No. 75193, citing *State v. Albert* (1997), 124 Ohio App.3d 225. Thus, the court must make the three findings, as outlined above, and state on the record its reasons for doing so before a defendant can be properly sentenced to consecutive terms.

{¶21} Abuse of discretion is not the standard of review with respect to sentencing; instead, an appellate court must find error by clear and convincing evidence. R.C. 2953.08(G)(2) provides that an appellate court may not increase, reduce, or otherwise modify a sentence imposed under Senate Bill 2 unless it finds by clear and convincing evidence that the sentence is not supported by the record or is contrary to law. Clear and convincing evidence is more than a mere preponderance of the evidence; it is that evidence "which will provide in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *State v. Garcia* (1998), 126 Ohio App.3d 485, citing *Cincinnati Bar Assn. v. Massengale* (1991), 58 Ohio St.3d 121, 122. When reviewing the propriety of the sentence imposed, an appellate court shall examine the record, including the oral or written statements at the sentencing hearing and the presentence investigation report. R.C. 2953.08(F)(1)-(4).

{¶22} Appellant argues that the principles of R.C. 2929.11 in the instant case were violated because the trial court failed to comply with the requirements for findings and reasons in R.C. 2929.14(E) and 2929.19. We disagree. At the sentencing hearing, the trial court heard from the prosecution, the victim's sister, defense counsel and from the appellant himself. Appellant waived his right to a presentence investigation, and so the court relied solely on

these statements and the appellant's prior criminal history, to which defense counsel stipulated (Tr. at 21).

{¶23} The trial court took into account the statutory factors required by R.C. 2929.14. The court found that the crime was of a highly serious nature and was the result of an "intentional striking" of the victim (Tr. at 28), further noting that the victim was robbed after he had been struck down by the appellant. The trial court then recognized that there were some mitigating factors, as pointed out by defense counsel, and the appellant demonstrated some remorse. However, because of appellant's prior criminal convictions, the trial court found that there was a high probability of recidivism and further found that the appellant would not be amenable to community control sanctions. Finally, the court found that the consecutive sentences were necessary to punish the appellant and to protect the public. The trial court, throughout the sentencing process, gave its reasons for making these findings and imposing consecutive sentences (Tr. at 27,28).

{¶24} We, therefore, find that the trial court complied with the principles and objectives of R.C. 2929.11 by making the requisite findings for imposing consecutive sentences under R.C. 2929.14(E). We further find that the trial court properly stated its reasons for imposing consecutive

sentences, pursuant to R.C. 2929.19. Accordingly, appellant's sole assignment of error lacks merit.

{¶25} The judgment is affirmed.

Judgment affirmed.

---

DIANE KARPINSKI and SEAN C. GALLAGHER, JJ., concur.

It is ordered that appellee recover from appellant 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.  
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).