[Cite as *State v. Craddock*, 2004-Ohio-627.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 82870

STATE OF OHIO	:	
	:	JOURNAL ENTRY
Plaintiff-Appellee	:	
	:	AND
vs.	:	
	:	OPINION
CHARLES CRADDOCK	:	
	:	
Defendant-Appellant	:	
	:	
	:	
DATE OF ANNOUNCEMENT	:	
OF DECISION	:	February 12, 2004
	:	
CHARACTER OF PROCEEDINGS	:	Criminal appeal from
	:	Common Pleas Court
	:	Case No. CR-376855
	:	
	:	
JUDGMENT	:	CONVICTION AFFIRMED; SENTENCE
	:	VACATED; REMANDED FOR
	:	RESENTENCING.
DATE OF JOURNALIZATION	:	

APPEARANCES:

For defendant-appellant

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For plaintiff-appellee

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SEAN C. GALLAGHER, J.

{¶1} Defendant Charles Craddock ("Craddock") appeals the decision of the Cuyahoga County Court of Common Pleas denying his motion to withdraw his guilty plea and the court's decision to sentence Craddock to maximum and consecutive sentences for some of the offenses to which he pleaded guilty. For the reasons adduced below, we affirm in part and vacate Craddock's sentence and remand the case for resentencing.

{¶2} The following facts give rise to this appeal. Craddock was indicted for the following offenses: four counts of rape, by use of force or threat of force, in violation of R.C. 2907.02 (counts 1-4); and nine counts of gross sexual imposition in violation of R.C. 2907.05 (counts 5-13).

{¶3} Craddock pleaded guilty to counts one and two (i.e., rape) with the "force or threat of force" specification removed. He also pleaded guilty to counts nine, ten, and eleven. The remaining counts were dismissed.

{¶4} A sexual predator hearing was held on February 10, 2000. At that hearing, the trial court heard evidence and classified Craddock as a sexual predator. Immediately following that hearing, Craddock was sentenced. He was sentenced to ten years each on counts one and two to run concurrently with each other. He was sentenced to five years each on counts nine, ten, and eleven to run concurrently with each other, but consecutively to the sentences on counts one and two.

{¶5} Craddock appeals the denial of his motion for withdrawal of his guilty plea and the sentencing decision of the trial court and advances four assignments of error.

{¶6} "Assignment of error number one: The trial court erred in not holding a hearing on appellant's motion to withdraw guilty plea."

{¶7} "Assignment of error two: The trial court's denial of appellant's motion to withdraw guilty plea was against the manifest weight of the evidence, contrary to law, and amounted to a manifest injustice."

{¶8} These assignments of error argue that the trial court ignored a manifest injustice by refusing to hold a hearing on Craddock's motion to withdraw a guilty plea and subsequently denied the motion.

{¶9} Crim.R. 32.1 governs motions to withdraw guilty pleas.

{¶10} "A motion to withdraw a plea of guilty * * * may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea."

{¶11} "It has been expressly recognized by the weight of authority that a defendant seeking to withdraw a plea of guilty after sentence has the burden of establishing the existence of manifest injustice." *State v. Smith* (1977), 49 Ohio St.2d 261. A decision on a defendant's motion to withdraw a guilty plea will not be disturbed on appeal absent an abuse of discretion. *State v. Boynton* (Aug. 14, 1997), Cuyahoga App. No. 71097.

{¶12} An abuse of discretion is more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *State v. Clark*, 71 Ohio St.3d 466, 1994-Ohio-43. When applying the abuse of discretion standard, a reviewing court is not free to merely substitute its judgment for that of the trial court. *In re Jane Doe I* (1991), 57 Ohio St.3d 135. With this standard in mind, we review the matter before us.

{¶13} Craddock argues that he provided sufficient facts and evidence to support his claim of manifest injustice entitling him to a hearing on his motion to withdraw guilty plea. We disagree.

{¶14} Craddock's motion included only one source of evidence – his own affidavit. In addition, that affidavit recounted events that occurred off the record (i.e., Craddock's claim that his attorney did not inform him of the potential maximum sentences that he faced in exchange for pleading guilty). In contrast to this self-serving affidavit, the trial court had significant evidence that denying Craddock's motion would not be a manifest injustice.

{¶15} The prosecutor informed Craddock, on the record, that his plea of guilty to counts one and two carried a mandatory sentence of three to ten years. The prosecutor also informed him that he could receive a one- to five-year sentence following his plea of guilty to counts nine, ten, and eleven. Following that explanation, Craddock acknowledged that he understood the potential sentences he was facing.

{¶16} Craddock's counsel also stated on the record that he had informed Craddock of the potential result of his pleading guilty. Craddock had no questions and indicated he understood everything that was being said. Finally, the court specifically informed Craddock that "there is no promise on what type of sentencing you are going to get. Do you understand that?" Craddock replied, "Yes, Sir."

{¶17} In light of these facts, we cannot say the trial court abused its discretion in determining that no manifest injustice had occurred, in refusing to hold a hearing on Craddock's motion and in denying Craddock's motion to withdraw his guilty plea. We,

therefore, affirm the decision of the trial court as to assignments of error one and two.

{¶18} "Assignment of error number three: The trial court erred in imposing the maximum sentences on each of the counts to which appellant plead [sic] guilty."

{¶19} In order for a trial court to impose the maximum sentence, it must make the required findings set forth in R.C. 2929.14(C), which provides in relevant part: "[T]he court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense pursuant to division (A) of this section only upon offenders who committed the worst form of the offense, [and] upon offenders who pose the greatest likelihood of committing future crimes."

{¶20} In *State v. Edmonson* (1999), 86 Ohio St.3d 324, 329, the Supreme Court of Ohio held that in order to lawfully impose a maximum prison sentence, the record must reflect that the trial court found the defendant satisfied at least one of the criteria set forth in R.C. 2929.14(C). It is not necessary for the trial court to use the exact language of R.C. 2929.14(C), as long as it is clear from the record that the court made the required findings. *State v. Hollander* (2001), 144 Ohio App.3d 565.

{¶21} In addition, R.C. 2929.19(B) requires the trial court to "make a finding that gives its reasons for selecting the sentence imposed," and if that sentence is the maximum term allowed for that offense, the judge must set forth "reasons for imposing the maximum prison term." Failure to enumerate the findings behind the sentence constitutes reversible error. *Edmonson*, 86 Ohio St.3d at 329.

{¶22} In the present case, the trial court made the required finding under R.C. 2929.14(C) that Craddock had "committed one of the worst forms of the offense of rape."

The court, however, did not list any reasons for imposing the maximum term.

{¶23} The appellee's argument that the court heard evidence in connection with Craddock's sexual predator classification that justified the imposition of a maximum sentence is without merit. The Supreme Court of Ohio has defined sexual predator hearings as civil actions. *State v. Gowdy* (2000) 88 Ohio St.3d 387. While this court has consistently held that "* * * a sexual predator determination hearing is akin to a sentencing hearing * * *," this likening has been consistently applied to issues concerning standards of admissible evidence, not issues involving required findings or reasons for a sentence. *State v. Purser* (2003), 153 Ohio App.3d 144. There is a clear distinction between the purpose of sentencing and the purpose of a sexual predator hearing. Unless the court clearly integrates or incorporates the hearings together and expressly indicates the findings or reasons stated in one are to be applied in the other, statements in a sexual predator hearing cannot be used to satisfy the statutory required findings and reasons for maximum or consecutive sentences.

{¶24} In this case, the trial court's statement at sentencing that "The harm caused was so great that any single sentence would not adequately reflect the harm that was done to these children," is only a finding and does not provide reasons for the imposition of maximum sentences. The statement that the case involves "children" does not, by itself, distinguish the facts in the case from any other case involving the statutory rape of a child.

{¶25} Further, the comments made during the sexual predator hearing were likewise inadequate to support maximum or consecutive sentences. The trial court during the sexual predator hearing said: "Based on the exhibits submitted by the prosecutor, the fact that the defendant pled guilty to two rapes of children under the age of 13 years of age, the Court is going to find that the defendant is, in fact, a sexual predator." First, this comment was directed at the sexual predator finding and was not made as reason supporting the sentences later imposed. In addition, even if this comment from the sexual predator hearing was applied to the sentencing requirements, the language used was still inadequate to support maximum sentences. The comment references evidence that exists, but does not articulate reasons that conceivably could be drawn from that evidence.

{¶26} While we philosophically agree with the prosecutor's position that evidence that may have contained sufficient facts to warrant maximum sentences existed and was offered at the sexual predator hearing, the reasons that might be drawn from this evidence to support the finding were not stated or articulated in either the sexual predator hearing or the sentencing hearing. The comments by the court, in both hearings, detailed none of the specific information outlined by the prosecutor, or in the exhibits offered, that would have justified the imposition of maximum sentences.

{¶27} Because R.C. 2929.19(B) requires the trial court to "make a finding that gives its reasons for selecting the sentence imposed," and requires "reasons for imposing the maximum prison term," assignment of error number three is sustained and the case is remanded for resentencing.

{¶28} "Assignment of error number four: The trial court erred

in ordering the sentences on counts nine, ten, and eleven to run consecutively to the sentences on counts one and two."

{¶29} R.C. 2929.14(E)(4) provides that a trial court may impose consecutive sentences only when it 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 his offense; or (c) the offender's criminal history demonstrates that consecutive sentences are necessary to protect the public from future crime." *State v. Stadmire*, Cuyahoga App. No. 81188, 2003-Ohio-873. In addition, R.C. 2929.19(B)(2) provides that "a 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: * * * (c) If it imposes consecutive sentences under section 2929.14 of the Revised Code, its reasons for imposing the consecutive sentences." Thus, "a trial court is required to make at least three findings under R.C. 2929.14(E)(4) prior to sentencing an offender to consecutive sentences and must give the reasons for its findings pursuant to R.C. 2929.19(B)(2)(c)." *Stadmire*, supra. Failure to

sufficiently state these reasons on the record constitutes reversible error. Id.

{¶30} As to the need for consecutive sentences, the court found only that "* * * consecutive sentences are necessary in this case. The harm caused was so great that any single sentence could not adequately reflect the harm that was done to these children." This statement provides only one of the three required findings. Further, it contains no reasons from any of the evidence offered by the prosecutor or from the P.S.I. to support the imposition of consecutive sentences.

{¶31} Appellee would have us "boot strap" the comments given in the sexual predator hearing transcript, held just prior to the sentencing, into the sentencing hearing to satisfy the statutory requirements for consecutive sentences. Again, as with the analysis on the issue of maximum sentences, even if the sexual predator comments had been incorporated into the sentencing hearing, those earlier comments detailed none of the specific information outlined by the prosecutor or in the exhibits offered that would have justified the imposition of consecutive sentences.

{¶32} We note that the court does not have to use the exact terminology of the statute in setting forth its findings. We have previously recognized that R.C. 2929.14(E)(4) is satisfied when we can glean from the tenor of the trial court's comments, its findings, and the evidence that imposition of consecutive sentences

is justified. See *State v. Robinson, Cuyahoga* App. No. 81610, 2003-Ohio-1353.

{¶33} Further, this does not mean that the trial court must follow a predetermined format setting forth the reasons for its findings pursuant to R.C. 2929.19(B)(2)(c). As we stated in *State v. Webb*, Cuyahoga App. No. 80206, 2003-Ohio-1718, "Although the court did not specifically state the findings first and then relate its reasons to the findings, there is no obligation to do so in the sentencing statutes. The sentencing statutes do not put an obligation upon the lower court to provide the statutory findings and its reasons in such close proximity on the record in order for the reasons to be of effect." In *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, the Supreme Court of Ohio stated a trial court "must clearly align each rationale with the specific finding to support its decision to impose consecutive sentences." *Comer* focused on a trial court's improper use of a journal entry, rather than the open record, to satisfy the statutory requirements. While *Comer* uses the term "clearly align," this does not mean the trial court must prepare and follow a list. Rather, the ability to clearly align the findings and reasons for maximum or consecutive sentences must be clear from the record as a whole. This was not done in the instant case.

{¶34} Upon our review of the record here, we find the trial court failed to make all of the required findings and did not state any reasons for imposing consecutive sentences.

{¶35} For the reasons outlined above, the fourth assignment of error has merit and we remand the case for resentencing.

{¶36} The conviction is affirmed; the sentence is vacated and the case remanded for a new sentencing hearing.

{¶37} It is, therefore, ordered that appellant and appellee share the costs herein taxed.

FRANK D. CELEBREZZE, JR., P.J., concurs.

DIANE KARPINSKI, J., concurs.
(SEE SEPARATE CONCURRING OPINION).

KARPINSKI, J., concurring.

{¶38} I agree with the lead opinion in this case, except for its discussion of the mechanics of imposing consecutive sentences. While it is true that the trial court need not follow a "predetermined format setting forth the reasons for its findings," I do not agree that the procedure the Supreme Court of Ohio described in *Comer*, ante, is satisfied if "the ability to clearly align the findings and reasons for maximum or consecutive sentences" is "clear from the record as a whole," as the lead opinion says.

{¶39} First, the statute is not satisfied by the mere "**ability** to clearly align the findings and reasons." (Emphasis added.) The statute is not satisfied by some potentiality of alignment; the finding and its reasons must in fact be demonstrably aligned.

{¶40} Second, neither the statute nor the Supreme Court permits this alignment to be drawn from the "record as a whole." In explaining the consecutive sentence, the Supreme Court stated: "***a trial court must clearly align each rationale with the specific finding to support its decision to impose consecutive sentences." p. 468 This statement sharply spells out the requirement of a "specific finding" for "each rationale."

Furthermore, the trial court is required to "align" the two and to do so "clearly." In other words, the rationale must be coordinated with the finding. An alignment is a very precise kind of coordination.

{¶41} R.C.2929.19(B)(2) provides: "The court shall impose a sentence and shall make a **finding that gives its reasons** for selecting the sentence imposed ***." (Emphasis added.) The language of the statute is quite remarkable in that it is the **finding** that gives the reasons. The language of the statute binds together the finding and the reasons for the finding. Thus the statute is not satisfied by reference to anything as vague as "the record as a whole."

> The court finds there were reasonable grounds for this appeal. It is ordered that a special mandate issue out of this court directing the Cuyahoga County Common Pleas Court to carry this judgment into execution. A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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).