

[Cite as *State v. Davis*, 2015-Ohio-1037.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 102130 and 102132

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TIMOTHY DAVIS

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-13-580150-B and CR-14-584240-A

BEFORE: Jones, P.J., Boyle, J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: March 19, 2015

ATTORNEY FOR APPELLANT

Stephen L. Miles
20800 Center Ridge Road
Suite 405
Rocky River, Ohio 44116

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

BY: Amy Venesile
Assistant County Prosecutor
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

LARRY A. JONES, SR., P.J.:

{¶1} Defendant-appellant Timothy Davis appeals from the trial court’s imposition of consecutive sentences in Cuyahoga C.P. Nos. CR-13-580150-B and CR-14-584240-A. The cases have been consolidated for our review on appeal.

{¶2} In January 2014, Davis was charged in CR-13-580150-B with five counts of burglary and five counts of theft. In April 2014, Davis was charged in CR-14-584240-A with three counts of theft. After negotiations with the state, in May 2014, Davis pled guilty to five counts of burglary in CR-13-580150-B, and one count of theft in CR-14-584240-A, in exchange for the remaining counts in both cases being dismissed.

{¶3} In June 2014, Davis was sentenced to 15 years in prison in CR-13-580150-B; the sentence consisted of three years consecutive on each of the five counts of burglary. Davis was also sentenced to one year in prison on the theft charge, to run consecutively to the 15 years on the burglary case.¹

{¶4} Davis now appeals, raising as his sole assignment of error that the trial court erred by sentencing him to consecutive terms. The state, pursuant to Loc.App.R. 16(B), has conceded this error.²

{¶5} R.C. 2929.14(C)(4) requires that a trial court engage in a three-step analysis prior to imposing consecutive sentences. First, the trial court must find that “consecutive service is

¹In October 2014, Davis was charged in another case, Case No. CR-586417. Davis has filed an appeal in that case, which will be disposed of independent of this appeal.

²Loc.App.R. 16(B) provides:

Notice of Conceded Error. When a party concedes an error that is dispositive of the entire appeal, the party conceding the error shall file a separate notice of conceded error either in lieu of or in addition to their responsive brief. Once all briefing is completed, the appeal will be randomly assigned to a merit panel for review. The appeal will be considered submitted on the briefs unless the assigned panel sets an oral argument date.

necessary to protect the public from future crime or to punish the offender.” *Id.* Next, the trial court must find that “consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public.” *Id.* Finally, the trial court must find that at least one of the following applies: (1) the offender committed one or more of the multiple offenses while awaiting trial or sentencing, while under a sanction, or while under postrelease control for a prior offense; (2) at least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the offenses was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender’s conduct; or (3) the offender’s history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. *Id.*

{¶6} In order to impose consecutive terms of imprisonment, a trial court must both (1) make the statutory findings mandated for consecutive sentences under R.C. 2929.14(C)(4) at the sentencing hearing, and (2) incorporate those findings into its sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus.

{¶7} The only statement the trial court made at sentencing regarding consecutive sentences was as follows: “Case Number 580150 you’re going to get 3 years on Counts 1, 3, 5, 7, 9, consecutive to each other, consecutive to the sentence in 584240.” Further, the sentencing judgment entries merely reiterate the consecutive nature of the sentence, but do not state any of the statutorily required findings. On this record, we must reverse and remand for resentencing.

{¶8} Judgments reversed; case remanded.

It is ordered that appellant recover from appellee his 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.

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

LARRY A. JONES, SR., PRESIDING JUDGE

MARY J. BOYLE, J., and
SEAN C. GALLAGHER, J., CONCUR