[Cite as *State v. Turner*, 2015-Ohio-1148.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101578

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DESTINY S. TURNER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-578648-A

BEFORE: Stewart, J., Keough, P.J., and Kilbane, J.

RELEASED AND JOURNALIZED: March 26, 2015

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MELODY J. STEWART, J.:

{¶1} Defendant-appellant, Destiny S. Turner, appeals her conviction of misdemeanor child endangering, and two counts of attempted felony child endangering. We find no merit to the appeal and affirm the decision of the trial court.

{¶2} On September 28, 2013, witnesses observed Turner pull a knife on her daughter, drag her daughter into a building, and proceed to beat her in the building hallway. Police officers responded to Turner's residence to investigate the incident. While there, the officers observed two children whom the officers believed were possibly not being cared for properly.[1] Due to their concern, the police contacted Children and Family Services, who arrived at the scene and upon investigation of the child who was beaten, found healing wounds on the child — including what appeared to be an iron burn on the child's leg. Further investigation revealed that Turner had subjected her children to multiple forms of corporal punishment that caused serious physical harm in the past, that Turner was keeping her children in unsanitary conditions, and was neglecting their basic needs.

{¶3} As a result of the investigation, Turner was indicted in a six-count indictment alleging the crime of felonious assault, and five counts of child endangering, for incidents that took place between the dates of July 1, 2013, and September 28, 2013. In a negotiated plea deal, Turner pleaded guilty to one count of misdemeanor child endangering, and two counts of attempted child endangering, felonies of the third degree. All other counts were nolled.

{¶4} On June 9, 2014, the trial court sentenced Turner to a prison term of 180 days on the misdemeanor charge to run concurrent to three years on the first attempted child endangering

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[1] The children in Turner's care were her daughter and son.

charge. The court then ordered Turner to a term of three years on the second attempted child endangering charge, running it consecutively to the first attempted child endangering count, totaling a six-year prison term.

{¶5} On appeal, Turner argues that she did not enter into her plea knowingly and intelligently because she was not advised by the trial court of the possibility of consecutive sentences, and that she was not advised of the consequences of a felony violation while under postrelease control supervision. Turner also assigns as error that the trial court erroneously imposed consecutive sentences.

{¶6} The record reflects that the court did not advise Turner prior to her plea that it could run her sentences consecutively. While it is true that Crim.R. 11(C)(2)(a) requires courts to advise defendants of the maximum penalty that may be imposed on each charge prior to accepting a plea, the Ohio Supreme Court has made clear that a trial court does not run afoul of Crim.R. 11(C)(2)(a) or the United States Constitution by failing to notify the defendant that the sentences may run consecutively. *State v. Johnson*, 40 Ohio St.3d 130, 133, 532 N.E.2d 1295 (1988). Here, the trial court correctly notified Turner, in accordance with Crim.R. 11(C)(2)(a), that she could receive up to three years on each of the felony offenses; thus, we find that the court did not fail to properly advise the defendant of the maximum sentences involved.

{¶7} Turner next argues that her plea was not knowing and intelligent because she was not advised that the court has the authority under R.C. 2929.141 to order a 12-month prison term or order a prison term for the remaining time on postrelease control for a previous felony, if the defendant were to commit another felony while out on postrelease control. Turner admits that numerous Ohio appellate courts, including this one, have held that a defendant does not need to be advised of all of the potential consequences of a postrelease control violation, including the

consequences under R.C. 2929.141, if another felony charge is committed while on postrelease control. *State v. Shaffer*, 8th Dist. Cuyahoga Nos. 95273 and 95274, 2011-Ohio-844, ¶ 12; *see State v. Lamb*, 156 Ohio App.3d 128, 2004-Ohio-474, 804 N.E.2d 1027 (6th Dist.) (a trial court is not required to inform a defendant, at the time of a guilty plea, of the possibility of a prison term for the commission of a new felony while on mandatory postrelease control, as the imposition of a prison term is a matter within the court's discretion); *State v. Lane*, 3d Dist. Allen No. 1-10-10, 2010-Ohio-4819, ¶ 15 (a trial court does not have to inform a defendant at the time of his guilty plea of the possibility that it could impose an additional prison term for committing a new felony while on postrelease control in order to substantially comply with Crim.R. 11(C)(2)(a)); *State v. Susany*, 7th Dist. Mahoning No. 07 MA 7, 2008-Ohio-1543, ¶ 95 (finding no error where the court did not inform the defendant of the potential consequences for committing a new felony while on postrelease control); *State v. Mullins*, 12th Dist. Butler No. CA2007-01-028, 2008-Ohio-1995, ¶ 12-13. Nonetheless, Turner urges this court to abandon its holding in *Shaffer*, and hold that an offender must be advised of the consequences of a postrelease control violation based on a new felony charge. Because courts have discretion to impose a prison term under R.C. 2929.141 for a new felony violation, and because the Ohio General Assembly has not felt the need to make R.C. 2929.141 a notification requirement — like it has with other postrelease control supervision statutes, *see* R.C. 2929.14(B)(3) — we decline to deviate from our holding in *Shaffer*. *Accord State v. Witherspoon*, 8th Dist. Cuyahoga No. 90498, 2008-Ohio-4092, ¶ 17-19, fn.11.

{¶8} In her second assignment of error, Turner contends that the court erred in ordering consecutive sentences on her two felony attempted child endangering counts, and thus, she is entitled to a new sentencing hearing. Turner argues that the error occurred when the judge made

the required findings for consecutive sentences under R.C. 2929.14(C)(4) during the sentencing hearing, but failed to incorporate those findings into the journal entry. A court is required to make the statutory findings under R.C. 2929.14(C)(4) at the sentencing hearing before imposing consecutive terms of imprisonment. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29. Further, because a court speaks only through its journal, it must also incorporate the statutory findings in its sentencing entry. *Id.* However, when a court properly makes the findings at sentencing but fails to incorporate them into the sentencing entry, it does not render the sentence contrary to law; rather, the proper remedy to correct the mistake is by a nunc pro tunc entry. *Id.* at ¶ 30. Because we find that the court properly made the findings at sentencing, but did not incorporate those findings into its journal entry, we remand to the trial court with an order to correct the sentencing entry nunc pro tunc.

{¶9} Judgment is affirmed, but the case is remanded for the limited purpose of correcting the sentencing entry.

It is ordered that appellee recover of 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 correction of the journal entry.

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

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MELODY J. STEWART, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
MARY EILEEN KILBANE, J., CONCUR