[Cite as *State v. Purvis*, 2015-Ohio-1149.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101608

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JOHN A. PURVIS

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED
FOR RESENTENCING

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-579301-A

BEFORE: Jones, P.J., E.A. Gallagher, J., and McCormack, J.

RELEASED AND JOURNALIZED: March 26, 2015

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

{¶1} Defendant-appellant John Purvis appeals from the trial court's sentencing judgment entry, which sentenced him to two 180-day consecutive terms in county jail. We reverse and remand for resentencing.

{¶2} Purvis pled guilty to two charges in this case: Count 1, felonious assault, a second-degree felony, and an amended Count 2, attempted felonious assault, a third-degree felony. Purvis committed the assaults against two different victims while he was in the custody of the Cuyahoga County Community Based Correctional Facility. Purvis had been placed at the facility while he was on probation in another case. One of the victims required treatment at a hospital for his injuries.

{¶3} As to Count 1, the trial court sentenced Purvis to community control sanctions. Specifically, the court indicated that it was sentencing Purvis to the local incarceration program under R.C. 2929.16(B) and to 180 days in county jail. The trial court also sentenced Purvis to 180 days on Count 2. The court ordered the sentences to be served consecutively, and stated the following in that regard:

> I think there is a foundation in this case and under these circumstances that consecutive sentences are appropriate. These did occur while you were on probation. These events are — in fact, the series of events arising out of the circumstances are separate from each other, but under the same general time period, and the circumstances are such that it's serious enough for me to make a determination that sentencing under this situation should be consecutive. That's to recognize the seriousness of the case itself and also the import and the situation with regard to the community. So I think I've satisfied the factors with regard to consecutive sentencing.

{¶4} Purvis now appeals, raising the following two assignments of error:

> I. The trial court erred by ordering Appellant to serve a consecutive sentence without making the appropriate findings required by R.C. 2929.14 and HB 86.

II. The trial court erred by ordering a jail sentence longer than six months, which is in direct violation of R.C. 2929.16.

{¶5} In his first assignment of error, Purvis contends that the trial court did not make the statutorily required findings for the imposition of consecutive sentences.

{¶6} R.C. 2929.14(C)(4) requires that a trial court engage in a three-step analysis in order to impose consecutive sentences. First, the trial court must find that "consecutive service is necessary to protect the public from future crime or to punish the offender." *Id.* Second, 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.* Third, 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.

{¶7} The record demonstrates that trial court went through great lengths to fashion a sentence that it believed was just, and one in which Purvis would be able to address issues that have plagued him in the past. Unfortunately, it fell short with making the required findings necessary for the imposition of consecutive sentences. We recognize that the court was not required to use "talismanic words," but, it must be clear from the record that it actually made the

findings required by statute. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37; *State v. Venes*, 2013-Ohio-1891, 992 N.E.2d 453, ¶ 14, 17; *see also State v. Pierson*, 1st Dist. Hamilton No. C-970935, 1998 Ohio App. LEXIS 3812 (Aug. 21, 1998).

{¶8} The only factor that we can definitely find that the trial court made relates to the third step for the imposition of consecutive sentences, under which the court found that Purvis committed the crimes while he was on probation.[1] The record does not clearly demonstrate that the trial court made the findings required under the first two steps. We therefore sustain Purvis's first assignment of error and remand for resentencing.

{¶9} Because Purvis will have to be resentenced, we address his contention, raised in his second assignment of error, that a jail sentence longer than six months is in direct violation of R.C. 2929.16.

{¶10} Purvis relies on subsection (A)(2) of the statute, which provides as follows:

> (A) Except as provided in this division, the court imposing a sentence for a felony upon an offender who is not required to serve a mandatory prison term may impose any community residential sanction or combination of community residential sanctions under this section. * * * Community residential sanctions include, but are not limited to, the following:
>
> * * *
>
> (2) Except as otherwise provided in division (A)(3) of this section and subject to division (D) of this section, a term of up to six months in a jail[.]

R.C. 2929.16(A)(2).

{¶11} According to Purvis, R.C. 2929.16(A)(2) mandates that the maximum sentence that

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[1]Arguably, the trial court also found, under the third step, that the crimes 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."

could have been imposed in this case was six months. His contention is without merit.

{¶12} Purvis was sentenced to six months for two separate charges, with two different victims; the court, therefore, properly imposed two sentences for each of the two charges. As explained by the Fourth Appellate District in *State v. Barnhouse*, 4th Dist. Athens No. 02CA22, 2002-Ohio-7082:

> R.C. 2929.16(A) refers to "a" sentence being imposed for "a" felony. This statute speaks in the singular and we find no language to suggest that when multiple offenses are involved, "a" six month sentence cannot be imposed for each offense. Statutes mean what they say * * * and we find nothing in R.C. 2929.16(A) to support the conclusion that only six months of total jail time can be imposed regardless of the number of offenses involved. If the Ohio General Assembly had intended such a result, they could have expressly stated that position in the statute. They did not.

(Citations omitted.) *Id.* at ¶ 15.

{¶13} The Ninth Appellate District has also reached the same conclusion:

> The language of R.C. 2929.16 is unambiguous. R.C. 2929.16(A) refers to imposing a sentence for "a felony" in the singular. It logically follows that multiple residential community sanctions may be imposed where the criminal defendant has been found guilty of multiple felony offenses. This court does not believe that it was the intent of the legislature to limit the power of the sentencing court to a maximum sentence of six months regardless of the number of felonies of which a defendant was convicted.

State v. Culgan, 147 Ohio App.3d 19, 768 N.E.2d 712, ¶ 27 (9th Dist.2001).

{¶14} We agree with the Fourth and Ninth Districts.

{¶15} In light of the above, the second assignment of error is overruled.

{¶16} Judgment reversed; case remanded for resentencing.

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

EILEEN A. GALLAGHER, J., and
TIM McCORMACK, J., CONCUR