

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 101912 and 101913

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

EARNEST FIELDS

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-14-583264-B and CR-14-583043-A

BEFORE: Laster Mays, J., E.A. Gallagher, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: March 26, 2015

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ANITA LASTER MAYS, J.:

{¶1} In these consolidated appeals, defendant-appellant Earnest Fields appeals from the consecutive sentences imposed after he pleaded guilty in the two underlying cases to charges of drug possession, drug trafficking, and possession of criminal tools.

{¶2} Fields presents a single assignment of error. He argues that his sentences are contrary to law because the trial court did not make the statutory findings necessary to impose consecutive prison terms. He is correct.

{¶3} Fields was indicted in Cuyahoga C.P. CR-14-583264¹ with two codefendants. Fields was charged in that case with four counts of drug trafficking, three counts of drug possession, and one count of possession of criminal tools. In CR-14-583043,² Fields was indicted on one count of drug possession.

{¶4} Eventually, Fields entered into a plea bargain with the state. In exchange for the dismissal of the remaining charges in CR-583264, Fields pleaded guilty to two counts of drug trafficking and to one count of possession of criminal tools, and to the indictment in CR-583043.

{¶5} When Fields appeared for sentencing, the trial court imposed consecutive prison terms. Fields was sentenced in CR-583264 to consecutive terms of 12 months for trafficking on Count 2, six months for trafficking on Count 5, and two years of community control for possession of criminal tools on Count 8. The trial court then sentenced the defendant for drug possession in CR-583043 to community control sanctions to run consecutively to the sentences

¹ *State v. Fields*, 8th Dist. Cuyahoga No. 101912.

² *State v. Fields*, 8th Dist. Cuyahoga No. 101913.

imposed in CR-583264, with six months to be served in The Judge Nancy R. McDonnell Community Based Correctional Facility upon release from prison.

{¶6} Fields appeals from his sentences with one assignment of error, asserting that his sentences are contrary to law because the trial court failed to set forth all of the statutory findings required by R.C. 2929.14(C)(4). The state concedes that Fields is correct.

{¶7} Pursuant to R.C. 2929.14(C)(4), a trial court can impose consecutive sentences if it makes each of the following findings: (1) that the consecutive sentence is necessary to protect the public from crime or to punish the offender, (2) that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and (3) consecutive sentences are not disproportionate to the danger the offender poses to the public and, either : (a) the offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to R.C. 2929.16 , 2929.17, or 2929.18, or was under postrelease control for a prior offense; or (b) 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 multiple offenses so committed 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 (c) the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶8} In this case, the trial court acknowledged that it had read the presentencing report and considered the offender's history, then stated at tr. 65-66:

It's necessary to punish the offender or to protect the public from future crime concerning these issues because of the continued history you have with trafficking offenses, and confinement doesn't seem to be answering that issue in your life.

And so I think there is a real risk, both as punishment for you and for concern for the public.

And your criminal history demonstrates that it's warranted under these circumstances.

Also, the consecutive nature of these offenses, the repeated nature of these offenses before me compounds that problem, and further points out that consecutive sentences are appropriate.

{¶9} In order to comply with R.C. 2929.14(C)(4), the trial court must “state the required findings as part of the sentencing hearing, and by doing so it affords notice to the offender and to defense counsel.” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659. The foregoing demonstrates that the trial court failed to comply in this case.

{¶10} The state concedes Fields's assignment of error pursuant to Loc.App.R. 16(B), and the record supports it. Consequently, Fields's assignment of error is sustained.

{¶11} Fields's sentences are reversed. This case is remanded for the limited purpose of having the trial court consider whether consecutive sentences are appropriate, and, if so, to make the findings required by R.C. 2929.14(C)(4) on the record and to incorporate those findings into the sentencing entries. *Beachwood v. Chatmon*, 8th Dist. Cuyahoga Nos. 101767 and 101768, 2015-Ohio-425, ¶ 9, citing *Bonnell*, at syllabus.

It is ordered that appellant recover from appellee 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.

ANITA LASTER MAYS, JUDGE

EILEEN A. GALLAGHER, P.J., and
PATRICIA A. BLACKMON, J., CONCUR