[Cite as *State v. Nordstrom*, 2015-Ohio-1454.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101657

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DANIEL E. NORDSTROM

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-581152-A

BEFORE: Stewart, J., Celebrezze, A.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: April 16, 2015

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MELODY J. STEWART, J.:

{¶1} Defendant-appellant Daniel E. Nordstrom appeals his conviction of domestic violence on the grounds that his plea was not knowing and voluntary and that the court erred in imposing consecutive sentences.

{¶2} The Cuyahoga County Grand Jury returned a six-count indictment against Nordstrom on January 14, 2014, in Cuyahoga C.P. No. CR-13-581152-A, charging him with aggravated burglary, abduction, domestic violence, criminal damaging or endangering, and two counts of endangering children. The charges arose from an incident that occurred on June 27, 2013, where Nordstrom assaulted the mother of his two children.

{¶3} On June 16, 2014, Nordstrom agreed to plead guilty to Count 3, domestic violence, in exchange for the state dismissing the other charges. At the plea hearing, the court properly complied with Crim.R. 11 by advising Nordstrom of his rights and the consequences of entering a plea. After determining that Nordstrom's plea was knowing, voluntary, and intelligent, the court accepted the plea.

{¶4} Immediately thereafter, the court proceeded to sentencing. However, before sentencing Nordstrom on this case, the court sentenced Nordstrom in Cuyahoga C.P. No. CR-13-580118-A. In CR-13-580118, Nordstrom was indicted on the charges of kidnapping, domestic violence and two counts of felonious assault, for an attack committed on his girlfriend in November 2013. A jury found Nordstrom guilty of one

count of felonious assault in violation of R.C. 2903.11(A)(1), found him not guilty of kidnapping, and was hung on the second felonious assault charge under R.C. 2903.11(A)(2). The court found Nordstrom guilty of domestic violence under R.C. 2919.25(A), after Nordstrom waived a jury trial on that count. After the court merged the domestic violence charge with the felonious assault, the state elected to proceed to sentencing on the felonious assault. The court then ordered Nordstrom to a six-year prison term in that case, and ordered a six-month prison term in the present case, CR-13-581152, to run consecutively to the six years in CR-13-580118. Defendant now appeals his convictions in case CR-13-581152.[1]

{¶5} Nordstrom contends that his plea was not entered into knowingly and intelligently because the trial court failed to advise him of the maximum penalties associated with his guilty pleas. Specifically, Nordstrom complains that he was not advised by the trial court that it could run his sentence in this case consecutive to his sentence in CR-13-580118. We find no merit to this argument.

{¶6} The United States Constitution requires a trial court, prior to accepting a plea of guilty or no contest, to determine that the plea is made knowingly, intelligently, and voluntarily. *State v. Johnson*, 40 Ohio St.3d 130, 132, 532 N.E.2d 1295 (1988), citing *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed. 274 (1969). From a constitutional standpoint, this requires a court to inform a defendant of three rights: his

[1] Although not the focus of this appeal, Nordstrom also appealed his conviction in CR-13-580118, raising issues related to the trial. *See State v. Nordstrom*, 8th Dist. Cuyahoga No. 101656.

privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers — and then determine if the defendant understands these rights. *Id.*

{¶7} Ohio's Crim.R. 11(C)(2) codifies the protections guaranteed by the United States Constitution, but adds some additional requirements. *Johnson* at 133.

{¶8} Crim.R. 11(C)(2) states:

> In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept such plea of guilty or no contest without first addressing the defendant personally and in doing all of the following:
>
> (a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that he is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.
>
> (b) Informing the defendant of and determining that the defendant understands the effect of his plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.
>
> (c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

{¶9} The Ohio Supreme Court has held that the requirement that the court inform a defendant of the maximum and minimum penalties for the offenses involved, is a statutory requirement, and has no basis in either the United States or Ohio Constitutions. *Johnson*, 40 Ohio St.3d at 133, 532 N.E.2d 1295 (1988). Further, although the trial court has the statutory obligation to inform the defendant of the maximum penalty

involved on each charge, a court is not required to inform a defendant that it has the option of imposing consecutive sentences. *Id.*

{¶10} Here, Nordstrom argues that his plea was not knowing and intelligent because the trial court failed to inform him of the possibility of consecutive sentences on his two cases. However, because *Johnson* clearly states that lack of knowledge regarding consecutive sentences is not a basis upon which a court may find a plea involuntary, we summarily overrule Nordstrom's first assignment of error.

{¶11} Nordstrom next argues that the trial court did not make the necessary findings under R.C. 2929.14 to impose consecutive sentences.

{¶12} R.C. 2929.14(C)(4) states:

> If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:
>
> (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 section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.
>
> (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.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶13} At the sentencing hearing, the court stated that consecutive sentences "[are] necessary to punish you for your crime in this case for a separate victim, and that should be separate from the punishment in the crime involving [the other victim.]" This statement satisfies the first requirement of R.C. 2929.14(C)(4), that the court find either that consecutive sentences are necessary to protect the public from future crime or to punish the offender.

{¶14} The court then went on to say that Nordstrom's conduct in the first case was not related to his conduct in the second case, and that his "previous conduct and [his] previous past is such that the components of consecutive sentence[s], in the Court's view have been met." Tr. at 49. Although our court has noted that trial courts should be more articulate when making the R.C. 2929.14(C)(4) statutory findings, *see State v. Venes*, 8th Dist. Cuyahoga No. 98682, 2013-Ohio-1891, ¶ 17, the Ohio Supreme Court has stated that "a word-for-word recitation of the language of the statute is not required, and as long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld." *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29. Thus, it is clear to us that the court, in making the above statement, found that imposition of a six-month consecutive sentence on the

domestic violence charge was not disproportionate to Nordstrom's conduct. Indeed, we know from the record that the court took the plea in the domestic violence case, and heard the evidence in the felonious assault jury trial; therefore, the court was well within its right to conclude that consecutive sentences would not be disproportionate to the defendant's conduct after hearing evidence that the defendant was involved in two similar domestic violence assaults within a short amount of time.

{¶15} The court then stated that it does not think that the consecutive sentences are disproportionate to the danger posed to the public because Nordstrom is a violent person. Tr. at 49.

{¶16} And lastly, the court stated that Nordstrom had a history of domestic violence, and that these cases evidence that Nordstrom is continuing the same abusive course of conduct that has existed for an extended period of time, and therefore, consecutive sentences were appropriate. This last statement shows that the court made the findings that Nordstrom's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crimes that he may commit. Tr. at 50.

{¶17} Because the court made the appropriate findings under R.C. 2929.14(C)(4), we cannot conclude that the court erred by running this case consecutive to CR-13-580118.

{¶18} However, we do agree, as Nordstrom contends, that the court erred by failing to include the R.C. 2929.14(C)(4) consecutive sentencing finding in the sentencing

entry. *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, at ¶ 29 (stating "because a court speaks through its journal, the court should also incorporate its statutory findings into the sentencing entry." (Citation omitted.))

{¶19} Here, the court stated in its journal entry, "The court imposes a prison sentence at the Lorain Correctional Institution of 6 month(s). Case is consecutive to case number CR 580118 because the factors that apply to consecutive sentencing have been met as stated on the record."

{¶20} Simply referencing back to the sentencing transcript where the R.C. 2929.14(C)(4) findings might be archived does not satisfy the incorporation requirements under *Bonnell.* Incorporation in this context means that the court must include each statutorily mandated finding — albeit there is no requirement that the findings be word for word from the statute.

{¶21} Because the trial court did not properly incorporate the statutory findings under R.C. 2929.14(C)(4), we remand to the trial court to correct the error through a nunc pro tunc sentencing entry.

{¶22} 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 execution of sentence.

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

FRANK D. CELEBREZZE, JR., A.J., and
SEAN C. GALLAGHER, J., CONCUR