[Cite as *State v. Sandridge*, 2015-Ohio-1541.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101653

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JEROME SANDRIDGE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-575521-A

BEFORE: Boyle, P.J., S. Gallagher, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: April 23, 2015

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MARY J. BOYLE, P.J.:

{¶1} Defendant-appellant, Jerome Sandridge, appeals his conviction and sentence. He raises two assignments of error for our review:

> 1. The trial court abused its discretion in failing to allow appellant to withdraw his guilty plea prior to sentencing.
>
> 2. The trial court erred when it failed to make mandatory findings before imposing consecutive sentences.

{¶2} Finding no merit to his appeal, we affirm.

Procedural History and Factual Background

{¶3} Sandridge was indicted in June 2013 on six counts: one count of rape of a victim who was less than ten years old, one count of attempted rape of a victim who was less than ten years old, two counts of gross sexual imposition, and two counts of kidnapping. The rape, attempted rape, and kidnapping counts carried sexually violent predator, notice of prior conviction, and repeat violent offender specifications. The kidnapping counts also carried sexual motivation specifications. The gross sexual imposition counts carried sexually violent predator specifications.

{¶4} In May 2014, Sandridge withdrew his former plea of not guilty and pleaded guilty to an amended indictment of rape (which was amended from R.C. 2907.02(A)(1)(b) to 2907.02(A)(2) and the specifications were removed), one count of gross sexual imposition without the specification, and one count of kidnapping with the

sexual motivation specification, but not the other three specifications. The remaining attempted rape, gross sexual imposition, and kidnapping counts were nolled.

{¶5} At the sentencing hearing, Sandridge orally moved to withdraw his plea. The trial court heard Sandridge's arguments, which will be set forth in the analysis section, and denied his motion.

{¶6} The trial court merged the rape and gross sexual imposition convictions before sentencing and the state elected to proceed on the rape conviction. The trial court sentenced Sandridge to a total of 16 years in prison; 10 years for rape and 6 years for kidnapping, to be served consecutive to one another. The trial court also notified Sandridge that he would be subject to five years of mandatory postrelease control and be labeled a Tier III sex offender. It is from this judgment that Sandridge appeals.

Plea Withdrawal Before Sentencing

{¶7} In his first assignment of error, Sandridge argues that the trial court erred when it denied his presentence motion to withdraw his plea.

{¶8} A motion to withdraw a guilty plea is governed by the standards set forth in Crim.R. 32.1, which provides that "[a] motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea."

{¶9} Generally, a presentence motion to withdraw a guilty plea should be freely and liberally granted. *State v. Xie*, 62 Ohio St.3d 521, 527, 584 N.E.2d 715 (1992). A

defendant, however, does not have an absolute right to withdraw a plea prior to sentencing, and it is within the sound discretion of the trial court to determine what circumstances justify granting such a motion. *Id*. In ruling on a presentence motion to withdraw a plea, the court must conduct a hearing and decide whether there is a reasonable and legitimate basis for withdrawal of the plea. *Id*. at 527. This court has held that a trial court does not abuse its discretion in overruling a motion to withdraw a plea:

> (1) where the accused is represented by highly competent counsel, (2) where the accused was afforded a full hearing, pursuant to Crim.R. 11, before he entered the plea, (3) when, after the motion to withdraw is filed, the accused is given a complete and impartial hearing on the motion, and (4) where the record reveals that the court gave full and fair consideration to the plea withdrawal request.

State v. Tucker, 8th Dist. Cuyahoga No. 97981, 2012-Ohio-5067, ¶ 7, quoting *State v. Peterseim*, 68 Ohio App.2d 211, 214, 428 N.E.2d 863 (8th Dist.1980), paragraph three of the syllabus.

{¶10} At the plea hearing, the state outlined the plea agreement, which defense counsel agreed that the state's rendition of the plea agreement was what he understood it to be. The trial court addressed Sandridge personally. Based on the trial court's questions, Sandridge told the court that he was 60 years old, had attended school "to 11th grade," and that he was able to read and understand the indictment against him. Sandridge further informed the court he was not under the influence of alcohol or drugs "other than [his] psych meds." Sandridge explained that he takes medicine to keep him calm and that when he takes his medicine he understands things better than without them.

Sandridge also told the court that no threats or promises had been made to him to induce him to change his plea, that he was satisfied with his defense counsel's service, and that he was a United States citizen.

{¶11} The court then asked Sandridge if he was "currently on any community control sanctions, probation, or parole." Sandridge said that he was. Sandridge explained: "Judge, I was under you when you gave me three years, I was finishing up — May the 1st would have been my last day, but I was incarcerated here. I followed all the rules, I reported when I got out, and I did everything you asked me to do." The trial court asked Sandridge if he understood that his plea in the current case could affect his other case, including additional penalties in the other case. Sandridge said that he understood.

{¶12} Next, the trial court reviewed Sandridge's constitutional rights with him, made sure that he understood them, and that he was giving up those rights. The trial court then reviewed each count with Sandridge that he was pleading guilty to, as well as the maximum penalty involved with each count, sex offender classification and reporting requirements, and the duration and consequences of violating postrelease control.

{¶13} The trial court asked the state and defense counsel whether there was "an issue of merger with any of these charges." The state informed the court that the kidnapping and rape convictions would not merge because they dealt with separate victims. But the state agreed that the gross sexual imposition and the rape were allied

offenses of similar import. Defense counsel agreed with the state's assessment of merger.

{¶14} The court then informed Sandridge that he could face a total of 22 years in prison if it ran the sentences for rape and kidnapping consecutively, as well as $40,000 in fines. Sandridge replied that he understood. The trial court also asked Sandridge if he understood that there was "no promise of a particular sentence." Sandridge again indicated that he understood.

{¶15} Sandridge pleaded guilty to each count as amended and the trial court accepted his guilty plea. The trial court referred Sandridge for a presentence investigation report to be completed prior to sentencing.

{¶16} At the sentencing hearing, the trial court reviewed the previous plea on the record, including the fact that the rape and gross sexual imposition offenses would merge for purposes of sentencing. The state indicated that it elected for Sandridge to be sentenced on rape, rather than on gross sexual imposition.

{¶17} The state then stated on the record:

> Your Honor, I would state as well I did have the opportunity to review the presentence report. I made note specifically of the defendant's long criminal history. I would say that that criminal history goes back decades from anything from DUI to strong-arm robbery, aggravated robbery with guns.
>
> Your Honor, there are two victims in this matter. Count 1 and Count 6 are two separate victims. The victim of the sexual assault is a [K.H.] [K.H.] at the time of the incident was 8 years old. [K.H.] and her brother, [Z.H.], were in the front yard of their residence when they were approached by the defendant. [Z.H.] was 6 at the time of the incident.

> The two kids were taken by the defendant, they were led to a house down the street and around the corner. When they got to the back of the house — this was an abandoned house — [Z.H.] was told to sit by the fence and keep lookout, and [K.H.] and the defendant went around to the back of the house where the defendant pulled down her underwear and performed oral sex on her.
>
> Your Honor, it should be noted for the record that the defendant's DNA was found on the underwear of [K.H.]. I would note that this was not semen, that this was either touch DNA or saliva, but it was located. And that was shared with the defense as well.
>
> Your Honor, when this incident happened, both kids ran home immediately and spoke with their parents about what happened to them. They were able to give a description of what the defendant looked like. They were able to give a description of what he was wearing, color of his hair, teeth, glasses, and a smell that was coming from off of him. The defendant was arrested minutes later and identification was made. And as I said, the defendant's DNA was located on the underwear as well.
>
> Your Honor, prior to you sentencing this defendant, there are both parents of the kids here. The kids were actually here as well, but they're sitting outside of the courtroom. We didn't bring them in the courtroom. And both parents would like to speak to the Court if the Court would allow them to do so.

{¶18} At that point, Sandridge asked to address the court. Sandridge stated, "Your Honor. Judge, I know that you are highly respected. Your Honor, I'm 60 years old. I've been in and out of institutions for half of my life, and every crime that I did I admitted up to it, Your Honor. I have three lovely granddaughters myself, 9, 5, and 8. Your Honor, I did not rape this little girl." The court asked, "Well, what's your explanation for the DNA — your DNA on her underwear?" Sandridge replied that he could not explain that. Sandridge said that he had never seen "these kids before in [his]

life." He stated that he pleaded guilty because "the last counselor I had was telling me that these kids [were] probably coerced to say it was [him]."[1]

{¶19} Sandridge told the court that he had never been provided with discovery in his case. His defense counsel stated that he had met with Sandridge "on several occasions to go over discovery," and that he "fully discussed the contents of the documents." Defense counsel further stated, "That's what led us to the resolution that we came to."

{¶20} The trial court asked defense counsel how long he had been an attorney. Defense counsel replied that he had been an attorney for 12 to 13 years, handling "these types of cases" both as a defense attorney and as a prosecutor. Based upon the court's questioning, defense counsel further told the court that he had talked to Sandridge about his rights and "the possibilities of going to trial."

{¶21} Sandridge explained that he kept telling his former defense counsel that he did not "have oral sex with this girl nor did [he] do that to the little girl." Sandridge stated again, "Your honor, on all my cases I been through I never had a child involved in my history of doing crime not have I ever hurt one."

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[1]Sandridge was orginally represented by different counsel, but filed a grievance against him. After Sandridge filed a grievance against his first counsel, that attorney moved to withdraw from the case before Sandridge pleaded guilty. Subsequently, the trial court appointed new counsel for Sandridge.

{¶22} The trial court asked Sandridge, "I didn't force you into this plea, did I?" Sandridge replied, "no." The trial court asked Sandridge if his defense counsel forced him into the plea; Sandridge replied, "no." Sandridge then stated:

> Your Honor. It goes to the fact I was thinking about my grandchildren, not being able to be in their life. And when I — when he read that to me, Your Honor, it gave me a chance to think. I couldn't even take my grandchildren to school, I couldn't participate in a school play with my grandchildren because of the fact of being a sex predator, what I am not.
>
> Your Honor, it wasn't — if I get three years or 300 years, I got to be able to live with myself. And I couldn't live with myself knowing that I've been accused of doing something to a small 8-year-old girl that I did not do.

{¶23} The trial court asked Sandridge again how his DNA showed up in the 8-year-old's underwear. Sandridge replied, "I don't know how they come up with my DNA either in there, Your Honor. That's amazing to me how that happened[.]"

{¶24} Sandridge then informed the court that according to the docket, as of April 14, 2014, independent DNA testing was still pending. Defense counsel explained that Sandridge was referring to his request for independent DNA testing that was handled by Sandridge's previous defense counsel. The court asked defense counsel if it was true that there were no results ever obtained from the independent DNA diagnostic center. Defense counsel replied that there were results and that he had discussed those results with Sandridge.

{¶25} The prosecutor stated "for the record * * *[,] the independent test confirmed the testing done by the regional forensic lab again stating that the defendant cannot be

excluded as a source of the DNA, so it confirmed the tests that were already done by the state of Ohio."

{¶26} Defense counsel informed the court that he had shared those results with Sandridge before he entered into the plea. Sandridge replied that defense counsel did share those results with him, but argued that the fact that he could not be excluded did not mean it was definitely him. Sandridge again stated that he had never hurt a child.

{¶27} Sandridge's former counsel came to the hearing. He informed the court that he pretried the case extensively, visited Sandridge multiple times, and ordered independent DNA testing. He stated that there were some "mixups at the DNA diagnostic firm," so it "took a while to get the results" and Sandridge "became very irritated with the delay." But when they received the results, former counsel discussed them with Sandridge.

{¶28} The trial court denied Sandridge's motion. The trial court found that Sandridge had two competent attorneys representing him throughout the case. It found that Sandridge entered into the plea knowingly, voluntarily, and intelligently. The court stated that it took its time with Sandridge during the plea, ensuring that he understood his rights. It found the motion not well taken and continued the sentencing hearing.

{¶29} After review, we find no abuse of discretion in the trial court's denial of Sandridge's request to withdraw his plea as the parameters set forth in *Peterseim,* 68 Ohio App.2d 211, 214, 428 N.E.2d 863, are met here: (1) Sandridge was represented by highly competent counsel, (2) he was afforded a full Crim.R. 11 hearing before he entered

into the plea, (3) he was given a full and impartial hearing on his motion to withdraw his plea, and (4) the record reveals that the court gave full and fair consideration to Sandridge's plea withdrawal request.

{¶30} The court also recalled the plea hearing, noting that it took its time to ensure that Sandridge understood his rights and understood the nature of the charges against him. It is clear that Sandridge simply had a change of heart regarding his plea.

{¶31} Sandridge's first assignment of error is overruled.

Consecutive Sentences

{¶32} In his second assignment of error, Sandridge argues that the trial court failed to make the required findings under R.C. 2929.14(C) before imposing consecutive sentences.

{¶33} When reviewing the imposition of consecutive sentences, "R.C. 2953.08(G)(2)(a) directs the appellate court 'to review the record, including the findings underlying the sentence' and to modify or vacate the sentence 'if it clearly and convincingly finds * * * [t]hat the record does not support the sentencing court's findings under [R.C. 2929.14(C)(4)].'" *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, quoting R.C. 2953.08(G)(2)(a).

{¶34} R.C. 2929.14(C)(4) requires trial courts to engage in a three-step analysis when imposing 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*. 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 imposed under R.C. 2929.16, 2929.17, or 2929.18, 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.*

{¶35} Compliance with R.C. 2929.14(C)(4) requires the trial court to make the statutory findings as part of the sentencing hearing. *Bonnell* at syllabus. But "a word-for-word recitation of the language of the statute is not required. 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." *Id.* at ¶ 29. The Ohio Supreme Court further explained that the word "finding" in this context means that the trial court "must note that it engaged in the analysis" and that it "considered the statutory criteria and specifie[d] which of the given bases warrants its decision." *Id.*, quoting *State v. Edmonson*, 86 Ohio St.3d 324, 326, 1999-Ohio-110, 715 N.E.2d 131. The court emphasized that the trial court is not

required to give a "talismanic incantation" of the words of the statute, provided the necessary findings can be found in the record. *Id.* at ¶ 37.

{¶36} When the sentencing hearing resumed in this case, the victims' mother and father spoke to the court extensively about the damage and pain Sandridge caused their children and their family. The parents asked the court to give Sandridge the maximum penalty.

{¶37} The state asked the court to take into account "the lasting effect" that this will have on the children and the parents. The state further asked the court to consider Sandridge's long criminal history.

{¶38} Defense counsel stated that Sandridge was 60 years old and took responsibility for his actions by pleading guilty. Sandridge again stated to the court that he did not rape the 8-year-old child. Sandridge said that he pleaded guilty because he was scared of not being in his grandchildren's life because he had never before faced a life sentence.

{¶39} The court reviewed the sex offender reporting requirements with Sandridge. The court then stated:

> [I]n regards to Count 1, rape, a felony of the first degree, the Court will sentence the defendant to ten years at the Lorain Correctional Institution. He'll have five years of mandatory post-release control. As to the kidnapping charge, also a felony of the first degree, I believe that based upon the prior criminal history of the defendant and as necessary to protect the public and punish the offender, it is not disproportionate and that the crimes are so great and have such unusual effect that a single term would not adequately reflect the seriousness of the conduct, and the offender's criminal history shows a consecutive term is needed to protect the public.

{¶40} The court then imposed its sentence of ten years for rape to be served consecutive to six years for kidnapping.

{¶41} After review of the record, we find that the trial court made the required findings under R.C. 2929.14(C). Sandridge argues that because the court only said "it is not disproportionate," but did not say the full finding, it is not disproportionate "to the danger the offender poses to the public," that his sentence is contrary to law. We disagree.

{¶42} We can discern from the trial court's statement, "it is not disproportionate and that the crimes are so great and have such unusual effect that a single term would not adequately reflect the seriousness of the conduct," that it found the required finding of "consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public." Sandridge's long criminal history that the trial court referred to began in 1976 and amounted to eight pages of the presentence investigation report, including charges of strong armed robbery, multiple counts of robbery, assault and battery, assault on a police officer, multiple counts of domestic violence, multiple counts of felonious assault, attempted kidnapping, and many other nonviolent offenses.

{¶43} Accordingly, Sandridge's second assignment of error is overruled.

{¶44} We do note, however, that the trial court failed to incorporate its consecutive sentence findings in its journal entry. In *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, the Ohio Supreme Court recognized that a trial court must not only make

the findings at the sentencing hearing, it must also incorporate its statutory findings for consecutive sentences into the sentencing entry. *Id*. at ¶ 29. The Supreme Court further explained, however, that "[a] trial court's inadvertent failure to incorporate the statutory findings in the sentencing entry after properly making those findings at the sentencing hearing does not render the sentence contrary to law[.]" *Id*. Instead, "such a clerical mistake may be corrected by the court through a nunc pro tunc entry to reflect what actually occurred in open court." *Id.*

{¶45} Thus, in light of *Bonnell*, this matter is remanded to the trial court for the court to issue a new sentencing journal entry, nunc pro tunc, to incorporate its consecutive sentence findings.

{¶46} Judgment affirmed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellee recover from appellant the 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.

MARY J. BOYLE, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
ANITA LASTER MAYS, J., CONCUR