

[Cite as *State v. Greene*, 2015-Ohio-1551.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102118

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JACOB J. GREENE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED; REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-13-581342-B, CR-14-584459-A,
and CR-14-585925-A

BEFORE: Kilbane, J., Keough, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: April 23, 2015

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MARY EILEEN KILBANE, J.:

{¶1} Defendant-appellant, Jacob Greene (“Greene”), appeals the consecutive sentences imposed in connection with three separate guilty pleas, and asserts that the trial court failed to include findings required pursuant to R.C. 2929.14(C) in the sentencing journal entries. The state concedes this error, and following our independent review, we sustain this assignment of error and remand to the trial court for the limited purpose of issuing a new sentencing journal entry, nunc pro tunc, incorporating the consecutive sentence findings.

{¶2} On January 16, 2014, Greene was indicted in Cuyahoga C.P. No. CR-13-581342 for two counts of drug trafficking, in violation of R.C. 2925.03(A), and two counts of drug possession, in violation of R.C. 2925.11. On April 22, 2014, Greene was indicted in Cuyahoga C.P. No. CR-14-584459 on two counts of drug trafficking, in violation of R.C. 2925.03(A), two counts of drug possession, in violation of R.C. 2925.11, attempted tampering with evidence in violation of R.C. 2921.12(A), and possession of criminal tools, in violation of R.C. 2923.24. On June 17, 2014, Greene was indicted in Cuyahoga C.P. No. CR-14-585925 for drug trafficking, in violation of R.C. 2925.03(A), attempted drug possession, in violation of R.C. 2925.11, and possession of criminal tools, in violation of R.C. 2923.24.

{¶3} On August 5, 2014, Greene entered into a guilty plea in each matter. In Case No. CR-13-581342, he pled guilty to one count of third-degree felony drug

trafficking. In Case No. CR-14-584459, he pled guilty to attempted tampering with evidence, and two counts of fifth-degree felony drug trafficking. In CR-14-585925, he pled guilty to fourth-degree felony attempted drug possession.

{¶4} The trial court held a sentencing hearing on September 29, 2014. The trial court concluded that community control sanctions were not appropriate, and it sentenced Greene to 36 months of imprisonment in CR-13-581342, to be served concurrently with 18 months in Case No. CR-14-584459, and a consecutive period of three years of community control sanctions in CR-14-585925. The record indicates that in announcing this sentence, the trial court stated the findings required pursuant to R.C. 2929.14(C) in open court, including that consecutive terms were needed to punish the offender and to protect the public, the sentences were not disproportionate to the offenses, and Greene engaged in a course of conduct that rendered a single term inappropriate.

{¶5} Greene now appeals and assigns the following single assignment of error:
Assignment of Error

The trial court erred by imposing consecutive sentences without incorporating into the sentencing journals the findings required by Ohio Revised Code Section 2929.14(C).

{¶6} Greene argues that consecutive sentences were erroneously imposed in this matter because the trial court failed to incorporate the findings required by R.C. 2929.14(C) in the sentencing journal entries prepared in these matters.

{¶7} R.C. 2929.14(C)(4) requires that a trial court engage in a three-step analysis prior to 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, 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.*

{¶8} In order to impose consecutive terms of imprisonment, a trial court must both (1) make the statutory findings mandated for consecutive sentences under R.C. 2929.14(C)(4) at the sentencing hearing, and (2) incorporate those findings into its sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus.

{¶9} In this case, the trial court set forth the required findings during the sentencing hearing. Greene complains that the court did not set forth the findings in the

court's journal. The state, pursuant to Loc.App.R. 16(B), has conceded this error.¹

{¶10} Our review of the record confirms that the sentencing entry in this case does not include the consecutive sentence findings in the sentencing journal entry. Therefore, in accordance with *Bonnell*, we sustain this assignment of error and remand to the trial court for the limited purpose of entering a nunc pro tunc order correcting the sentencing entry to memorialize the consecutive sentencing findings.

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

It is ordered that appellant recover from appellee 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.

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

MARY EILEEN KILBANE, JUDGE

¹Loc.App.R. 16(B) provides:

Notice of Conceded Error. When a party concedes an error that is dispositive of the entire appeal, the party conceding the error shall file a separate notice of conceded error either in lieu of or in addition to their responsive brief. Once all briefing is completed, the appeal will be randomly assigned to a merit panel for review. The appeal will be considered submitted on the briefs unless the assigned panel sets an oral argument date.

KATHLEEN ANN KEOUGH, P.J., and
ANITA LASTER MAYS, J., CONCUR