

[Cite as *State v. Nia*, 2015-Ohio-1644.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101725

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

AKANBI NIA

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-04-456529-A

BEFORE: Stewart, J., E.T. Gallagher, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: April 30, 2015

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MELODY J. STEWART, J.:

{¶1} A jury found defendant-appellant, Akanbi Nia, guilty of murder and attempted murder. The court sentenced Nia to serve a prison term of 20 years to life in prison for the aggravated murder count consecutive to a prison term of eight years for the attempted aggravated murder count. The sole issue in this appeal is whether the record supports the findings the sentencing judge made when deciding to order consecutive service.

{¶2} The legislature has decided that appellate courts cannot review sentencing decisions for an abuse of discretion: “The appellate court’s standard for review is not whether the sentencing court abused its discretion.” R.C. 2953.08(G)(2). As a result, appellate courts can only review criminal sentences for being “contrary to law.” In the context of consecutive sentencing, “contrary to law” means either that the court failed to make the findings required by R.C. 2929.14(C)(4) or that the appellate court clearly and convincingly finds that the record does not support the findings made pursuant to R.C. 2929.14(C)(4). *See State v. Nia*, 2014-Ohio-2527, 15 N.E.3d 892 (8th Dist.), ¶ 16.

{¶3} Nia does not actually dispute that the court made the findings required by R.C. 2929.14(C)(4).¹ Those findings, the specifics of which we need not detail here because they are not being disputed, were made in full compliance with R.C. 2929.14(C)(4). Instead, Nia suggests that the findings are contrary to law. We use the term “suggest” because Nia does not set forth an argument showing why the court’s findings are not supported by the record. He merely “requests that this Court look at the entire record and decide if the consecutive sentences are supported in the record.” Appellant’s brief at 7.

{¶4} Although R.C. 2953.08(G)(2) sets forth that appellate courts review the record to determine whether a sentencing court’s R.C. 2929.14(C) findings are supported, Nia’s suggestion that the record may not support the trial court’s findings is not an argument raised or briefed in conformance with App.R. 16(A)(7). The rule requires the appellant to file a brief with:

[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies.

{¶5} Nia’s brief does not conform to App.R. 16(A)(7). Indeed, it not only fails to show why the record does not support the court’s findings, it asks us to make the argument for him. This alone is a basis for overruling his assigned error.

¹ We say that Nia has no actual dispute because he simply asks this court to determine whether they were made.

{¶6} In any event, the court's findings are amply supported by the record, which we have said "encompasses all of the proceedings before the court, not just the sentencing." *State v. Venes*, 2013-Ohio-1891, 992 N.E.2d 453 (8th Dist.), ¶ 22. This court's recitation of facts in Nia's direct appeal from conviction, *State v. Nia*, 8th Dist. Cuyahoga No. 87335, 2007-Ohio-1283, shows that Nia and a confederate seriously wounded a drug dealer and killed the drug dealer's girlfriend in what the state theorized was a robbery. The evidence showed that Nia, who was friends with the drug dealer, knew that the dealer was carrying over \$26,000 in cash to pay for a purchase from a drug supplier. It appeared that Nia and his confederate arranged for the drug dealer and his girlfriend to give them a ride, and then had the drug dealer park the car in a parking lot. The murder came without warning and was particularly callous: Nia took a firearm from his confederate and then shot both the drug dealer and the drug dealer's girlfriend in the back of the head. The drug dealer survived and identified Nia as the shooter. At the time he committed these offenses, Nia was on probation in two drug trafficking cases.

{¶7} Given these facts, we cannot clearly and convincingly find that the record does not support the sentencing judge's finding that consecutive service was necessary to protect the public from future crime and punish Nia. Likewise, we cannot clearly and convincingly find that the record does not support the sentencing judge's finding that consecutive service was not disproportionate to the seriousness of Nia's conduct or to the danger he posed to the public. Finally, there is nothing in the record to contradict the court's finding that Nia was on probation at the time he committed the crimes in this case. The assigned error is overruled, but the case is remanded to the court with instructions to issue a nunc pro tunc entry memorializing the court's findings under R.C. 2929.14(C)(4). *See State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 30.

{¶8} Judgment affirmed and remanded.

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 court of common pleas 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.

MELODY J. STEWART, JUDGE

EILEEN T. GALLAGHER, P.J., and
MARY J. BOYLE, J., CONCUR