

[Cite as *State v. Jenkins*, 2015-Ohio-2762.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101899

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

**FRANKLIN JENKINS
A.K.A. DOUGLAS ROBERTS**

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED
FOR RESENTENCING**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-14-561797-A, CR-14-578409-A, CR-14-584010-A,
CR-14-584791-A, and CR-14-586073-A

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

RELEASED AND JOURNALIZED: July 9, 2015

ATTORNEY FOR APPELLANT

Brian R. McGraw
55 Public Square
Suite 2100
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

BY: Fallon Radigan
Assistant County Prosecutor
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

LARRY A. JONES, SR., P.J.:

{¶1} Defendant-appellant Franklin Jenkins, a.k.a. Douglas Roberts (“Jenkins”), appeals from the trial court’s August 2014 sentencing judgment. Finding some merit to the appeal, we reverse and remand for resentencing.

I. Procedural History

{¶2} This appeal is relative to the 18 year, 11-month sentence that the trial court imposed on Jenkins. The sentence resulted after Jenkins’s guilty pleas in five separate cases, and included consecutive terms.

{¶3} In the first case, Cuyahoga C.P. No. CR-14-561797-A, Jenkins pled to robbery. He was originally sentenced to community control sanctions and ordered to participate in a community-based treatment program. The trial court informed him that he would be sentenced to a four-year prison term if he violated his community control sanctions.

{¶4} Jenkins’s second case was Cuyahoga C.P. No. CR-14-578409-A, in which he pled to breaking and entering. The trial court sentenced him to an 11-month prison term, but suspended the sentence so that he could continue to participate in the treatment program. The court continued his community control sanctions for 18 months, to run consecutive to the first case.

{¶5} Several months later, Jenkins entered guilty pleas in three other separate cases. In Cuyahoga C.P. No. CR-14-584010-A, he pled to escape; in Cuyahoga C.P. No. CR-14-586073-A, he pled to two counts of burglary; and in Cuyahoga C.P. No.

CR-14-584791-A, he pled to burglary with a notice of prior conviction specification.

{¶6} In August 2014, the trial court held a sentencing hearing. The court terminated Jenkins's community control sanctions in Case Nos. CR-14-561797-A and CR-14-578409-A, and sentenced him to four years and 11 months, respectively, on those cases. In Case No. CR-14-584010-A, Jenkins was sentenced to six months; in Case No. CR-14-586073-A, he was sentenced to seven years on each of the two burglary counts, to be served concurrent to each other; and in Case No. CR-14-584791-A, he was sentenced to seven years. With the exception of the six-month sentence in Case No. CR-14-584010-A and the concurrent terms on the two burglary charges in Case No. CR-14-586073-A, the trial court ordered all the other terms to be served consecutively, for an aggregate sentence of 18 years and 11 months.

{¶7} Jenkins now appeals, raising the following two assignments of error for our review:

[I.] The appellant was denied his right to allocution.

[II.] The trial court did not take into account the necessary factors in 2929.14(C)(4)(a-c) in imposing consecutive sentences.

II. Law and Analysis

{¶8} For ease of discussion, we consider the second assignment of error first. To properly sentence an offender to consecutive terms, the record must demonstrate that the trial court imposed consecutive sentences because it found: (1) consecutive sentences were necessary to protect the public or to punish the offender, (2) they are not disproportionate to the seriousness of the offender's conduct and the danger the offender

poses to the public, and (3) either, (a) the offender's history of criminal conduct demonstrated consecutive sentences were necessary to protect the public from future crime, or, (b) 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 postrelease control for a prior offense, or, (c) 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. R.C. 2929.14(C)(4).

{¶9} In *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, the Ohio Supreme Court stated the following regarding the imposition of consecutive sentences:

When imposing consecutive sentences, a 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. *See* Crim.R. 32(A)(4). And because a court speaks through its journal, *State v. Brooke*, 113 Ohio St.3d 199, 2007-Ohio-1533, 863 N.E.2d 1024, ¶ 47, the court should also incorporate its statutory findings into the sentencing entry. However, 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.

Id. at ¶ 29.

{¶10} In sentencing Jenkins to consecutive terms, the trial court stated the following:

I have to read the reasons I'm imposing sanctions. Course of conduct. At the time of your offenses you were on post-release control when you committed the offenses. Obviously we need to protect the public from people like you because obviously I didn't the first time I sentenced you, right? Goodbye.

{¶11} This statement does not satisfy the requirements for consecutive sentences under R.C. 2929.14(C) or *Bonnell*. Specifically, the trial court did not make the finding that the imposition of consecutive sentences would not be “disproportionate to the seriousness of the offender’s conduct and the danger the offender poses to the public.” Further, the sentencing judgment entry does not contain any findings relative to the imposition of consecutive sentences.

{¶12} The second assignment of error is therefore sustained. The sentence is vacated and the case is remanded for resentencing for the trial court to consider whether consecutive sentences are appropriate under R.C. 2929.14(C)(4), and, if so, to make the required findings on the record. *State v. Nia*, 2014-Ohio-2527, 15 N.E.3d 892, ¶ 22 (the holding in *Nia* regarding the remand on a consecutive sentence error was not affected by *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659). If the court finds that consecutive sentences are appropriate, in addition to stating the required findings in open court, the court must also state them in the journal entry of sentence. *State v. Fowler*, 8th Dist. Cuyahoga No. 101101, 2014-Ohio-5687, ¶ 21.

{¶13} In his first assignment of error, Jenkins contends that the trial court denied him his right to allocution prior to sentencing him. We disagree.

{¶14} Crim.R. 32(A)(1) provides that

[a]t the time of imposing sentence, the court shall * * * [a]fford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.

See also R.C. 2929.19(A) (providing that at the sentencing hearing, the court shall “ask the offender whether the offender has anything to say.”).

{¶15} The purpose of allocution is to afford the defendant an opportunity to present additional information to the court that it may consider when fashioning an appropriate sentence. *Defiance v. Cannon*, 70 Ohio App.3d 821, 828, 592 N.E.2d 884 (3d Dist.1990). A trial court complies with a defendant’s right of allocution when it addresses the defendant personally and asks whether he has anything he would like to say on his own behalf. *State v. Green*, 90 Ohio St.3d 352, 359, 738 N.E.2d 1208 (2000), citing *Green v. United States*, 365 U.S. 301, 305, 81 S.Ct. 653, 5 L.Ed.2d 670 (1961).

{¶16} Here, prior to pronouncing sentence, the court heard statements from one of the burglary victims, the assistant prosecuting attorney, defense counsel, and Jenkins. The victim relayed to the court what a traumatic experience the crime had been for her and how difficult it was for her to lose her jewelry, much of which had sentimental value to her.

{¶17} Defense counsel addressed the court as follows:

Thanks, Judge, may it please the Court. My client is 51 years old. He’s had a hard life, as you may or may not be able to see, an extremely deformed arm. He’s really never been able to maintain work, though he’s worked some as a roofer. Seems as though alcohol may be an issue here,

as well, Judge.

In speaking with him he's been extremely forthright, admitted his involvement, took responsibility [by] pleading guilty. So I think that's a factor you ought to consider.

* * *

Okay, he's remorseful, Judge, and [I] ask the court to consider that.

{¶18} In his statement, Jenkins said the following: "I know the girls that have the jewelry. 4505 Pearl Road. [Their names are] Theresa and Veronica." The court then engaged in a discussion with Jenkins about whether the two who supposedly had the jewelry still had it or pawned it.

{¶19} After their discussion, the court told Jenkins "I read your letter, all this about being in foster care doesn't fly with me, do you understand?" The court then sentenced him. Jenkins now contends that the court did not properly allow him his right to allocution because it failed to ask him if he had anything more to say or if he wished to address the victim. We disagree.

{¶20} Jenkins had the opportunity to address the court and he did so, telling the court, in hopeful mitigation, that he could possibly get one of the victim's jewelry back. Further, Jenkins wrote a letter to the court, which the court stated that it had read. His counsel also addressed the court on his behalf in an attempt to mitigate his sentence.

{¶21} On this record, Jenkins was afforded his right to allocution. Further, even if the court was somehow deficient, which we do not believe it was, the error was harmless, because Jenkins will have another opportunity to address the court when he is

resentenced on the consecutive-sentence portion of his sentence in light of our disposition on the second assignment of error.

{¶22} The first assignment of error is therefore overruled.

{¶23} Judgment reversed; case remanded.

It is ordered that appellant recover from appellee his 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.

LARRY A. JONES, SR., PRESIDING JUDGE

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