

[Cite as *State v. Rice*, 2015-Ohio-3885.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102443

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANTONIO RICE

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-589427-A

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

RELEASED AND JOURNALIZED: September 24, 2015

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MARY J. BOYLE, J.:

{¶1} Defendant-appellant, Antonio Rice, appeals his sentence, arguing that “[t]he trial court did not have authority to impose a consecutive sentence with another case.”

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

Procedural History and Facts

{¶3} In December 2014, Rice pleaded guilty to an amended indictment of four fifth-degree felonies: two counts of breaking and entering, in violation of R.C. 2911.13(A); one count of possessing criminal tools, in violation of R.C. 2923.24(A); and one count of vandalism, in violation of R.C. 2909.05(A). The charges arose from Rice breaking into vacant homes and “scrapping” recyclable metals, including copper, from the homes.

{¶4} Following his guilty plea, Rice elected to proceed directly to sentencing. The trial court heard from Richmond Heights Detective Sergeant Porter and the prosecutor, both of whom urged the trial court to impose any sentence consecutive to the other one-year sentence that Rice recently received. The prosecutor detailed Rice’s criminal record and the fact that two homes were involved in the underlying charges. Conversely, defense counsel urged the trial court to run any sentence concurrently to the one-year sentence that Rice received in Judge Carolyn Friedland’s courtroom on similar charges. Rice also addressed the court, apologizing for his actions and indicating the potential of a job waiting for him after he completed his prison term already imposed by Judge Friedland.

{15} The trial court imposed a one-year prison term on each of the four counts, all to run concurrent to one another, but consecutive to the one-year prison term imposed by Judge Friedland in Case No. CR-14-586874. Prior to ordering the sentence consecutive, the trial court fully complied with R.C. 2929.14(C), making all the required findings to support the imposition of consecutive sentences.

{16} Rice now appeals his sentence, raising a single assignment of error.

Standard of Review

{17} 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).

Multiple Offenses

{18} In his sole assignment of error, Rice argues that the trial court did not have authority to impose a consecutive sentence to the prison term already imposed by another judge in an earlier case. We disagree.

{19} Although a general presumption exists for the imposition of concurrent sentences, R.C. 2929.41(A) expressly recognizes certain exceptions, including when the record requires

the imposition of consecutive sentences under R.C. 2929.14(C) for multiple offenses. The statute provides in relevant part as follows:

Except as provided in division (B) of this section, division (C) of section 2929.14, or division (D) or (E) of section 2971.03 of the Revised Code, a prison term, jail term, or sentence of imprisonment shall be served concurrently with any other prison term, jail term, or sentence of imprisonment imposed by a court of this state, another state, or the United States.

{¶110} R.C. 2929.14(C)(4) provides as follows:

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.

{¶11} Here, the trial court made all of the required findings under R.C. 2929.14(C) to justify the imposition of consecutive sentences between the two cases. As for Rice's broad argument that R.C. 2929.14(C) is ambiguous, we find no merit to this claim. Rice offers no authority in support of his claim of an ambiguity between R.C. 2929.14(C)(3) and (C)(4) that precludes the imposition of consecutive sentences for multiple offenses in two separate cases. Nor do we find one. Under R.C. 2929.41(A) and 2929.14(C)(4), the trial court had the authority to impose Rice's one-year sentence consecutive to the one-year sentence in the other case. *See generally State v. Simpson*, 2d Dist. Montgomery No. 25163, 2013-Ohio-1696 (upholding trial court's order imposing concurrent sentences on each count but ordering sentence to be served consecutive to sentences defendant was serving in other cases); *State v. Hess*, 2d Dist. Montgomery No. 25144, 2013-Ohio-10 (recognizing trial court's authority to order a prison term to be served consecutively to another prison term that was currently being served in Ohio).

{¶12} We find no merit to Rice's sole assignment of error and overrule it.

{¶13} We note, however, that the trial court failed to incorporate in the journal entry the statutory findings supporting consecutive sentences that it made at sentencing. Thus, this matter is remanded to the trial court for the court to issue a new sentencing journal entry, nunc pro tunc, to incorporate its findings. *See Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d

659, ¶ 29 (sentencing entry may be corrected nunc pro tunc when the trial court made findings at sentencing hearing but inadvertently failed to incorporate them in the journal entry).

{¶14} Judgment affirmed and case 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, JUDGE

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