

[Cite as *State v. Aniton*, 2015-Ohio-4080.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 102440

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**DARNELL S. ANITON**

DEFENDANT-APPELLANT

---

**JUDGMENT:**  
**AFFIRMED**

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case Nos. CR-11-555072-A, CR-14-583323-A, CR-14-587525-A,  
CR-14-588028-A, and CR-14-588730-A

**BEFORE:** Boyle, J., Jones, P.J., and McCormack, J.

**RELEASED AND JOURNALIZED:** October 1, 2015

## **ATTORNEY FOR APPELLANT**

Aaron T. Baker  
Aaron T. Baker Co., L.P.A.  
38109 Euclid Avenue  
Willoughby, Ohio 44094

## **ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
BY: Zachary Humphrey  
Assistant County Prosecutor  
Justice Center, 9th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶1} Defendant-appellant, Darnell Aniton, appeals his sentence, raising the following two assignments of error:

I. The trial court erred to the prejudice of the defendant-appellant by sentencing him to a maximum and consecutive sentence of twenty-one years in prison.

II. The trial court denied appellant his rights to due process and equal protection under the Ohio and United States Constitutions and abused its discretion by sentencing him to pay a stated amount of restitution and an undetermined amount in court costs and by doing so without first conducting the inquiry required by R.C. 2929.18 and R.C. 2929.19(B).

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

#### Procedural History and Facts

{¶3} This appeal involves five lower court cases. In Cuyahoga C.P. No. CR-11-555072, Aniton pleaded guilty to two counts of unlawful sexual contact with a minor in violation of R.C. 2907.04(A), a fourth-degree felony. In July 2012, he was sentenced to five years of community control sanctions with numerous conditions and classified as a Tier II sex offender. In April 2014, Aniton pleaded guilty to an amended charge of burglary in violation of R.C. 2911.12(B), a fourth-degree felony in Cuyahoga C.P. No. CR-14-583323. He was subsequently sentenced to three years of community control with numerous conditions.

{¶4} While under community control sanctions, Aniton was subsequently indicted in three more cases — all of which he ultimately pleaded guilty to amended indictments. Specifically, in November 2014, Aniton pleaded guilty to an amended

indictment in Cuyahoga C.P. No. CR-14-587525 on the following charges: attempted escape in violation of R.C. 2921.34(A)(1) and 2923.02, a third-degree felony; burglary in violation of R.C. 2911.12(A)(3), a third-degree felony; burglary in violation of R.C. 2911.12(A)(2), a second-degree felony, with a one-year firearm specification attached; attempted burglary in violation of R.C. 2911.12(A)(2) and 2923.02, a third-degree felony; and having weapons while under disability in violation of R.C. 2923.13(A)(2), a third-degree felony. The counts involved different victims. Similarly, in Cuyahoga C.P. No. CR-14-588028, Aniton pleaded guilty to an amended charge of burglary in violation of R.C. 2911.12(A)(3), a third-degree felony, with a forfeiture specification. And in Cuyahoga C.P. No. CR-588730, Aniton pleaded guilty to an amended charge of burglary in violation of R.C. 2911.12(A)(3), a third-degree felony.

{¶5} At the time of his guilty plea, Aniton also agreed to pay restitution to the victims in each case. The parties further agreed that the amount of restitution would be determined at sentencing. The trial court then referred Aniton for a presentence investigation report as well as to the court psychiatric clinic for a mitigation of penalty report.

{¶6} On December 11, 2014, the trial court held the sentencing hearing on the three cases. The court first heard from five victims that were present in court, who detailed the items taken from their house as well as the destruction done to their homes by Aniton. The victims also testified as to the specific value of the items taken and not recovered. One victim testified that his and his wife's life "has changed considerably

because of this burglary,” explaining that they no longer feel comfortable leaving their house unoccupied, that their six-year-old granddaughter is afraid to sleep in her room by herself, and that their other grandchildren are not permitted to stay overnight anymore. Another victim testified that it took her “over a month to finally sleep at night” and that she has been emotionally traumatized by the events. Other victims testified as to the economic loss suffered and their hope that Aniton is “off the streets for some time.”

{¶7} The trial court then heard from defense counsel who emphasized Aniton’s cooperation in the three cases and his genuine remorse for his actions. Defense counsel also pointed out Aniton’s mental illnesses, including depressive disorder, anxiety disorder, post-traumatic stress disorder, panic disorder, cannabis dependence, and opiate dependence, as a mitigating factor. Aniton addressed the court, apologizing to the victims for his actions and apologizing to his family. Aniton’s mother also addressed the court, pleading with the court to give Aniton help, not prison time. According to Aniton’s mother, Aniton is not a bad person. She stated that Aniton cuts hair for free for kids who are going back to school, and that “[h]e tries to be a good person.”

{¶8} The trial judge then addressed Aniton, indicating that he reviewed the PSI and the mitigation report and that he considered the seriousness and recidivism factors in the sentencing statutes. The trial court stated that Aniton was 33 years old and then detailed Aniton’s extensive criminal history that dated back to 1999 and included convictions for felonious assault, criminal trespass, multiple counts of breaking and entering, unlawful sexual conduct with a minor, and burglary. The trial court

emphasized how he had previously given Aniton an opportunity to get help for his substance abuse and mental health problems by placing him in inpatient treatment and by imposing community control sanctions, instead of prison. The trial court further expressed its disappointment, stating, among other things, the following:

I was the only judge that gave you a chance and how did you pay me back? You paid me back by breaking into those people's homes and robbing them of their lives. \* \* \* Mr. Aniton, your belief that a light sentence is coming out of this, I believe, is severely misplaced. You stole guns. You sold those guns to drug dealers. Not little pistols; heavy weapons, Mr. Aniton. Weapons that can be used and may have already been used to commit homicides in this city, to commit gun crimes in this city.

\* \* \*

You heard these people come in here and testify. You heard what you did to them. The stuff that they're asking for is irreplaceable. We can't even put a number on it. You stole sentimental things that they cannot replace. I can give them money and they're never going to see any of that money again. They're never going to see it. You destroyed their lives, you destroyed their homes. Once again, you're doing this, you did this after I gave you a chance to try to fix yourself.

The Court finds that in each of these cases the injury in this matter was serious psychological harm, serious economic harm as testified to by the victims that came in here. The Court finds that really none of the less serious factors in this matter apply.

The Court further finds that these offenses were committed, as I've already made very clear, these offenses were committed while the defendant was on a sanction of community control.

The Court further finds, as I made clear, that this defendant has a history of incarcerations and that clearly he has not benefitted by any services offered by the State of Ohio during those incarceration periods. It shows a pattern of criminal behavior and really I don't find that any of the less likely factors with regard to recidivism apply in this matter.

Clearly, Mr. Aniton, a prison sentence in this matter is warranted and a sentence of community control would absolutely demean the seriousness of the offense.

{¶9} The court ordered restitution to compensate the victims in each case: \$500 in Cuyahoga C.P. No. CR-14-588730, \$500 in Cuyahoga C.P. No. CR-14-588028, and \$9,509.54 in Cuyahoga C.P. No. CR-14-587525 (\$7,659.54 to one victim and \$1,850 to the other victim). The trial court then imposed three years in prison in Cuyahoga C.P. No. CR-14-588730, and three years in prison in Cuyahoga C.P. No. CR-14-588028, to run concurrently to one another and concurrent to the 21-year sentence imposed in Cuyahoga C.P. No. CR-14-587525. Specifically, in Cuyahoga C.P. No. CR-14-587525, the trial court imposed three years on the attempted escape count; three years on a burglary count; eight years plus the one year mandatory firearm specification on a burglary count; three years on an attempted burglary count; and three years on a having a weapon while under disability count. The court then ordered each count to run consecutive to one another, after making the following findings:

The Court does find in this matter that consecutive sentences are necessary to protect the public and punish the defendant in this matter. The consecutive sentences would not be disproportionate to the conduct involved. Specifically, with regard to this case, we heard several weapons were taken. They're on the streets. They were given to drug dealers. That is absolutely unacceptable to this judge. These crimes were committed while the defendant was on a sentence of community control to this court.

The Court believes that in this particular case the harm is so great that a single term does not adequately reflect the seriousness of the defendant's conduct in this matter. Finally, the defendant's criminal history shows that consecutive terms are needed to protect the public in this matter.

{¶10} The trial court additionally found on the record that Aniton had violated the terms of his community control in both Cuyahoga C.P. Nos. CR-14-583323 and CR-11-555072, imposing an 18-month prison sentence in each case to run concurrently to all the other cases.

{¶11} Following the trial court's imposition of the sentence and order of restitution, defense counsel addressed the court and reiterated that Aniton was indigent and had no foreseeable income in light of the trial court's sentence. The trial court noted the objection but refused to waive costs or restitution. Specifically, the trial court noted that "[h]e's got 21 years in prison to pay off these costs."

{¶12} From this decision, Aniton now appeals, challenging his sentence and the restitution order.

### Sentence

{¶13} In his first assignment of error, Aniton argues that his sentence is contrary to law because the record does not clearly and convincingly support the trial court's findings under R.C. 2929.14(C)(4). We disagree.

{¶14} R.C. 2953.08(G)(2) provides that our review of felony sentences is not an abuse of discretion. An appellate court must "review the record, including the findings underlying the sentence or modification given by the sentencing court." *Id.* If an appellate court clearly and convincingly finds either that (1) "the record does not support the sentencing court's findings under [R.C. 2929.14(C)(4)]" or (2) "the sentence is otherwise contrary to law," then "the appellate court may increase, reduce, or otherwise



modify a sentence \* \* \* or may vacate the sentence and remand the matter to the sentencing court for resentencing.” *Id.*

{¶15} Aniton does not dispute that the trial court made all the required findings to support the imposition of consecutive sentences. Instead, he argues that 21 years “is a staggering sentence that should be reserved for only the worst of the worst offenders.” He further contends that there is no indication in the record that any of the victims were injured, beyond financial losses, and that his remorse and mental health disabilities should have mitigated against such a severe sentence.

{¶16} But the record demonstrates that the victims suffered serious emotional harm and that they were traumatized by Aniton’s actions. For example, two of the victims testified that they do not leave their house anymore out of fear that it will be burglarized again. We further cannot agree that Aniton’s sentence is contrary to law on the basis that the trial court did not give the mitigating factors the same weight that Aniton’s defense counsel urged. Indeed, the trial court acted well within its discretion in finding that the aggravating factors far outweighed any mitigating factors. *See State v. Warner*, 8th Dist. Cuyahoga No. 100197, 2014-Ohio-1519, ¶ 13 (giving more weight to the aggravating factors does not render a prison sentence as “contrary to law”). Our review of the record reveals that the trial court’s findings are clearly and convincingly supported by the record.

{¶17} The first assignment of error is overruled.

#### Restitution

{¶18} In his second assignment of error, Aniton argues that the trial court failed to consider his ability to pay restitution and, therefore, the order must be vacated.

{¶19} The Second Appellate District has succinctly set forth the standard and trial court's duty to consider a defendant's ability to pay a restitution order as follows:

R.C. 2929.19(B)(5) "imposes a duty upon the trial court 'to consider the offender's present or future ability to pay' before imposing any financial sanctions under R.C. 2929.18." The statute does not require the trial court to consider any specific factors when determining the offender's present or future ability to pay financial sanctions. Nor does the statute require a hearing on the matter. The court is also "not required to expressly state that it considered a defendant's ability to pay \* \* \*." "The record should, however, contain 'evidence that the trial court considered the offender's present and future ability to pay before imposing the sanction of restitution.'" The trial court may comply with this obligation "by considering a presentence-investigation report, which includes information about the defendant's age, health, education, and work history." "The court's consideration \* \* \* may be inferred from the record under appropriate circumstances."

(Citations omitted.) *State v. Tate*, 2d Dist. Montgomery No. 25386, 2013-Ohio-5167, ¶ 52.

{¶20} This court has also recognized that "'Ohio law does not prohibit a court from imposing a fine on an indigent defendant.'" *State v. Betliskey*, 8th Dist. Cuyahoga No. 101330, 2015-Ohio-1821, ¶ 42, quoting *State v. Ramos*, 8th Dist. Cuyahoga No. 92357, 2009-Ohio-3064, ¶ 7.

{¶21} Here, the record reveals that the trial court considered Aniton's ability to pay the restitution order. Although the trial court did not specifically state on the record the exact words that it had considered Aniton's present and future ability to pay restitution, the court's reference to Aniton "having 21 years in prison to pay off those costs"

evidences that it considered it. We further note that the trial court also specifically stated that it considered the PSI, which included Aniton's education, age, and employment history, as a self-employed, "mobile barber." Based on the record before us, we cannot say that the trial court failed to consider Aniton's ability to pay the restitution.

{¶22} The second assignment of error is overruled.

{¶23} Judgment affirmed.

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

LARRY A. JONES, SR., P.J., and  
TIM McCORMACK, J., CONCUR

