

[Cite as *State v. Crawley*, 2015-Ohio-5150.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102781

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

WILLIAM H. CRAWLEY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-12-565807-A

BEFORE: Celebrezze, A.J., Boyle, J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: December 10, 2015

ATTORNEYS FOR APPELLANT

Robert L. Tobik
Cuyahoga County Public Defender
By: John T. Martin
Assistant Public Defender
Courthouse Square Suite 200
310 Lakeside Avenue
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: Jeffrey M. Heller
Assistant Prosecuting Attorney
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., A.J.:

{¶1} Defendant-appellant, William H. Crawley (“appellant”), brings this appeal challenging the trial court’s imposition of consecutive sentences for two counts of aggravated arson. Specifically, appellant argues that the trial court improperly imposed consecutive sentences on the two counts of aggravated arson without finding that consecutive sentences were not disproportionate to the seriousness of the conduct or to the danger posed by the offender. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶2} On August 17, 2012, the Cuyahoga County Grand Jury returned a 24-count indictment charging appellant with two counts of aggravated arson, R.C. 2909.02(A)(1) and (2), and 22 counts of arson, R.C. 2909.03(A)(1). At the close of trial, the jury found appellant guilty on all 24 counts. On February 12, 2013, the trial court sentenced appellant to a prison term of 16 years: 9 years on Count 1, 7 years on Count 2, and 12 months for each of the remaining 22 counts. Furthermore, the trial court ordered that the sentences for Counts 1 and 2 be served consecutively.

{¶3} Appellant appealed the trial court’s sentence, arguing that the court erred in failing to merge Counts 22, 23, and 24. This court sustained appellant’s assignment of error and remanded the matter to the trial court for resentencing on that issue only. *State v. Crawley*, 8th Dist. Cuyahoga No. 99636, 2014-Ohio-921. After merging Counts 22, 23, and 24, the trial court resentenced appellant to the 16-year prison term that was initially issued, stating:

The Court does understand there is a presumption of concurrent terms, and the Court has taken discretion to impose consecutive sentences. The Court does find that the consecutive sentences in this matter are necessary to protect and punish, are not disproportionate, and once again, finds that the harm was so great or

unusual that a single term does not adequately reflect the seriousness of the conduct.

{¶4} Appellant filed the instant appeal assigning one error for review:

I. The trial court improperly imposed consecutive sentences on counts one and two, without finding that consecutive sentences were not disproportionate to the seriousness of the conduct or to the danger posed by the offender.

II. Law and Analysis

{¶5} R.C. 2929.14(C)(4) requires the court to enter findings before imposing consecutive sentences. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29. Those findings, as made pertinent to the specifics of this case, are that (1) a consecutive sentence is necessary to protect the public from future crime or to punish the offender, (2) consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and (3) 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. *Id.*

{¶6} In imposing consecutive terms of imprisonment, the trial court "must both make the statutory findings mandated for consecutive sentences under R.C. 2929.14(C)(4) at the sentencing hearing and incorporate those findings into its sentencing entry." *State v. Allen*, 8th Dist. Cuyahoga No. 101342, 2015-Ohio-1448; *see Bonnell* at ¶ 37. Where a trial court fails to make these requisite findings, the imposition of consecutive sentences is contrary to law, and the sentences must be served concurrently. *Bonnell* at ¶ 37.

{¶7} Although the requisite findings must be made, the trial court “has no obligation to state reasons to support its findings,” so long as “the necessary findings can be found in the record and are incorporated into the sentencing entry.” *Id.* Furthermore, this court has repeatedly held that the trial court — in making its findings — is not required to use “talismanic words to comply with the guidelines and factors for sentencing.” *State v. Mannarino*, 8th Dist. Cuyahoga No. 98727, 2013-Ohio-1795, ¶ 23, quoting *State v. Brewer*, 1st Dist. Hamilton No. C-000148, 2000 Ohio App. LEXIS 5455, *10 (Nov. 24, 2000); *see also Bonnell*.

{¶8} R.C. 2953.08(G)(2) provides two bases for a reviewing court to overturn the imposition of consecutive sentences: the sentence is “otherwise contrary to law” or the reviewing court clearly and convincingly finds that “the record does not support the sentencing court’s findings” under R.C. 2929.14(C)(4). *State v. Venes*, 8th Dist. Cuyahoga No. 98682, 2013-Ohio-1891, ¶ 11.

{¶9} This court explained the “clear and convincing” standard in *Venes*, stating:

It is important to understand that the “clear and convincing” standard applied in R.C. 2953.08(G)(2) is not discretionary. In fact, R.C. 2953.08(G)(2) makes it clear that “[t]he appellate court’s standard for review is not whether the sentencing court abused its discretion.” As a practical consideration, this means that appellate courts are prohibited from substituting their judgment for that of the trial judge.

It is also important to understand that the clear and convincing standard used by R.C. 2953.08(G)(2) is written in the negative. It does not say that the trial judge must have clear and convincing evidence to support its findings. Instead, it is the court of appeals that must clearly and convincingly find that the record does not support the court’s findings. In other words, the restriction is on the appellate court, not the trial judge. This is an extremely deferential standard of review.

In reaching this conclusion, we note that the term “record” as used in R.C. 2953.08(G)(2) is very broad. It encompasses all of the proceedings before the court, not just the sentencing. And while the court has the obligation to make separate and distinct findings under R.C. 2929.14(C)(4) before imposing sentence,

support for those findings may appear anywhere in the “record” and not just at the time the court imposes consecutive sentences.

Id. at ¶ 20-22.

{¶10} In the case at hand, appellant contends that the trial court failed to make the requisite findings, under R.C. 2929.14(C)(4), that consecutive sentences are not disproportionate to the seriousness of his conduct and to the danger he poses to the public. Appellant argues that the trial court failed to “examine the offense conduct and [his] characteristics, respectively, and ensure that the sentence is in line with those imposed for similar offenses by similarly-situated offenders.” Furthermore, appellant argues that the trial court’s statement that the sentences were “not disproportionate” — without specifying the factors upon which this conclusion is based — is unclear and insufficient in making the findings required by R.C. 2929.14(C)(4).

{¶11} After a careful review of the record, we find that the trial court made the requisite findings in imposing consecutive sentences. The trial court fulfilled both of the requirements established by the Ohio Supreme Court in *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659. First, during appellant’s resentencing hearing, the trial court — in imposing consecutive sentences — stated:

The Court has once again reviewed the purposes and principles of felony sentencing which are to protect the public and punish the offender. And the Court has also considered the seriousness and recidivism factors, the Court does find that prison is an appropriate sentence in this matter.

The Court sentences as to Count 1, nine years. As to Count 2, seven years. And counts 3 through 22, 12 months each. Counts 9 and 7 are to be run consecutively

to one another. Counts 3 through 22, concurrent to each other, and concurrent to Counts 1 and 2.

The Court, in reviewing the factors pursuant to House Bill 86, with regard to consecutive sentencings, finds that the matter in the case, the harm was so great or unusual, that single term does not adequately reflect the seriousness of the defendant's conduct in this. This was an incident where multiple individuals could have been killed, and a large amount of property damage was incurred here.

There were firefighters responding to the scene of a large warehouse fire. Firefighters responding to the scene could have been injured as well.

The Court does understand there is a presumption of concurrent terms, and the Court has taken discretion to impose consecutive sentences. The Court does find that the consecutive sentences in this matter are necessary to protect and punish, are not disproportionate, and once again, finds that the harm was so great or unusual that a single term does not adequately reflect the seriousness of the conduct.

Second, these findings were properly incorporated into the trial court's February 26, 2015 sentencing entry, which states in relevant part:

With regard to consecutive sentences, the court made findings on the record that consecutive sentences were appropriate in this matter due to the fact that the harm created by the defendant's actions was so great or unusual that a single term does not adequately reflect the seriousness of the conduct. The court also found that consecutive sentences were necessary to protect/punish and were not disproportionate.

{¶12} Appellant disputes the trial court's lack of specificity, arguing that the court merely stated that the sentences were "not disproportionate," without specifying the basis on which that

determination was made. Therefore, appellant argues, the trial court failed to make sufficient findings required by R.C. 2929.14(C)(4).

{¶13} This court has repeatedly held that although the trial court must make the findings required by R.C. 2929.14(C)(4), the court has no obligation to state the reasons to support its findings. Having made sufficient findings for the imposition of consecutive sentences, the trial court fulfilled the R.C. 2929.14(C)(4) requirements. Thus, the trial court's failure to identify the factors — or "the reasons" — that were considered in its proportionality analysis does not render the consecutive sentences contrary to law.

{¶14} After our review of the record, we cannot say that the trial court's findings are not supported by the record. The trial court, in imposing consecutive sentences, emphasized the gravity of appellant's conduct and the "great or unusual" harm caused by the "large warehouse fire." Specifically, the trial court cited the substantial property damage appellant caused. Furthermore, the trial court noted that several people — both civilians and first responders — could have been killed or severely injured as a result of appellant's conduct. Appellant's arson resulted in a three-alarm fire to which more than three dozen firefighters responded. Based on these facts, the trial court found that consecutive sentences were necessary to protect and punish, and were not disproportionate — again reiterating that "the harm was so great or unusual that a single term does not adequately reflect the seriousness of the conduct."

{¶15} In *Bonnell*, the Ohio Supreme Court stated:

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.

Bonnell at ¶ 29. Although the trial court did not set forth the reasoning to support its finding that appellant's sentences were not disproportionate to the seriousness of his conduct and to the danger he poses to the public, we find that the court engaged in the correct analysis in determining whether consecutive sentences were appropriate and necessary. Furthermore, we cannot clearly and convincingly find that the record does not support the trial court's finding that consecutive sentences are not disproportionate to the seriousness of appellant's conduct and the harm that he caused.

{¶16} Appellant's sole assignment of error is overruled.

III. Conclusion

{¶17} The trial court made the requisite findings necessary to impose consecutive sentences. There is no requirement that those findings be supported by reasons on the record. As long as the findings are not clearly and convincingly unsupported in the record, there is no basis to reverse the consecutive nature of the sentences. The record in this case supports consecutive sentences.

{¶18} 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.

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

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