

[Cite as *State v. Brown*, 2015-Ohio-598.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101367

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MAURICE BROWN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-13-572009-B, CR-13-573056-A, and CR-13-576253-A

BEFORE: Jones, J., Celebrezze, A.J., and Boyle, J.

RELEASED AND JOURNALIZED: February 19, 2015

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

{¶1} Defendant-appellant Maurice Brown appeals the imposition of consecutive sentences and the denial of his postsentence oral motion to withdraw his plea. We affirm and remand.

I. Procedural History and Facts

{¶2} This case involves Brown’s plea and sentence in three separate cases. **Case No. CR-13-572009 (“Riot Case”)**

{¶3} In February 2013, Brown was charged in a seven-count indictment as follows:

- Count 1: aggravated riot;
- Counts 2 and 3: felonious assault, both with notice of prior conviction and repeat violent offender specifications;
- Count 4: assault; and
- Counts 5, 6, and 7: kidnapping, each with notice of prior conviction and repeat violent offender specifications.

Case No. CR-13-573056 (“Abduction Case”)

{¶4} In April 2013, Brown was charged with one count each of abduction and domestic violence. The domestic violence charge contained a furthermore clause that Brown had previously been convicted of domestic violence.

Case No. CR-13-576253 (“Aggravated Murder Case”)

{¶5} In July 2013, Brown was charged with eight counts as follows:

- Counts 1 and 2: aggravated murder, an unclassified felony, each with one- and three-year firearm, notice of prior conviction and repeat violent offender specifications;
- Count 3: aggravated burglary with one- and three-year firearm, notice of prior conviction and repeat violent offender specifications;
- Count 4: burglary, with one- and three-year firearm, notice of prior conviction and repeat violent offender specifications;

- Count 5: murder, an unclassified felony, one- and three-year firearm, notice of prior conviction and repeat violent offender specifications;
- Counts 6 and 7: felonious assault, with one- and three-year firearm, notice of prior conviction and repeat violent offender specifications; and
- Count 8: having weapons while under disability.

{¶6} After discovery was completed, Brown pleaded guilty to all counts and specifications in all three cases.¹ The trial court immediately proceeded to sentence Brown as follows: a total of three years in the riot case, to run concurrent to the aggravated murder sentence; a total of 54 months in the abduction case, to run consecutive to the aggravated murder sentence; and life with the possibility of parole in 33 years in the aggravated murder case, for a total of 37½ years to life in prison. Immediately after the trial court sentenced Brown, he requested to withdraw his plea; the court denied his request.

{¶7} The record reflects the following relative to the aggravated murder case. Brown and the victim, a 29-year old mother of two young girls, had been acquainted, as had Brown and the victim's family, including her children. The court described the victim as having had said "no" to Brown's advances, which prompted him to shoot her "several times." The assistant prosecuting attorney stated that the way the victim died "haunts" him, because he believed she was "surprised by this and * * * didn't even have a chance to defend herself."

II. Assignments of Error

I. The trial court erred in sentencing appellant to consecutive sentences.

II. Appellant's change of plea was not knowingly and intelligently made.

¹Brown rejected the state's plea offer, which was a plea to all counts and specifications in exchange for the state recommending a sentence of life with the possibility of parole in 40 years.

III. Law and Analysis

{¶8} In his first assignment of error, Brown contends that the trial court erred in sentencing him to consecutive terms because it only “substantially complied” with the required statutory findings for imposing such a sentence.

{¶9} A trial court can order an offender to serve consecutive multiple prison terms for convictions on multiple offenses under R.C. 2929.14(C)(4). Under the statute, consecutive sentences can be imposed if the court finds that (1) a consecutive sentence is necessary to protect the public from future crime or to punish the offender and (2) that consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public. In addition to these two factors, the court must find any one 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.

{¶10} In imposing consecutive terms, the court made the following findings at the sentencing hearing:

The terms imposed in Case 573056 will run consecutive to the term imposed in Case 576253, and that is because consecutive terms are necessary to protect the public from future crime and to punish the offender and * * * consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger that the offender poses to the public and the offender’s history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

(Tr. 99.) On this record, the trial court more than substantially complied in making the required statutory findings; it strictly complied.

{¶11} Further, we are not persuaded by Brown’s contention that the record did not support the findings. For example, Brown contends that the record did not demonstrate that he committed one or more of the multiple offenses while he was awaiting trial or sentencing, was under a sanction imposed pursuant to R.C. 2929.16, 2929.17, or 2929.18, or was under postrelease control for a prior offense.

{¶12} Such a finding would have been one of the possible findings under R.C. 2929.14(C)(4)(a)-(c). The trial court did not make that finding; rather, it made the finding under subsection (c), that Brown’s history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. But nonetheless, had the trial court made the finding, it would have been supported by the record. Specifically, at the plea, which occurred immediately prior to sentencing, Brown admitted that he was on supervision for probation, a community control sanction, parole, or postrelease control at the time he committed at least one of the offenses. *See* tr. 43-44.

{¶13} In short, the record here establishes that Brown has an extensive criminal background, including violent crimes he committed against women. The trial court reasoned that Brown is a “danger to society [and a] very dangerous man.” The record supports that reasoning, and the trial court made the required findings for consecutive sentences.

{¶14} The state requests that we remand for the limited purposes of requiring the trial court to incorporate its findings into the sentencing judgment entries, as required under the Ohio Supreme Court’s recent decision in *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16

N.E.3d 659, which was decided after Brown was sentenced.

{¶15} In *Bonnell*, the court held that trial courts must incorporate their consecutive sentence findings into the sentencing entries. The court noted that if the trial court made the required findings at the sentencing hearing, but failed to incorporate them into the sentencing judgment entry, it was merely a clerical error that could be corrected through a nunc pro tunc entry. *Id.* at ¶ 30.

{¶16} We grant the state's request and remand for the limited purpose of the trial court issuing a nunc pro tunc entry to incorporate its consecutive sentence findings into the sentencing judgment entries.

{¶17} Brown's first assignment of error is overruled.

{¶18} For his second assigned error, Brown contends that his plea was not knowingly and intelligently made because the trial court failed to properly inform him of the maximum penalties he faced. We disagree.

{¶19} Crim.R. 11(C) governs the process by which a trial court must inform a defendant of certain constitutional and nonconstitutional rights before accepting a felony plea of guilty or no contest. The underlying purpose of Crim.R. 11(C) is to convey certain information to a defendant so that he or she can make a voluntary and intelligent decision regarding whether to plead guilty. *State v. Schmick*, 8th Dist. Cuyahoga No. 95210, 2011-Ohio-2263, ¶ 5.

{¶20} To ensure that a defendant enters a plea knowingly, voluntarily, and intelligently, a trial court must engage in an oral dialogue with the defendant in accordance with Crim.R. 11(C)(2). *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). Crim.R. 11(C)(2) requires that a trial court determine from a colloquy with the defendant whether the defendant understands (1) the nature of the charge and maximum penalty, (2) the effect of the guilty plea,

and (3) the constitutional rights waived by a guilty plea.

{¶21} Brown contends that the trial court's advisement of the "potential" penalties for pleading guilty to aggravated murder did not inform him that he faced a mandatory minimum sentence for that charge. We are not persuaded.

{¶22} First, the "potential" penalties advisement must be read in context. The court advised Brown as follows:

The potential penalties to pleading guilty to * * * the underlying offense of aggravated murder, is life imprisonment with the possibility of parole after 20 or 25 or 30 years or life imprisonment without the possibility of parole.

{¶23} We find that this advisement more than adequately informed Brown that he faced a mandatory minimum sentence for aggravated murder. The mandatory minimum sentence, life imprisonment with the possibility of parole after 20 years, was one of the four potential penalties for aggravated murder. Thus, Brown's contention that the "record reflects nothing in regard to the minimum periods of prison required before consideration for parole" is simply wrong.

{¶24} Second, the record demonstrates that Brown understood the penalties he faced. Several times throughout the plea hearing Brown indicated that he understood what penalties he was facing in general, but for our purposes here, specifically for aggravated murder. His counsel also informed the court that they had explained the penalties to Brown.

{¶25} Furthermore, at sentencing, counsel repeatedly stated that in entering his plea, Brown knew that he was pleading to a life sentence, in which his first possibility for eligibility for parole would be in 20 years, if the court so sentenced him. In fact, the defense's strategy was to appeal to the court that since Brown had accepted responsibility for each and every count and specification in all three cases, sparing the victims (in particular the family of the aggravated murder victim) the toll of a trial, the court would sentence him to life with the possibility of

parole after 20 years.

{¶26} Simply, Brown took a gamble, and lost. He then had a change of heart. But it is well-established that a mere change of heart is an insufficient justification for withdrawing a plea. *State v. Meade*, 8th Dist. Cuyahoga No. 50678, 1986 Ohio App. LEXIS 6908, *3 (May 22, 1986).

{¶27} In light of the above, the second assignment of error is overruled.

{¶28} Judgment affirmed and case remanded.

It is ordered that appellee recover from 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 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., JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
MARY J. BOYLE, J., CONCUR