

[Cite as *State v. Walker*, 2016-Ohio-395.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102960

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DOMINIK M. WALKER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-585821-A

BEFORE: Stewart, J., Jones, A.J., and Blackmon, J.

RELEASED AND JOURNALIZED: February 4, 2016

ATTORNEY FOR APPELLANT

Ronald A. Skingle
6505 Rockside Road, Suite 320
Independence, OH 44131

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

Mahmoud S. Awadallah
Assistant County Prosecutor
Justice Center, 9th Floor
1200 Ontario Street
Cleveland, OH 44113

MELODY J. STEWART, J.:

{¶1} Defendant-appellant Dominik M. Walker pleaded guilty to involuntary manslaughter and attempted corruption of another with drugs. The court sentenced Walker to 36 months in prison on the involuntary manslaughter charge to be served consecutive to 24 months on the attempted corruption charge. On appeal, Walker argues that the order of consecutive sentences was contrary to law. We disagree and affirm.

{¶2} In Ohio, there is a general presumption that a prison term imposed on a single charge will be served concurrent with any other prison term(s) imposed. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 23. A trial court may overcome the presumption of concurrent sentences by complying with the dictates of R.C. 2929.14(C)(4), which require the court to make specific factual findings at the sentencing hearing and incorporate those findings in its journal entry. *See id.* at ¶ 23, ¶ 28. Pursuant to the statute, the court must find that consecutive sentences are necessary to protect the public from future crime or to punish the offender, 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 any one of the following: 1) that the offender committed the offenses while awaiting trial or sentencing, was under sanctions, or was on postrelease control; 2) that at least two of the offenses were committed as part of one or more courses of conduct and that the harm caused was so great or unusual that no single prison sentence would adequately reflect the seriousness of the offender's conduct; or 3) the offender's history of criminal conduct shows that consecutive sentences are necessary to protect the public from future crime by the offender. R.C. 2929.14(C)(4).

{¶3} If the trial court fails to make the required findings but nevertheless imposes consecutive sentences, then the order is contrary to law and must be reversed. *See* R.C. 2953.08(G)(2)(b); *State v. Venes*, 2013-Ohio-1891, 992 N.E.2d 453, ¶ 12 (8th Dist.). Similarly, reversal is required if the record clearly and convincingly does not support the order. *See* R.C. 2953.08(G)(2)(a).

{¶4} Walker concedes that the trial court made the R.C. 2929.14(C)(4) findings on the record and included the findings in the journal entry. Nevertheless, Walker argues that the record does not support consecutive sentences. He asserts that the record, as it stands, would not be sufficient to support the imposition of consecutive sentences under the former consecutive sentencing statute, R.C. 2929.14(E)(4). Urging this court to look to prior case law interpreting the former statute for guidance on how to interpret R.C. 2929.14(C)(4), Walker cites to *State v. Kase*, 11th Dist. Ashtabula No. 97-A-0083, 1998 Ohio App. LEXIS 4498 (Sept. 25, 1998); *State v. Glass*, 3d Dist. Allen No. 1-98-81, 1999 Ohio App. LEXIS 3086 (June 29, 1999); and *State v. Albert*, 124 Ohio App.3d 225, 705 N.E.2d 1274 (8th Dist.1997).

{¶5} We do not find the above cases germane to the present appeal. The cases fail to explain what kind of record is necessary to support an order of consecutive sentences; rather, those cases simply reiterate the outdated requirement that in addition to making the statutory findings for consecutive sentences, courts must also state their reasons for making those findings pursuant to R.C. 2929.19(B)(2)(c). However, through a series of statutory amendments and Ohio Supreme Court cases, courts are no longer required to state their reasons for the statutory findings. *See Bonnell*, 140 Ohio St. 3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 2-4. Appellate review of the sentence is now limited to determining only whether the court made the R.C.

2929.14(C)(4) findings and whether the record clearly and convincingly does not support the order of consecutive sentences.

{¶6} Here, the record shows that Walker sold heroin twice to an individual who sold the drug to the victim. The victim then overdosed and died. When Walker made the sales, he was awaiting trial on another case, and had a previous history of committing drug-related crimes. Despite these facts, Walker contends that consecutive sentences are not proportionate to the harm caused or the seriousness of his conduct because the facts establish that he only indirectly sold heroin to the victim and that he knew nothing about the victim's drug habit. While we agree that the limited facts in the record establish that Walker did not interact personally with the victim, the facts nevertheless show that the victim died as a result of Walker's actions. Accordingly, we disagree with Walker's assertion that the harm caused did not support consecutive sentences. Additionally, as the trial court noted at sentencing, Walker is an experienced drug dealer and a user of drugs himself; therefore, at the time of the sale, Walker likely either knew, or should have known the very serious and potentially life threatening consequences that his conduct could have on others. On these facts, we cannot find that the record clearly and convincingly does not support the order of consecutive sentences. *Compare Bonnell* at ¶ 29 (explaining that if 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.").

{¶7} Judgment affirmed.

It is ordered that appellee recover of said 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.

MELODY J. STEWART, JUDGE

LARRY A. JONES, SR., A.J., and
PATRICIA ANN BLACKMON, J., CONCUR