

[Cite as *State v. Abrams*, 2016-Ohio-4570.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103786

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TRAYVON ABRAMS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-595318-F

BEFORE: E.T. Gallagher, J., E.A. Gallagher, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: June 23, 2016

ATTORNEY FOR APPELLANT

James J. Hofelich
614 W. Superior Avenue
Suite 1310
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

BY: Ryan J. Bokoch
Assistant Prosecuting Attorney
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, Trayvon Abrams (“Abrams”), appeals his sentence and raises the following assignment of error:

1. The twenty-eight year prison sentence rendered by the trial court is contrary to law and not supported by the record.

{¶2} We find no merit to the appeal and affirm the trial court’s judgment.

I. Facts and Procedural History

{¶3} Abrams and six codefendants were charged in a 105-count indictment following a series of armed robberies in Parma and Cleveland, Ohio. Abrams pleaded guilty to one count of engaging in a pattern of corrupt activity, 18 counts of aggravated robbery, 54 counts of kidnapping, two counts of receiving stolen property, one count of improper handling of firearms in a motor vehicle, one count of carrying a concealed weapon, and one count of possession of criminal tools. Abrams also pleaded guilty to the three-year firearm specifications attendant to all the aggravated robbery and kidnapping charges and the one count of engaging in a pattern of corrupt activity.

{¶4} Prior to sentencing, the parties agreed that all but four of the kidnapping counts merged into the aggravated robbery convictions for sentencing purposes. The court sentenced Abrams to two, three-year prison terms on two of the firearm specifications to be served consecutive to each other and concurrently with the three-year terms on the remaining gun specifications, for a total of six years on the gun specifications. The court sentenced Abrams to seven years on two aggravated robbery counts and eight years on a third aggravated robbery count, to be served consecutive to one another but concurrent with the seven-year prison terms on each of the remaining aggravated robbery and kidnapping convictions, for a total 22-year prison term.

{¶5} The court imposed 18-month prison terms on the receiving stolen property, improper handling of firearms in a motor vehicle, and carrying a concealed weapon convictions, to be served concurrently with one another and with the aggregate 22-year prison term on the aggravated robbery and kidnapping convictions. On the possession of criminal tools conviction, the court sentenced Abrams to 12 months in prison to be served concurrently with the other convictions. Finally, the court ordered the six-year term on the gun specifications to be served consecutive to the 22-year sentence on the offenses for an aggregate 28-year prison term of imprisonment. Abrams now appeals his sentence.

II. Law and Analysis

{¶6} In his sole assignment of error, Abrams argues the 28-year prison term is contrary to law and not supported by the record.

{¶7} R.C. 2953.08(G)(2) provides that an appellate court may reverse, vacate, or modify a consecutive sentence if (1) the sentence is “otherwise contrary to law” or (2) the appellate court, upon its review, clearly and convincingly finds that the record does not support the sentencing court’s findings under R.C. 2929.14(C)(4).

{¶8} A sentence is contrary to law if (1) the sentence falls outside the statutory range for the particular degree of offense, or (2) the trial court failed to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12. *State v. Caraballo*, 8th Dist. Cuyahoga No. 100354, 2014-Ohio-2641, ¶ 6-7.

{¶9} Courts have “full discretion” to impose a sentence within the applicable statutory range. *State v. Collier*, 8th Dist. Cuyahoga No. 95572, 2011-Ohio-2791, ¶ 15, citing *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph seven of the syllabus. Therefore, a sentence imposed within the statutory range is “presumptively valid” if the court considered applicable sentencing factors. *Id.*

{¶10} All of Abrams’s aggravated robbery and kidnapping convictions were first-degree felonies. R.C. 2929.14(A)(1) governs basic prison terms for first-degree felonies and states that “[f]or a felony of the first-degree, the prison term shall be three, four, five, six, seven, eight, nine, ten, or eleven years.” The trial court sentenced Abrams to seven years on all but one of the aggravated robbery convictions and all of the kidnapping convictions. The court sentenced Abrams to eight years on the remaining one count of aggravated robbery. Thus, all the individual prison terms on Abrams’s aggravated robbery and kidnapping convictions were within the statutory range for first-degree felonies.

{¶11} The trial court sentenced Abrams to 18 months on each of Abrams’s receiving stolen property, improper handling of a firearm in a motor vehicle, and carrying a concealed weapon convictions. The two receiving stolen property counts involved Abrams’s receipt of two separate motor vehicles. R.C. 2913.51(C) provides that receiving a motor vehicle as a stolen property is a fourth-degree felony. Abrams’s improper handling of a firearm in a motor vehicle and carrying a concealed weapon convictions were also fourth-degree felonies. R.C. 2929.14(A)(4) states that prison terms for fourth-degree felonies “shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.” Therefore, Abrams’s 18-month prison terms on each of his fourth-degree felonies were also within the statutory range.

{¶12} The court sentenced Abrams to 12 months on his possession of criminal tools conviction, which was a fifth-degree felony. R.C. 2929.14(A)(5) provides that “[f]or a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.” Therefore, all of Abrams’s prison sentences were within the statutory range.

{¶13} Although the trial court must consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors listed in R.C. 2929.12, the

sentencing court is not required to “state on the record that it considered the statutory criteria or discussed them.” *State v. Pickens*, 8th Dist. Cuyahoga No. 89658, 2008-Ohio-1407, ¶ 5, quoting *State v. Polick*, 101 Ohio App.3d 428, 655 N.E.2d 820 (4th Dist.1995).

{¶14} Nevertheless, the trial court in this case considered all the required factors set forth in R.C. 2929.11 and 2929.12 on the record before imposing Abrams’s sentence. The court stated, in relevant part:

So the Court, having considered all the required factors under 2929.11, .12 and .13, at this time finds the defendant is not amenable to a community control sanction, and that prison is, in fact, warranted based on the series of events that have occurred here and for which the defendant pleaded guilty to.

(Tr. 91.) A trial court’s statement that it discussed the required statutory factors, without more, is sufficient to fulfill its obligations under the sentencing statutes. *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 18. The record shows that (1) the court complied with the sentencing requirements set forth in R.C. 2929.11 and 2929.12, and (2) all Abrams’s sentences were within the statutory range. Thus, all of Abrams’s individual sentences were lawful.

{¶15} However, Abrams also contends his consecutive sentence is contrary to law because the court failed to make the necessary findings required by R.C. 2929.14(C) for the imposition of consecutive sentences.

{¶16} There is a presumption in Ohio that prison sentences should be served concurrently, unless the trial court makes the findings outlined in R.C. 2929.14(C)(4) to justify the imposition of consecutive sentences. R.C. 2929.41(A). Before imposing consecutive sentences, R.C. 2929.14(C)(4) requires the court to find that (1) consecutive sentences are 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 one of the three findings set forth in R.C. 2929.14(C)(4)(a)-(c) applies. As relevant here, R.C. 2929.14(C)(4)(b) provides as a finding that the court consider whether

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.

{¶17} In *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29, the Ohio Supreme Court held that

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.

The failure to make the findings, however, is “contrary to law.” *Id.* at ¶ 37.

{¶18} With respect to consecutive sentences, the trial court made the following findings:

Consecutive sentences 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 this offender poses to the public, and I also find additionally that at least two of the multiple offenses were committed as part of one or more courses of conduct, and that 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 * * * adequately reflects the seriousness of this offender's conduct.

In this particular case this defendant actively participated as the main — one of the main participants, literally holding the gun in virtually every one of the eighteen aggravated robberies, and not just holding the gun, holding the gun to people's heads, necks, and bodies.

This defendant committed eighteen aggravated robberies over the course of a month. Again, the public must be protected from future crime committed by this defendant and that a single prison term is not sufficient to protect the public from this defendant's future crime. It is also insufficient to punish this defendant for his crime spree.

With that being said, I'm also going to note that consecutive sentences are not disproportionate to the seriousness of this offender's conduct, and in this particular case, this is as serious as it gets.

(Tr. 94-95.)

{¶19} The trial court further observed that Abrams targeted commercial businesses during regular business hours where he brandished his firearm and terrorized 60 separate victims, including several children who were present at a store or restaurant with their parents. (Tr. 96.)

The court continued:

T[here] were sixty separate victims, and these were amongst the most serious of offenses that can be committed in our society; not to mention the fact that, for the record, the victim impact statements * * * talked about the harm that was caused mentally to each of the people involved in the robberies, to the point where, in some cases, their entire lives are changed and they are debilitated from participating in society as victims.

Thus, the record reflects the court made all the findings required by R.C. 2929.14(C) for the imposition of consecutive sentences.

{¶20} Nevertheless, Abrams argues the trial court erroneously failed to consider mitigating factors that weigh in favor of concurrent sentences. However, as previously stated, there is a presumption in favor of concurrent sentences unless the court makes the findings required by R.C. 2929.14(C), which it did in this case.

{¶21} Moreover, despite Abrams's argument to the contrary, the court acknowledged the existence of mitigating factors, but found they did not outweigh the factors in favor of consecutive sentences. The court commented on the kind letters submitted by Abrams's family members on his behalf and the fact that he had no prior felony record. (Tr. 84.) But the court found that Abrams was the primary aggressor in the aggravated robberies. The court explained:

So you're the one putting the gun in peoples' faces, you're not just the driver, you're not the lookout, you're the coordinator. You're actually going in and putting a gun in peoples' faces.

Many of the victims pointed out * * * you terrorized them. There were sixty people total involved in this. Sixty.

(Tr. 85.)

{¶22} Thus, the court concluded that despite Abrams's lack of a criminal record, the terror he caused to the multitude of victims during 18 separate aggravated robberies was sufficient to justify his consecutive sentence. Therefore, the sole assignment of error is overruled.

III. Conclusion

{¶23} Abrams's 28-year consecutive sentence was not contrary to law where it was within the statutory range and the court considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12. Nor were the consecutive sentences contrary to law where the trial court made all the findings required by R.C. 2929.14(C) for the imposition of consecutive sentences.

{¶24} Judgment affirmed.

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. 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.

EILEEN T. GALLAGHER, JUDGE

EILEEN A. GALLAGHER, P.J., and
SEAN C. GALLAGHER, J., CONCUR