

[Cite as *State v. McCoy*, 2016-Ohio-5240.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103671

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

WILLIE MCCOY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-13-578027-C and CR-14-583624-A

BEFORE: E.T. Gallagher, J., Jones, A.J., and Keough, J.

RELEASED AND JOURNALIZED: August 4, 2016

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EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, Willie McCoy (“McCoy”), appeals from his sentence and raises the following assignment of error for review:

1. The trial court committed error when it imposed consecutive sentences without making one of the necessary findings and because the record does not support the findings the court did make.

{¶2} After careful review of the record and relevant case law, we affirm McCoy’s sentence.

I. Procedural History

{¶3} In October 2013, McCoy was named in a one-count indictment in Cuyahoga C.P. No. CR-13-578027-C, charging him with aggravated robbery, with one- and three-year firearm specifications.

{¶4} In March 2014, McCoy was named in an eight-count indictment in Cuyahoga C.P. No. CR-14-583624-A, charging him with two counts of attempted murder, two counts of aggravated robbery, and single counts of felonious assault, improper handling of a firearm in a motor vehicle, discharge of a firearm on or near a prohibited premises, and petty theft. The attempted murder, aggravated robbery, and felonious assault counts each contained one- and three-year firearm specifications.

{¶5} In September 2015, McCoy pleaded guilty in Case No. CR-13-578027-C to an amended count of robbery, a felony of the second degree, and the accompanying three-year firearm specification. The remaining one-year firearm specification was

nolled. In Case No. CR-14-583624-A, McCoy pleaded guilty to a single count of attempted robbery, a felony of the fourth degree, as amended in Count 4. The remaining counts and specifications were nolled.

{¶6} At sentencing, the trial court imposed an eight-year prison term for the robbery conviction in Case No. CR-13-578027-C, to run consecutive to the three-year firearm specification. In addition, the trial court imposed a 12-month prison term for the attempted robbery conviction in Case No. CR-14-583624-A. The court ordered all sentences to run consecutively to each other for a total of 12 years in prison. The court further ordered McCoy's 12-year prison term to run consecutive to an eight-year prison term previously imposed in an unrelated case in Medina County.

{¶7} McCoy now appeals from his sentence.

II. Law and Analysis

{¶8} In his sole assignment of error, McCoy argues the trial court erred in imposing consecutive sentences without making the findings required by R.C. 2929.14(C)(4).

{¶9} R.C. 2953.08(G)(2) provides that when reviewing felony sentences, the appellate court may overturn the imposition of consecutive sentences where the reviewing court "clearly and convincingly" finds 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." Our review of a claim that the record does not support the trial court's findings under R.C. 2929.14(C)(4) is "extremely deferential." *State v. Balbi*, 8th Dist.

Cuyahoga No. 102321, 2015-Ohio-4075, ¶ 5, quoting *State v. Venes*, 2013-Ohio-1891, 992 N.E.2d 453, ¶ 21 (8th Dist.).

{¶10} In Ohio, there is a presumption that prison sentences should be served concurrently, unless the trial court makes the findings outlined in R.C. 2929.14(C)(4) to justify consecutive service of the prison terms. *State v. Cox*, 8th Dist. Cuyahoga No. 102629, 2016-Ohio-20, ¶ 3; R.C. 2929.41(A). R.C. 2929.14(C)(4) provides that in order to impose consecutive sentences, the trial court must find that consecutive sentences are necessary to protect the public from future crime or to punish the offender, that such sentences would not be disproportionate to the seriousness of the conduct and to the danger the offender poses to the public, and that one of the following applies:

(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 postrelease 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.

State v. Bonnell, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 20-22.

{¶11} Compliance with R.C. 2929.14(C)(4) requires the trial court to make the statutory findings at the sentencing hearing, "and by doing so it affords notice to the offender and to defense counsel." *Bonnell* at ¶ 29. "Findings," for these purposes,

means that “the [trial] court must note that it engaged in the analysis’ and that it ‘has considered the statutory criteria and specifie[d] which of the given bases warrants its decision.” *Id.* at ¶ 26, quoting *State v. Edmonson*, 86 Ohio St.3d 324, 326, 715 N.E.2d 131 (1999). Further, the reviewing court must be able to determine that the record contains evidence to support the findings. *State v. Davis*, 8th Dist. Cuyahoga No. 102639, 2015-Ohio-4501, ¶ 21, citing *Bonnell* at ¶ 29.

{¶12} A trial court is not, however, required to state its reasons to support its findings, nor is it required to give a rote recitation of the statutory language, “provided that the necessary findings can be found in the record and are incorporated in the sentencing entry.” *Bonnell* at ¶ 37. The failure to make consecutive sentence findings is contrary to law. *Balbi*, 8th Dist. Cuyahoga No. 102321, 2015-Ohio-4075, ¶ 4.

{¶13} In this case, the trial court stated the following when ordering McCoy’s sentences to be served consecutively:

We have two circumstances here where firearms were used, one of them directly with the defendant in an armed robbery that took place in a parking lot in a public shopping center. People go to these places and expect to be safe there, not to be held up at gunpoint and robbed.

I’ve reviewed the purposes and principles of felony sentencing. I’ve reviewed the serious and recidivism factors. Clearly regardless of mandatory time or not, this defendant deserves to have prison for this matter. The community deserves to have individuals like this taken off the street.

And frankly, I see no reason to even consider anything less than a very serious sentence in this matter.

* * *

The Court does understand that * * * concurrent sentences are preferred, however, with discretion the Court can impose consecutive sentences, and in this case I do believe that based upon the defendant's actions, three separate cases where firearms were utilized or brandished, individuals being robbed in, like I said, at shopping centers, I don't believe that any punishment would be disproportionate, and I believe it's necessary to protect and punish.

And the Court finds the harm was so great or unusual that a single term in this matter does not adequately reflect the seriousness of the conduct.

{¶14} On this record, we find the trial court satisfied its statutory obligations for imposing consecutive sentences under R.C. 2929.14(C)(4) and incorporated its findings into the sentencing entry. The trial court carefully weighed the need to punish the great and unusual nature of McCoy's repeated course of conduct, involving "three separate cases where firearms were utilized or brandished," and concluded that a consecutive sentence was not disproportionate to the seriousness of McCoy's conduct and the danger he posed to the public. *See State v. Crawley*, 8th Dist. Cuyahoga No. 102781, 2015-Ohio-5150, ¶ 12-15 (rejecting defendant's argument that the trial court failed to make the necessary R.C. 2929.14(C)(4) findings where it "merely stated that the sentences were 'not disproportionate.'"). Further, we cannot "clearly and convincingly" find that the record does not support the court's findings. Accordingly, McCoy's sentence is not contrary to law.

{¶15} McCoy's sole assignment of error is overruled.

{¶16} 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.

EILEEN T. GALLAGHER, JUDGE

LARRY A. JONES, SR., A.J., and
KATHLEEN ANN KEOUGH, J., CONCUR