

[Cite as *State v. Campbell*, 2016-Ohio-5416.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103851

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

SCOTT A. CAMPBELL

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED; REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-576817-A

BEFORE: Kilbane, J., E.A. Gallagher, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: August 18, 2016

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MARY EILEEN KILBANE, J.:

{¶1} Defendant-appellant, Scott Campbell (“Campbell”), appeals from his sentence following a guilty plea to murder, kidnapping, aggravated robbery, and having a weapon while under disability. For the reasons set forth below, we affirm his sentence, but remand the matter for the issuance of a nunc pro tunc entry incorporating the trial court’s consecutive-sentence findings into the sentencing journal entry.

{¶2} In August 2013, Campbell was charged in a 13-count indictment involving the death of his friend, the kidnapping of Campbell’s son, and the robbery of his son’s roommate. He was charged with aggravated murder, murder, felonious assault, kidnapping, aggravated robbery, tampering with evidence, and having a weapon while under disability. The counts carried one- and three-year firearm specifications and forfeiture, repeat violent offender, and notice of prior conviction specifications. On the day of trial, Campbell entered into a plea agreement with the state. Campbell pled guilty to the following amended counts: murder, with a three-year firearm specification and the forfeiture of a gun (Count 1), kidnapping (Count 5), aggravated robbery (Count 10), and having a weapon while under disability (Count 13). The remaining counts and specifications were nolle.

{¶3} In February 2014, the matter proceeded to sentencing. The trial court sentenced Campbell to 15 years to life for murder with the three-year firearm specification to be served prior to the start of the sentence. The court also sentenced Campbell to three years in prison on the kidnapping charge, three years on the aggravated

robbery charge, and one year on the having a weapon while under disability charge. The court ordered that all counts be served consecutively, for a total of 25 years to life in prison.

{¶4} Campbell now brings this delayed appeal, in which he asserts the following two assignments of error for review:

Assignment of Error One

The trial court erred in imposing consecutive sentences without making the findings required by R.C. 2929.14(C)(4).

Assignment of Error Two

The trial court erred by failing to include any findings to support the imposition of consecutive sentences made on the record into its February 20, 2014 journal entry.

{¶5} In the first assignment of error, Campbell contends the trial court did not make the required findings for consecutive sentences under R.C. 2929.14(C)(4). When reviewing felony sentences, this court may increase, reduce, or modify a sentence, or it may vacate and remand the matter for resentencing, only if we clearly and convincingly find either 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.” R.C. 2953.08(G)(2).

{¶6} R.C. 2929.14(C)(4) requires trial courts to engage in a three-step analysis when imposing consecutive sentences. First, the trial court must find that “consecutive service is necessary to protect the public from future crime or to punish the offender.” *Id.* Next, the trial court must find that “consecutive sentences are not disproportionate to

the seriousness of the offender's conduct and to the danger the offender poses to the public.” *Id.* Finally, the trial court must find that at least one of the following applies: (1) the offender committed one or more of the multiple offenses while awaiting trial or sentencing, while under a sanction imposed under R.C. 2929.16, 2929.17, or 2929.18, or while under postrelease control for a prior offense; (2) 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 offenses 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; or (3) the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. *Id.*

{¶7} In addition to making the statutory findings required for consecutive sentences at the sentencing hearing, the trial court is also required to incorporate its findings into its sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus. The court in *Bonnell* found 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.” *Id.* at ¶ 29. The court rejected the claim that a trial court must give a “talismanic incantation of the words of the statute” when imposing consecutive sentences. *Id.* at ¶ 37.

{¶8} Here, when imposing the consecutive sentence, the trial court stated:

The overriding purpose of sentencing in any case, and in this case in particular, is to protect the public from future crime, to punish the offender using the minimum sanctions imposed by the Court to accomplish that in light of the case that's pending before me, and in light of the charges that I outlined to you at the beginning, and I have to follow the principles of the need for deterrence, incapacitation, sentencing to prison, in fact, rehabilitation, restitution, and the factors that I have to consider are essentially four: Was the defendant's, was the offender, was Mr. Campbell's conduct here more serious? And we're dealing with a murder charge and related conduct to that. A kidnapping. An aggravated robbery.

Also, one of the factors is that there is clear evidence that [the victim] suffered physically, psychologically, as a result of those wounds and he succumbed to those wounds days after the events took place.

So those are factors that make the conduct here more serious.

Are there any factors here that make the conduct less serious? And I have to consider those by the statute. And are there substantial grounds that would mitigate this conduct? And the only thing that I've heard here today about that is the relationship among the parties, the relationship of [the victim] and Mr. Campbell, and the nature of that relationship —

* * *

The other two factors that I have to consider is the likelihood of Mr. Campbell reoffending again in the future, and the likelihood of whether or not that's going to happen or not.

I have to take into account the factors of this case as an indicator as to whether or not he's likely to be charged again, or whether or not that's less likely.

I also factor in his extensive criminal record in making that determination.

When you put all of those factors together, then I'm to consider those factors in relationship to the sentence here today, taking into account all of the information that you've provided me by your statements, taking into

account the psychological reports that have been provided to me, and taking into account the crimes that Mr. Campbell has pled guilty to here today.

* * *

What I also have to consider are the other counts involving other individuals, and one of the decisions that I have to make for sentencing, even though he's pled guilty to these charges involving his son and his son's friend, I also have to consider whether or not that conduct merges together into one sentence that I would impose, rather than three possible sentences that would stack on each other.

Defense counsel has mentioned that he considers this to be a single course of conduct, which would lead me to believe that all of these counts should be run together for the purposes of sentencing.

What I have determined here by the evidence presented is that these events are three separate events in the court's view.

* * *

Now, consecutive sentences under the code means that I have to make a certain finding and that means that I have to make a finding that in order to impose consecutive sentences, that it's necessary to punish the offender and/or to protect the public from future crimes and that it's not disproportionate to the defendant's conduct.

Here I find that these are separate acts and that it is necessary to impose separate sentences — these are all very serious acts — and that these events took place at different points and different times and based on the criminal history of Mr. Campbell, which is extensive, involving weapons, involving assaults, that all justifies consecutive sentences concerning these counts and this case.

{¶9} In light of the foregoing, we find that the trial court properly sentenced Campbell to consecutive terms. The trial court considered the sentencing factors along with the statements made at sentencing and Campbell's psychological report. The court found that consecutive sentences are necessary to punish Campbell and that his history of

criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crimes. With respect to the proportionality analysis, the trial court also discussed the seriousness of Campbell's actions against his son and his son's roommate, and his friend, which led to his friend's death.

{¶10} Accordingly, the first assignment of error is overruled.

{¶11} In the second assignment of error, Campbell argues the trial court erred when it did not include any consecutive sentence findings in the sentencing journal entry as required by *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659. The state of Ohio requests that the trial judge "be given the opportunity to correct the sentencing entries through nunc pro tunc entries[.]"

{¶12} We recognize that the sentencing entry in this case was journalized prior to the Ohio Supreme Court's decision in *Bonnell*. However, since the issue is before us on appeal, we remand the matter under *Bonnell* for the trial court to issue a nunc pro tunc sentencing entry incorporating its consecutive sentence findings.

{¶13} The second assignment of error is sustained.

{¶14} Judgment is affirmed. The case is remanded, however, for the limited purpose of having the trial court incorporate, nunc pro tunc, its consecutive-sentence findings in the sentencing entry.

It is ordered that appellee recover of 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.

MARY EILEEN KILBANE, JUDGE

EILEEN A. GALLAGHER, P.J., and
MELODY J. STEWART, J., CONCUR