

[Cite as *State v. Manning*, 2016-Ohio-5841.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103879

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

STERLING MANNING, JR.

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-14-589155-L and CR-15-595260-A

BEFORE: Boyle, J., E.T. Gallagher, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: September 15, 2016

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MARY J. BOYLE, J.:

{¶1} Following a guilty plea in two separate cases, defendant-appellant, Sterling Manning, was convicted on the following counts: engaging in a pattern of corrupt activity, criminal gang activity, felonious assault, and voluntary manslaughter, with all counts carrying a one- and three-year firearm specification. The trial court ultimately sentenced Manning to 31 years in prison. Manning appeals his sentence, raising the following two assignments of error:

I. The trial court erred and abused its discretion when it imposed consecutive sentences on the appellant.

II. The trial court erred and abused its discretion when it denied the defendant's motion to strike the state's belated filing of its sentencing memorandum.

{¶2} Finding no merit to the appeal, we affirm.

A. Consecutive Sentences

{¶3} In his first assignment of error, Manning argues that the trial court failed to make the necessary findings to support the imposition of consecutive sentences. We disagree.

{¶4} R.C. 2953.08(G)(2) states that when reviewing felony sentences, “[t]he appellate court’s standard for review is not whether the sentencing court abused its discretion.” Rather, the statute states that if we “clearly and convincingly” find that (1) “the record does not support the sentencing court’s findings under [R.C. 2929.14(C)(4)],” or that (2) “the sentence is otherwise contrary to law,” then we “may increase, reduce, or

otherwise modify a sentence * * * or [we] may vacate the sentence and remand the matter to the sentencing court for resentencing.”

{¶5} R.C. 2929.14(C)(4) requires trial courts to engage in a three-tier analysis in order to impose 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: (a) the offender committed one or more of the multiple offenses while awaiting trial or sentencing, while under a sanction, or while 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 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 (c) the offender’s history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. *Id.*

{¶6} In each step of this analysis, the statutory language directs that the trial court must “find” the relevant sentencing factors before imposing consecutive sentences. R.C. 2929.14(C)(4). But “a word-for-word recitation of the language” of the statute is not required. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29.

{¶7} Prior to sentencing, the trial court ordered a presentence investigation report (“PSI”). According to the PSI, Manning’s first case arose in connection with his involvement in a gang and their shooting of another juvenile on June 9, 2014. The victim suffered a gunshot wound to his foot. The second case arose from an incident that occurred approximately one month later. Manning shot the victim in the head following a disagreement over what movie to watch. The victim died from the gunshot wound.

{¶8} At the sentencing hearing, the trial court heard from defense counsel who emphasized Manning’s remorse and the tragic circumstances of the death of the victim. Defense counsel further commented on Manning’s unfortunate lifestyle that inevitably led to gang membership. Defense counsel also emphasized Manning’s young age as a mitigating factor.

{¶9} The prosecutor next addressed the court and highlighted Manning’s extensive juvenile record, including several offenses of violence, and the timing of the underlying offenses. Specifically, the prosecutor stated that within 24 hours of Manning’s release from the juvenile detention center, he affiliated with his gang and committed the shooting of another juvenile in the park. Approximately one month later, Manning shot his acquaintance/friend, who was only 15 years old, over a dispute regarding a movie. Based on Manning’s criminal record and the harm to the two victims in these cases, the prosecutor urged the trial court to impose a sentence at the 30-year mark.

{¶10} The deceased victim's parents and sister also spoke at the sentencing hearing. According to the victim's family, Manning was not the victim's friend. The victim's family further detailed their grief and despair over the victim's death. The family urged the trial court to impose the maximum sentence.

{¶11} Manning's uncle, aunt, and mother spoke on his behalf, pleading with the court to have mercy on Manning, who had a kind heart but made some mistakes. They expressed their sorrow for the victim's family but urged the court to give Manning a second chance.

{¶12} Manning addressed the court and expressed his remorse. He stated that he did not intend to harm the now-deceased victim and acknowledged that he deserved to be punished. Manning's defense counsel also addressed the court again and asked that the court "have some forgiveness," indicating that "this is a 17 year old who made some very bad decisions."

{¶13} After considering the entire record, including the oral statements at the sentencing hearing and the PSI, as well as the sentencing purposes in R.C. 2929.11 and the guidelines contained in R.C. 2929.12, the trial court stated that a prison term was necessary. The trial court commented on the fact that Manning was a great individual to his family (based on the numerous letters that were received and the statements made at sentencing) but presented himself much differently "out on the street" as a "tough guy that carries a gun that's not afraid to use the gun." The trial court then stated the number of years that it was imposing on each count and indicated that the sentences would run

consecutively. In support of consecutive sentences, the trial court stated the following:

The court also finds that consecutive sentences are necessary to protect the public from future crimes or to punish the offender, and that consecutive sentences are not disproportionate to the seriousness of the defendant's conduct and to the danger the defendant poses to the public.

I also find that at least two of these offenses were committed as part of or 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 as part of any of the course of conduct quality reflects the seriousness of the offender's conduct.

Now, while the defendant was only 17 at the time that these crimes occurred, the court is mindful that he did have a number of juvenile cases that were filed against him as well as having been placed in a juvenile jail, for lack of a better term.

At the time these offenses occurred, it is also my understanding that you were on somewhat of a parole to those charges and the court finds that you committed one or more of these offenses while you were under some sort of post-release control for your juvenile offense.

* * *

I understand that counsel on one side wanted 30 years, another side wanted anywhere from 23 to 30. I think it's very important that each victim in a case like this can realize that this court is giving them justice, as well, that enabled them to understand that these were separate crimes that the defendant did.

{¶14} Here, the record clearly indicates that the trial court made the required findings to support the imposition of consecutive sentences. We further note that the record overwhelmingly supports the trial court's findings. Accordingly, we find no merit to the first assignment of error and overrule it.

B. Sentencing Memorandum

{¶15} In his second assignment of error, Manning argues that the trial court abused

its discretion by refusing to strike the state's sentencing memorandum. Manning contends that the memorandum was filed "untimely" — the evening before the sentencing hearing — and therefore the trial court should have granted his request to strike it. But the record reflects that the trial court did not rely on the memorandum for purposes of determining an appropriate sentence. Specifically, in addressing defense counsel's request to strike the motion, the trial court explained the following:

So there is nothing here that has moved this court one way or the other from my preparation prior to today, that's first of all. Second of all, even if — I don't think this really adds anything for sentencing purposes as far as I'm concerned, so I'm going to deny your motion to strike it on the record or not allow it, and I am going to state on the record that there is nothing in here that would be any surprise to this court or anything new that I don't have in my other documents that we have for this case. The only thing I didn't have any knowledge of was that transcript, but since defendants have admitted that they have this transcript, as well, I don't find it prejudicial, so let's proceed.

{¶16} Moreover, Manning fails to cite any authority in support of his claim that a trial court is required to strike a sentencing memorandum filed the day before sentencing.

See App.R. 16(A)(7). Based on the record before us, we find no prejudicial error by the trial court's decision.

{¶17} The second assignment of error is overruled.

{¶18} 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.

MARY J. BOYLE, JUDGE

EILEEN T. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR