

[Cite as *State v. Smeznik*, 2016-Ohio-709.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 103196 and 103197

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROBERT T. SMEZNIK

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-15-592327-A and CR-15-592495-B

BEFORE: S. Gallagher, J., Jones, A.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: February 25, 2016

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SEAN C. GALLAGHER, J.:

{¶1} Appellant Robert T. Smeznik appeals his sentence in two underlying cases, Cuyahoga C.P. Nos. CR-15-592327-A and CR-15-592495-B. Upon review, we affirm.

{¶2} In January 2015, appellant was indicted in each of the cases. In CR-15-592327, appellant pled guilty to charges of burglary, a felony of the second degree, in violation R.C. 2911.12(A)(2); grand theft, a felony of the fourth degree, in violation of R.C. 2913.02(A)(1); and grand theft, a felony of the third degree, in violation of R.C. 2913.02(A)(1); each including a one-year firearm specification. In CR-15-592495, appellant pled guilty to an amended charge of burglary, a felony of the third degree, in violation of R.C. 2911.12(A)(3); grand theft, a felony of the fourth degree, in violation of R.C. 2913.02(A)(1); and criminal damaging, a misdemeanor of the second degree, in violation of R.C. 2909.06(A)(1).

{¶3} In CR-15-592327, the trial court sentenced appellant to five years in prison — four years on Count 1, 18 months on Count 2, and 36 months on Count 3, with the one-year firearm specification on each count ordered to run prior to and consecutive with the base count. The court also imposed three years of mandatory postrelease control on all counts, ordered the gun specifications to merge, and ordered the terms to run concurrently on all counts. The trial court ordered the sentence to run consecutive to CR-15-592495. The court also ordered restitution in the amount of \$7,600 and ordered appellant to pay court costs.

{¶4} In CR-15-592495, the trial court sentenced appellant to three years in prison — 36 months on Count 1, with three years of mandatory postrelease control; 18 months on Count 2, with three years of discretionary postrelease control; and 60 days on Count 3.

The terms were run concurrently on all counts. The trial court ordered the sentence to run consecutive to CR-15-592327 and also ordered appellant to pay court costs.

{¶5} Appellant raises two assignments of error for our review. Under his first assignment of error, appellant claims the trial court failed to make all the required findings for imposing consecutive sentences.

{¶6} R.C. 2929.14(C)(4) permits the court to order consecutive service of sentences if

[T]he court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and 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 if the court also finds any of the following:

(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.

{¶7} Pursuant to R.C. 2953.08(G)(2), we may modify or vacate a sentence only if we clearly and convincingly find that the record does not support the mandatory sentencing findings, or that the sentence is otherwise contrary to law. A sentence is “contrary to law” if the sentencing court failed to make the findings required to order consecutive service of sentences under R.C. 2929.14(C)(4). *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37. However, “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.

{¶8} Our review in this case reflects that the trial court made the requisite R.C. 2929.14(C) findings for imposing consecutive sentences. The trial court recognized that appellant had a “deplorable” criminal history and a record of violating people, their homes, and their safety. In determining that consecutive sentences were warranted for the two cases, the trial court stated as follows:

I feel that it is absolutely necessary in this matter to give you a consecutive sentence because the harm is so great that no single sentence would adequately punish you or protect the public. * * *

In imposing consecutive sentences I find it is necessary to protect the public and punish you. I find the sentences are not disproportionate to your crimes, and I find that the crimes — the harm was so great or unusual that a single term does not adequately reflect the seriousness of the conduct, and I further find that your criminal history shows that consecutive terms are needed to protect the public.

The trial court then outlined appellant’s criminal history on the record.

{¶9} Our review of the record demonstrates the trial court considered all the statutory requirements and made the required findings for imposing a consecutive sentence. Further, the record contains evidence that supports the trial court’s findings. Both cases involved serious crimes. Appellant committed residential burglaries and stole valuable personal items and keepsakes, including a firearm that was a family heirloom.

{¶10} The trial court also stated the required findings in its judgment entry. Upon our review, we find that the sentence is not contrary to law.

{¶11} Under his second assignment of error, appellant claims the trial court abused its discretion when it imposed court costs. Appellant argues that he was found indigent, sentenced to eight years in prison, and has no foreseeable future ability to pay costs. He claims defense counsel inquired as to costs, so as to move for waiver. The trial court declined to waive costs.

{¶12} “A determination that a defendant is indigent for purposes of appointed counsel does not shield the defendant from paying court costs or a financial sanction[.]” which may be paid over a period of time. *State v. Simpson*, 8th Dist. Cuyahoga No. 101088, 2014-Ohio-4580, ¶ 20. R.C. 2947.23 requires a trial court to assess the costs of prosecution against all convicted defendants, even those who are indigent. *State v. Dean*, Slip Opinion No. 2015-Ohio-4347, ¶ 231. Nevertheless, an indigent defendant may make a motion for the waiver of costs at the time of sentencing and the trial court is permitted to waive the payment of costs if the trial court finds that the defendant is indigent. *Id.* Although a waiver of court costs against an indigent defendant is

permissible, it is not required. *State v. White*, 103 Ohio St.3d 580, 2004-Ohio-5989, 817 N.E.2d 393, ¶ 14.

{¶13} Although the trial court found appellant to be indigent, it acted within its discretion under R.C. 2947.23(A)(1) in imposing court costs regardless of appellant's financial status. Appellant's second assignment of error is overruled.

{¶14} 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.

SEAN C. GALLAGHER, JUDGE

LARRY A. JONES, SR., A.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR