

[Cite as *State v. Jarrell*, 2016-Ohio-930.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102923

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DENNIS JARRELL

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-14-591585-A and CR-14-591712-A

BEFORE: Jones, A.J., McCormack, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: March 10, 2016

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LARRY A. JONES, SR., A.J.:

{¶1} Defendant-appellant Dennis Jarrell appeals from the trial court's imposition of consecutive sentences. We affirm.

{¶2} Jarrell was indicted in two separate criminal cases, which the trial court combined for the purposes of his plea and sentencing. In the first case, Cuyahoga C.P. No. CR-14-591585, Jarrell pled guilty to theft and attempted identity fraud. In that case, Jarrell was at a bowling alley and stole a patron's purse. That same day, he made purchases at several stores and restaurants using credit cards he got from the stolen purse ("bowling alley case").

{¶3} In the second case, Cuyahoga C.P. No. CR-14-591712, which occurred approximately two weeks after the bowling alley case, Jarrell pled guilty to breaking and entering and attempted safecracking. In that case, Jarrell went to a laundromat and inquired of the employee on duty about drop-off laundry service. After Jarrell finished speaking with the employee, the employee went outside to smoke. Jarrell then stole money out of the cash register. The employee saw him stealing the money and confronted him. He gave the money back and fled the scene by car ("laundromat case").

{¶4} After taking Jarrell's pleas on the cases, the trial court ordered a presentence investigation report. After the report was completed, the trial court held a sentencing hearing, at which it sentenced Jarrell to a ten-month sentence in the bowling alley case and a ten-month sentence on the laundromat case. The sentences on the two cases were ordered to be served consecutively, for a total 20-month sentence. Jarrell's sole

assignment of error reads: “The record does not support the findings made under R.C. 2929.14(C)(4).”

{¶5} Before imposing a consecutive sentence, a trial court is required to find that: (1) “consecutive service is 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) 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 post-release 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.

R.C. 2929.14(C)(4).

{¶6} On appeals involving the imposition of consecutive sentences, R.C. 2953.08(G)(2) directs the appellate court “to review the record, including the findings underlying the sentence” and to modify or vacate the sentence “if it clearly and

convincingly finds * * * [t]hat the record does not support the sentencing court’s findings under division * * * (C)(4) of section 2929.14 * * * of the Revised Code * * *” or if the “sentence is otherwise contrary to law.” *See also State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 28. Thus, under R.C. 2953.08(G)(2), an appellate court may increase, reduce, or modify a sentence, or it may vacate the sentence and remand for resentencing, only if it “clearly and convincingly” finds either (1) that the record does not support certain specified findings, or (2) that the sentence imposed is contrary to law.

{¶7} The trial court stated the following in imposing the consecutive sentences:

I find that a consecutive prison sentence is necessary to protect the community and punish you, and it’s not disproportionate. And I also find that the harm is so great or unusual that a single term would not adequately reflect the seriousness of your conduct. And your criminal history shows that a consecutive sentence is necessary to protect the public. And the harm was so great or unusual in that you have two cases pending before this court, plus you have a lengthy criminal record. I find that a consecutive sentence is necessary also because you never appeared to do well on a community control sanction either.

{¶8} Jarrell does not claim that the trial court failed to make the statutory findings under R.C. 2929.14(C)(4); rather, he contends that the record does not support the trial court’s findings. Specifically, he contends that the following mitigated against a consecutive sentence: (1) his significant history of drug abuse and need for treatment; (2) his remorse; (3) the theft in the bowling alley case was not substantial; (4) the theft in the laundromat case was not substantial and he returned the money; and (5) he neither threatened nor caused physical harm to either victim.

{¶9} The trial court considered the above alleged mitigating contentions. In regard to Jarrell’s substance abuse history and treatment opportunities, the court noted the following:

Well, I see back in 2006 he went, he had a TASC¹ evaluation and received drug treatment back then, but then didn’t comply. A capias was issued for him in ‘07, he was arrested in ‘08. And then he continued to pick up numerous offenses. In 2011 he had three separate offenses * * * and then he was sent to prison and then he got out and picked up some more cases, including this.

{¶10} The court listened to Jarrell’s statement of remorse and responded, in part, that his “crimes just continue to get worse.” The court noted that although Jarrell “may have a serious drug problem,” “at some point it’s incumbent upon [him] to address [his] drug issues and not at the time [he is] being sentenced for another crime.”

{¶11} And in regard to the crimes at issue, although the monetary amounts of the thefts may not have been substantial and no one was physically hurt or threatened, the record nonetheless supports the trial court’s finding that the harm was great or unusual. Specifically, the victim in the bowling alley incident was an auxiliary police officer at the Bedford Heights Police Department, and as a result of her purse being stolen, the police department had to “change their whole system” out of concern that police “materials” were taken. And in regard to the laundromat incident, although Jarrell did return the stolen money, the record indicates that when he was initially confronted by the employee, he denied taking any money, and only returned it after the employee insisted that she had

¹Treatment Accountability for Safer Communities.

seen him take the money.

{¶12} Finally, the trial court noted that although Jarrell qualified for placement in a CBCF,² based on his prior history it was concerned about such a placement because “after so many days you’re placed on passes, and you’re not going to be getting intensive drug treatment while you’re there.”

{¶13} In light of the above, the consecutive sentences were not clearly and convincingly unsupported by the record. Jarrell’s sole assignment of error is therefore overruled.

{¶14} Judgment affirmed.

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.

LARRY A. JONES, SR., ADMINISTRATIVE JUDGE

TIM McCORMACK, J., and
ANITA LASTER MAYS, J., CONCUR

²Community Based Correctional Facility.

