

[Cite as *State v. Inman*, 2016-Ohio-936.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 103082,103083,103084,
103085,103086

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

SHELDON RYAN INMAN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART;
VACATED IN PART

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-14-587252-A, CR-14-587253-A,
CR-14-587270-A, CR-14-587408-A, CR-15-593904-A

BEFORE: E.A. Gallagher, P.J., E.T. Gallagher, J., and Blackmon, J.

RELEASED AND JOURNALIZED: March 10, 2016

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EILEEN A. GALLAGHER, P.J.:

{¶1} Defendant-appellant Sheldon Inman appeals his consecutive sentences in the Cuyahoga County Court of Common Pleas. For the following reasons we affirm, in part, and vacate, in part.

Facts and Procedural Background

{¶2} On September 19, 2014 appellant plead guilty to attempted identity fraud, misuse of credit cards, forgery and identity fraud in CR-14-587408; burglary in CR-14-587270; drug possession in CR-14-587253; and disrupting public service and domestic violence in CR-14-587252. The trial court imposed two years of community control sanctions on all counts.

{¶3} On March 25, 2015, appellant plead guilty to escape, attempted burglary and tampering with records in CR-15-593904. Appellant admitted to being in violation of his community control sanction sentences in the above cases. At sentencing the trial court imposed the following prison terms: one year for each count of attempted identity fraud, misuse of credit cards, forgery and identity fraud in CR-14-587408; two years for burglary and one year for theft in CR-14-587270;¹ one year for drug possession in CR-14-587253; one year for disrupting public service and six months for domestic violence in CR-14-587252; and one year for escape and two years for both the attempted burglary and tampering with records counts in CR-15-593904.

¹As addressed in the second assignment of error, the state concedes that the trial court erroneously sentenced appellant on the theft count in CR-14-587270 despite that count being nolleed at the time of appellant's plea.

{¶4} With the exception of CR-15-593904, the trial court ordered the counts in each individual case to be served concurrent to each other. In CR-15-593904 the trial court ordered the two year prison terms for attempted burglary and tampering with records to be served concurrent to each other but consecutive to the one year prison term for escape. Finally, the trial court ordered the sentences in each of the five cases to be served consecutive to one another for a cumulative prison term of eight years.

Law and Analysis

I. Consecutive Sentences

{¶5} Appellant argues in his first assignment of error that the trial court erred in imposing consecutive sentences.

{¶6} R.C. 2929.14(C)(4) requires a trial court to engage in a three-step analysis before it imposes consecutive sentences. First, the court must find that “consecutive service is necessary to protect the public from future crime or to punish the offender.” *Id.* Second, 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.* Third, 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.

{¶7} Inman concedes that the trial court made the necessary findings pursuant to R.C. 2929.14(C)(4) in ordering consecutive sentences. Inman's sole argument on appeal is that the record does not support the findings and the imposition of consecutive sentences.

{¶8} R.C. 2953.08(G)(2) makes it clear that, if the court has properly made the required findings in order to impose consecutive sentences, we must affirm those sentences unless we "clearly and convincingly" find "[t]hat the record does not support the court's findings[.]" *Id.*; *State v. Carson*, 8th Dist. Cuyahoga No. 102424, 2015-Ohio-4183, ¶ 2. In *State v. Venes*, 2013-Ohio-1891, 992 N.E.2d 453 (8th Dist.), we noted:

It is also important to understand that the clear and convincing standard used by R.C. 2953.08(G)(2) is written in the negative. It does not say that the trial judge must have clear and convincing evidence to support its findings. Instead, it is the court of appeals that must clearly and convincingly find that the record does not support the court's findings. In

other words, the restriction is on the appellate court, not the trial judge. This is an extremely deferential standard of review.

Id. at ¶ 20.

{¶9} Inman argues that the trial court’s imposition of consecutive sentences was in excess of what was necessary to incapacitate him, deter him from future crime and rehabilitate him. Inman further argues that the harm in these cases was not so great that concurrent terms would not adequately reflect the seriousness of the conduct involved. We disagree and find that the record supports the trial court’s consecutive findings.

{¶10} The record supports the trial court’s finding that appellant’s conduct reflected a lengthy course of conduct spanning several years and that the harm caused by his multiple offenses was so great or unusual that no single prison term for any of the offenses would adequately reflect the seriousness of his conduct. The record at sentencing detailed appellant’s drug problems, his repeated victimization of his great grandparents, his inability to respect the law and his numerous failures to take advantage of opportunities to reform.

{¶11} Furthermore, the trial court correctly noted that appellant’s “criminal history is replete with the need to have consecutive sentences in order to protect the public from future crimes * * *.” The presentence investigation report in this case unequivocally confirms this finding. Appellant’s criminal record includes juvenile delinquency adjudications for domestic violence, falsification, failure to comply, obstructing official business, escape, assault, burglary, theft, menacing, criminal damaging, resisting arrest,

criminal trespass and telecommunications harassment. Appellant's record also contain adult criminal convictions for possession of drug paraphernalia, falsification, theft, aggravated theft, misuse of credit cards and attempted grand theft. Appellant compiled this lengthy record by the age of 21. The trial court concluded, "We're beyond treatment options. We're really beyond penalty. I'm onto preservation of society." Appellant replied, "I wish I could defend myself but you're right."

{¶12} We find no error in the trial court's imposition of consecutive sentences.

{¶13} Appellant's first assignment of error is overruled.

II. Erroneous Sentencing

{¶14} In his second assignment of error appellant argues that the trial court erred in imposing a sentence for the theft count in CR-14-587270 despite that count being nolledd at the time of appellant's plea. The state concedes this error.

{¶15} Appellant's second assignment of error is sustained.

{¶16} We affirm the trial court's consecutive sentencing findings but vacate on appellant's one year prison sentence for theft in CR-14-587270 because count two had been been nolledd.

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 A. GALLAGHER, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
PATRICIA A. BLACKMON, J., CONCUR