

[Cite as *State v. Vega*, 2016-Ohio-939.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103142

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JESUS A. VEGA

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-15-592632-A, CR-15-593460-A, and CR-15-594072-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, Jesus Vega, appeals his sentence in three cases. We affirm.

{¶2} In 2015, Vega pleaded guilty to the following: drug possession in Cuyahoga C.P. No. CR-15-592632-A; burglary and criminal damaging in Cuyahoga C.P. No. CR-15-593460-A; and burglary in Cuyahoga C.P. No. CR-15-594072-A. The trial court sentenced him to 12 months in prison for drug possession, 180 days in jail for criminal damaging, and four years in prison for each burglary. The court ordered the sentences be served concurrently, for a total sentence of four years in prison, with credit for time served.

{¶3} Vega filed a timely notice of appeal and raises one assignment of error for our review:

The trial court failed to consider whether its sentence utilized the minimum sanctions necessary to accomplish the goals of sentencing without unnecessarily burdening governmental resources.

{¶4} In his sole assignment of error, Vega claims that the trial court erred by failing to consider imposing the minimum sanction as required by R.C. 2929.11. R.C. 2929.11 provides that a sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing: (1) “to protect the public from future crime by the offender and others,” and (2) “to punish the offender using the minimum sanctions that the court determines accomplish those purposes.” The sentence

imposed also shall be “commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact on the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.” R.C. 2929.11(B). In determining the most effective way to comply with the purposes and principles of sentencing set forth in R.C. 2929.11, the sentencing court must consider the seriousness and recidivism factors set forth in R.C. 2929.12, and additionally may consider any other relevant factors to achieving those purposes and principles of sentencing. R.C. 2929.12(A).

{¶5} The sentencing court, however, is not required to make specific findings of its consideration of these factors. *State v. Carman*, 8th Dist. Cuyahoga No. 99463, 2013-Ohio-4910, ¶ 14; *see also State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 31. “R.C. 2929.11 and 2929.12 are not fact-finding statutes, and consideration of the appropriate factors can be presumed unless the defendant affirmatively shows to the contrary.” *State v. Dodson*, 8th Dist. Cuyahoga No. 100347, 2014-Ohio-2272, ¶ 16, quoting *State v. Jones*, 8th Dist. Cuyahoga No. 99759, 2014-Ohio-29, ¶ 13; *State v. Conner*, 8th Dist. Cuyahoga No. 99557, 2014-Ohio-601, ¶ 119.

{¶6} In this case, the trial court indicated that it had received and reviewed Vega’s presentence investigation report, court psychiatric report, and prior probation reports. In sentencing Vega to four years in prison, the court also considered the following:

The seriousness of the crime and are there any circumstances. And there are factors we have to consider when we think about that. And then we have to think about is there something that makes this matter worse than what we might otherwise expect, or is there something that makes it less

than what we might expect. And then we have to look at each defendant's record to see if that is likely to cause you to draw a new case in the future; based on your record or the conduct in this case, is it such that you're likely to draw a new case in the future. * * * [T]he probation department has evaluated your past and your current situation and they consider you to be a high risk. * * * And I agree with that evaluation given your past and the circumstances of this case. So I have to factor that in as well.

I do note for the record that your first felony was in 2009; your second was in 2012; then you had the felony charge in the case before me that was pled out to a misdemeanor that you're on probation presently; and now you have the three felonies that we're dealing with here today while you're on probation to me.

I have read your presentence investigation report. I do see that you are very dedicated to your family and that you take an active role in the lives of your three children. I also note that you're significantly behind in your child support obligations to them, which tells me that you enjoy spending time with them and they're an important part of your life, but not important enough that you'll support them in the way in which they're expected to be supported. * * *

You were given at least the opportunity to participate in a treatment program when I put you on probation. Your record certainly warranted at that point in time, in 2013, a consideration of confinement; but whatever time that you had spent in jail prior to sentencing, I put you on probation with the hope that you would take that seriously; and that has not worked out. And, again, you were repeating — you're in violation of your probation status with me, although it hadn't been for me. You had tested positive; and you were involved in the conduct that led to this situation here.

With regard to the conduct here, I do think robbing the same — or burglarizing the same person twice within a one- or two-week period, particularly someone in the neighborhood who is either known or generally known among others, is not only extremely difficult for the victim but shows a conscious disregard for the people in your community, the people around you, and clearly the victim in this case * * * . So this is repeated conduct that keeps coming again * * * .

The question is for how long; and the minimum is going to be two years. The question is whether I'm going to run these consecutive to each other or concurrent to each other; and given the entire situation at issue before me,

the three cases and the probation violation, I've decided that the appropriate amount of time in prison is four years.

{¶7} Thus, the trial court considered that Vega was at a high risk for recidivism, had an extensive criminal history, was on probation at the time he committed the current offenses, had a prior chance at probation, repeated the same conduct over and over, and committed his current crimes against a well-known person in the community showing a disregard for the victim and his community.

{¶8} The record reflects that the trial court considered numerous factors on the record in sentencing Vega to prison time, including the minimum sentence. Thus, Vega has failed to show affirmatively that the trial court failed to consider the appropriate statutory factors. Accordingly, his sole assigned error is overruled.

{¶9} 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

