

[Cite as *State v. Holiday*, 2017-Ohio-4306.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105070

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

STACEY HOLIDAY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-603909-A

BEFORE: Keough, A.J., E.A. Gallagher, J., and Boyle, J.

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KATHLEEN ANN KEOUGH, A.J.:

{¶1} Defendant-appellant, Stacey Holiday,¹ appeals his sentence following a guilty plea. For the reasons that follow, we affirm, but remand for the issuance of a nunc pro tunc sentencing journal entry

{¶2} In February 2016, Holiday was named in a nine count indictment charging him with four counts of rape, three counts of kidnapping, and one count each of gross sexual imposition and robbery. Most counts contained sexual motivation and sexually violent predator specifications. These charges stemmed from incidents that occurred in March 2003 and October 2007.

{¶3} Holiday withdrew his not guilty plea and pleaded guilty to two amended charges — one count of sexual battery, a felony of the third degree, stemming from the 2003 incident, and one count of rape, a felony of the first degree, stemming from the 2007 incident. The trial court imposed a total sentence of 13 years — three years on the sexual battery count ordered to run consecutively to ten years on the rape offense.

{¶4} Holiday now appeals, raising as his sole assignment of error that the trial court erred by imposing consecutive sentences when the court's findings, specifically the third finding, were not supported by the record.

{¶5} R.C. 2953.08(G)(2) provides that when reviewing felony sentences, a reviewing court may overturn the imposition of consecutive sentences where the court

¹It appears from the record that Holiday's correct spelling of his last name is "Holliday."

“clearly and convincingly” finds that (1) “the record does not support the sentencing court’s findings under R.C. 2929.14(C)(4),” or (2) “the sentence is otherwise contrary to law.”

{¶6} R.C. 2929.14(C)(4) provides that in order to impose consecutive sentences, the trial court must find that (1) consecutive sentences are necessary to protect the public from future crime or to punish the offender, (2) such sentences would not be disproportionate to the seriousness of the conduct and to the danger the offender poses to the public, and (3) one of the following applies:

(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} Compliance with R.C. 2929.14(C)(4) requires the trial court to make the statutory findings at the sentencing hearing, which means that “‘the [trial] court must note that it engaged in the analysis’ and that it ‘has considered the statutory criteria and specifie[d] which of the given bases warrants its decision.’” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 26, quoting *State v. Edmonson*, 86 Ohio St.3d 324, 326, 715 N.E.2d 131 (1999). Further, the reviewing court must be able to

discern that the record contains evidence to support the findings. *State v. Davis*, 8th Dist. Cuyahoga No. 102639, 2015-Ohio-4501, ¶ 21, citing *Bonnell* at ¶ 29. A trial court is not, however, required to state its reasons to support its findings, nor is it required to give a rote recitation of the statutory language, “provided that the necessary findings can be found in the record and are incorporated in the sentencing entry.” *Bonnell* at ¶ 37.

{¶8} In this case, the trial court made the requisite R.C. 2929.14(C)(4) findings in support of its imposition of consecutive sentences. Additionally, the record supports these findings.

{¶9} In making the first finding, the court expressly it was imposing consecutive sentences “in this case to protect the public from future crime and to punish the offender, Mr. Holiday, for his conduct in this case.” (Tr. 35.)

{¶10} In making the second finding, the court stated “that consecutive sentences are not disproportionate to the seriousness of his conduct and to the danger he poses to the public.” (Tr. 35.)

{¶11} Finally, the trial court satisfied the third finding by stating

based on Mr. Holiday’s criminal history, that his criminal history does indicate that at the time period that all this took place and prior, that consecutive sentences are necessary based upon his criminal history, in order to protect the public from future crime by him. In addition, Mr. Holiday committed one or more of these offenses over a period of time; and that it’s involving same or similar type of conduct; and even though it’s separated by a number of years, it does indicate a pattern of activity. And I think it’s appropriate not to combine those for the purposes of sentencing and make it concurrent. But I do think the harm is so great or so unusual, that it is not appropriate to have a single term, and more appropriate to have a consecutive term based on the course of conduct and the seriousness of his conduct.

(Tr. 35-36.)

{¶12} Accordingly, we conclude that the trial court made the appropriate consecutive sentence findings and engaged in the analysis required under R.C. 2929.14(C)(4). We cannot “clearly and convincingly” find that the record does not support the court’s findings. However, the matter is remanded to the trial court for the court to issue a new sentencing journal entry, nunc pro tunc, to incorporate in the journal entry the statutory findings the trial court actually made at sentencing. *See Bonnell* at syllabus. The sentencing entry should only include statutory findings that were orally made at sentencing. Holiday’s first assignment of error is overruled.

{¶13} Judgment affirmed; case remanded for the issuance of a nunc pro tunc sentencing journal entry.

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.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE

EILEEN A. GALLAGHER, J., and
MARY J. BOYLE, J., CONCUR

