

[Cite as *State v. Carswell*, 2017-Ohio-4447.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105112

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

KEVIN A. CARSWELL

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-16-607546-A and CR-16-608489-A

BEFORE: Kilbane, P.J., Boyle, J., and Jones, J.

RELEASED AND JOURNALIZED: June 22, 2017

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MARY EILEEN KILBANE, P.J.:

{¶1} Defendant-appellant, Kevin A. Carswell (“Carswell”), appeals the trial court’s imposition of consecutive sentences for drug trafficking and resisting arrest. For the reasons set forth below, we affirm.

{¶2} In April 2016, Euclid police conducted a controlled buy of heroin from Carswell that resulted in a nine-count indictment against him. In Cuyahoga C.P. No. CR-16-608489-A, he was charged with six counts of drug trafficking and three counts of drug possession. Carswell was also charged in Cuyahoga C.P. No. CR-16-607546-A, after a car he was a passenger in caused a motor vehicle accident while fleeing from the Richmond Heights police in June 2016. The driver of the car and Carswell fled the scene, but only Carswell was apprehended. Police searched the vehicle and found Percocet, a handgun, and a digital scale. Carswell was charged with one count of trafficking, one count of drug possession, one count of resisting arrest, and one count of possessing criminal tools.

{¶3} Carswell later pled guilty to two counts of drug trafficking in CR-16-608489-A. In CR-16-607546-A, he pled guilty to one count of drug trafficking and one count of resisting arrest. In CR-16-608489-A, the trial court sentenced Carswell to 12 months on each count of drug trafficking, to run concurrently. In CR-16-607546-A, the trial court sentenced him to 12 months on the one count of drug trafficking and 90 days for resisting arrest. The trial court then ordered the 12-month sentences in each case to run consecutively to each other.

{¶4} It is from this order that Carswell now appeals, raising a single assignment of error for our review:

Assignment of Error

The trial court's sentence is contrary to law.

{¶5} Carswell argues that the trial court failed to properly consider R.C. 2929.14(C)(4) in imposing consecutive sentences.

{¶6} We review consecutive sentences using the standard set forth in R.C. 2953.08. *State v. Wells*, 8th Dist. Cuyahoga Nos. 99305, 99306, and 99307, 2013-Ohio-3809, ¶ 11, citing *State v. Venes*, 2013-Ohio-1891, 992 N.E.2d 453, ¶ 10, (8th Dist.). R.C. 2953.08(G)(2) provides two grounds for an appellate court to overturn the imposition of consecutive sentences: (1) the sentence is “otherwise contrary to law”; or (2) the appellate court, upon its review, clearly and convincingly finds that “the record does not support the sentencing court’s findings” under R.C. 2929.14(C)(4). *Wells* at ¶ 12.

{¶7} The presumption under Ohio law is that prison terms are to be served concurrently; therefore, a trial court may only impose consecutive sentences after making three distinct findings. R.C. 2929.14; *State v. Taylor*, 8th Dist. Cuyahoga No. 100315, 2014-Ohio-3134, ¶ 56. Specifically, the trial court must find that consecutive service for convictions of multiple offenses is “necessary to protect the public from future crime or to punish the offender.” It must also find that the consecutive sentences are “not disproportionate to the seriousness of the offender’s conduct and to the danger the

offender poses to the public.” Finally, the trial court must find that one of the three statutory factors set forth in R.C. 2929.14(C)(4)(a)-(c) applies. *Id.* Here, the trial court found that Carswell committed these two offenses while he was on community control, a finding under R.C. 2929.14(C)(4)(a).

{¶8} Carswell admits that the trial court adequately referenced these findings, but asserts that the consecutive sentences are contrary to law because the trial court gave no reasoning supporting its finding of disproportionality. The Ohio Supreme Court has addressed this argument in *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659. In *Bonnell*, the court found that

[i]n order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, *but it has no obligation to state reasons to support its findings*. Nor is it required to give a talismanic incantation of the words of the statute, provided that the necessary findings can be found in the record and are incorporated into the sentencing entry.

(Emphasis added.) *Id.* at ¶ 37.

{¶9} Here, the trial court discussed its findings under R.C. 2929.14(C)(4) on the record and incorporated these findings into the sentencing entries in both cases.

{¶10} Based on the foregoing, we cannot clearly and convincingly say that the record does not support the trial court’s finding that consecutive sentences are not disproportionate to the seriousness of Carswell’s conduct and the harm he caused the community. Accordingly, we find that the trial court properly made the required findings under R.C. 2929.14 in imposing consecutive sentences in these matters.

{¶11} Therefore, Carswell's single assignment of error is overruled.

{¶12} 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.

MARY EILEEN KILBANE, PRESIDING JUDGE

MARY J. BOYLE, J., and
LARRY A. JONES, SR., J., CONCUR