

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 14CA0046-M

Appellee

v.

CHARLES MILLS

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 14CR0003

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 31, 2015

HENSAL, Presiding Judge.

{¶1} Charles Mills appeals his sentences for rape, pandering sexually oriented matter involving a minor, tampering with evidence, and unlawful sexual conduct with a minor from the Medina County Court of Common Pleas. For the following reasons, this Court affirms but remands for the issuance of a nunc pro tunc sentencing entry.

I.

{¶2} The Grand Jury indicted Mr. Mills for one count of rape with a sexually violent predator specification, two counts of pandering sexually oriented matter involving a minor, one count of tampering with evidence, and one count of sexual conduct with a minor. In exchange for dismissal of the specification, Mr. Mills pleaded guilty to the offenses. For the rape offense, the trial court sentenced him to life imprisonment with parole eligibility after 15 years. For the pandering offenses, it sentenced him to 60 months. For the tampering offense, it sentenced him to 12 months. For the unlawful sexual conduct with a minor offense, it sentenced him to 18

months. Finally, it ordered the rape and unlawful-sexual-conduct-with-a-minor offenses to run consecutively to the pandering offenses. Mr. Mills has appealed his sentences, arguing that the trial court did not make the proper findings to support consecutive sentences.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT FAILED TO EXPRESSLY MAKE THE FINDINGS REQUIRED IN RC 2929.11 AND RC 2929.14 AND RESTATE THOSE FINDINGS IN ITS SUBSEQUENT JUDGMENT ENTRY.

{¶3} Mr. Mills argues that the trial court did not make the sentencing findings required by Revised Code Sections 2929.11 and 2929.14(C)(4). This Court reviews sentences pursuant to the two-step approach set forth in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912.

First, [we] must examine the sentencing court’s compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court’s decision in imposing the term of imprisonment is reviewed under the abuse-of-discretion standard.

Id. at ¶ 26. An abuse of discretion implies that “the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983), quoting *State v. Adams*, 62 Ohio St.2d 156, 157 (1980). Mr. Mills argues that, because the trial court did not follow the applicable statutes, his sentences are “clearly and convincingly contrary to law.”

{¶4} Regarding Section 2929.11, it provides, in part:

The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

R.C. 2929.11(A). This Court has held that, “[a]lthough a sentencing judge must consider the principles and purposes of sentencing in imposing a sentence, he or she is not required to make findings or give their reasons before imposing a maximum sentence.” *State v. Linde*, 9th Dist. Summit No. 26714, 2013-Ohio-3503, ¶ 21. In addition, it is presumed that a trial court gave proper consideration of the factors. *State v. Fernandez*, 9th Dist. Medina No. 13CA0054-M, 2014-Ohio-3651, ¶ 8. “Unless the record shows that the court failed to consider the factors, or that the sentence is ‘strikingly inconsistent’ with the factors, the court is presumed to have considered the statutory factors if the sentence is within the statutory range.” *Id.*, quoting *State v. Boyse*, 2d Dist. Clark No. 2013-CA-78, 2014-Ohio-1272, ¶ 13. Mr. Mills has not pointed to anything in the record that suggests that the trial court did not consider the factors outlined in Section 2929.11. We, therefore, reject his argument with respect to Section 2929.11.

{¶5} Regarding Section 2929.14(C)(4), it provides:

If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public, and if the court also finds 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.

“With exceptions not relevant here, if the trial court does not make the factual findings required by R.C. 2929.14(C)(4), then ‘a prison term, jail term, or sentence of imprisonment shall be served concurrently with any other prison term, jail term, or sentence of imprisonment imposed by a court of this state, another state, or the United States.’” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, ¶ 23, quoting R.C. 2929.41(A).

{¶6} “When imposing consecutive sentences, a trial court must state the required findings as part of the sentencing hearing * * * [h]owever, a word-for-word recitation of the language of the statute is not required[.]” *Id.* at ¶ 29. “[A]s long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld.” *Id.* “[T]he court should also incorporate its statutory findings into the sentencing entry.” *Id.* “A trial court’s inadvertent failure to incorporate the statutory findings in the sentencing entry after properly making those findings at the sentencing hearing does not render the sentence contrary to law; rather, such a clerical mistake may be corrected by the court through a nunc pro tunc entry to reflect what actually occurred in open court.” *Id.* at ¶ 30.

{¶7} At the sentencing hearing, the trial court made the findings required under Section 2929.14(C)(4). It stated that consecutive sentences were “necessary to protect the public of future crime and also to punish the offender.” It also found that “[c]onsecutive sentences are not disproportionate to the seriousness of the offender’s conduct” and “the danger you pose to the public[.]” The court further found that, “two or more of the multiple offenses were committed as part of one or more courses of conduct” and that “the harm caused by two or more multiple offenses * * * was so great and unusual that no single prison term for any of the offenses

committed as part of the course of conduct adequately reflects the seriousness of the Defendant's conduct."

{¶8} In its sentencing entry, the trial court wrote that consecutive prison terms were necessary to protect the public from future harm, that two or more of the offenses were committed as part of the same course of conduct, and that the harm caused was so great or unusual that a single term does not adequately reflect the seriousness of the conduct. It did not, however, incorporate its finding that consecutive sentences "are not disproportionate to the seriousness of [Mr. Mills's] conduct" or to the danger he poses to the public.

{¶9} The trial court's failure to include all of its Section 2929.14(C)(4) findings in its sentencing entry "does not render the sentence contrary to law, in light of the fact that it made the findings at the sentencing hearing." *State v. Kilmire*, 9th Dist. Summit Nos. 27319, 27320, 2015-Ohio-665, ¶ 19. "[S]uch a clerical mistake may be corrected by the court through a nunc pro tunc entry to reflect what actually occurred in open court." *Id.*, quoting *Bonnell* at ¶ 30. We, therefore, conclude that, although Mr. Mills's assignment of error must be overruled, this case must be remanded to the trial court for it to issue a nunc pro tunc entry that incorporates all of the consecutive sentences findings it made at the sentencing hearing into its sentencing entry.

III.

{¶10} Mr. Mills's assignment of error is overruled. The judgment of the Medina County Court of Common Pleas is affirmed, but this matter is remanded for the trial court to issue a nunc pro tunc order to incorporate its findings under Section 2929.14(C)(4) into its sentencing entry.

Judgment affirmed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

CARR, J.
WHITMORE, J.
CONCUR.

APPEARANCES:

WESLEY A. JOHNSTON, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and MATTHEW A. KERN, Assistant Prosecuting Attorney, for Appellee.