

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27510

Appellee

v.

DASHAUN SPEAR

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 2013 11 3167 A

DECISION AND JOURNAL ENTRY

Dated: April 22, 2015

SCHAFER, Judge.

{¶1} Defendant-Appellant, Dashaun M. Spear, appeals a judgment of the Summit County Court of Common Pleas that ordered his sentences for aggravated murder and attempted murder to run consecutively to each other. For the following reasons, we affirm.

I.

{¶2} On November 25, 2013, a grand jury indicted Dashaun M. Spear and three co-defendants on eleven counts following a home robbery that resulted in the shooting death of one person, and left another person seriously injured from a gunshot wound. While there is some dispute as to which defendant actually shot the two victims, eye witnesses identified Mr. Spear as the shooter.

{¶3} On July 7, 2014, Mr. Spear pled guilty to one count of aggravated murder in violation of R.C. 2903.01(B), and one count of attempted murder in violation of R.C.

2903.02(A). Mr. Spear also pled guilty to accompanying firearm specifications for both counts in violation of R.C. 2941.145. The State dismissed the remaining counts against Mr. Spear.

{¶4} The trial court held Mr. Spear's sentencing hearing on August 12, 2014. The trial court reviewed the presentence report and heard from the prosecuting attorney, who presented two victim impact statements. The trial court also heard from defense counsel and Mr. Spear.

{¶5} The trial court then sentenced Mr. Spear to life in prison with no eligibility of parole until after serving 25 actual years for aggravated murder, 10 years in prison for attempted murder, and three years in prison respectively for the two firearm specifications. The trial court ordered Mr. Spear to serve all four prison terms consecutively, for a total sentence of 41 years in prison before being eligible for parole. Mr. Spear's defense counsel objected to the trial court's imposition of consecutive sentences.

{¶6} Mr. Spear now appeals his sentence, raising one assignment of error for this Court's review.

II.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED BY SENTENCING MR. SPEAR TO CONSECUTIVE SENTENCES IN VIOLATION OF R.C. 2929.14(C)(4).

{¶7} Mr. Spear argues in his sole assignment of error that the trial court erred in imposing consecutive sentences. Specifically, Mr. Spear argues that although the trial court made the mandated statutory findings as required by R.C. 2929.14(C)(4) before sentencing him to consecutive terms of imprisonment, the record does not support those findings. We disagree.

{¶8} "A plurality of the Supreme Court of Ohio held that appellate courts should implement a two-step process when reviewing a felony sentence." *State v. Clayton*, 9th Dist. Summit No. 26910, 2014-Ohio-2165, ¶ 43, citing *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-

4912, ¶ 26. “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.” *Kalish* at ¶ 26. If the sentence is not contrary to law, we review the trial court’s decision in imposing a term of imprisonment for an abuse of discretion. *Id.* An abuse of discretion implies that the court’s decision is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶9} R.C. 2929.14(C)(4) states:

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.

Thus, a trial court must make three findings before imposing consecutive sentences:

- (1) that consecutive sentences are necessary to protect the public from future crime or to punish the offender; (2) 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 (3) that one of the three particular findings set forth in R.C. 2929.14(C)(4)(a)-(c) applies.

State v. Linde, 9th Dist. Summit No. 26714, 2013-Ohio-3503, ¶ 25.

{¶10} Recently, in *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, the Supreme Court of Ohio stated that:

In 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.

(Emphasis added.) *Id.* at syllabus. Here, the parties do not dispute that the trial court complied with R.C. 2929.14(C)(4) in imposing Mr. Spear's sentence. The trial court stated as follows at the sentencing hearing:

Consecutive sentences are going to be imposed because the Court concludes that consecutive sentences are necessary both to protect the public from future crime and to punish [Mr. Spear.]

Consecutive sentences are not disproportionate to the seriousness of [Mr. Spear's] conduct or to the danger that is posed to the public. Consecutive sentences are necessary in this case because there were multiple offenses committed as part of one or more courses of conduct, and the amount of harm is so great and so unusual that no single prison term for the attempted murder and aggravated murder charges would be sufficient to adequately reflect the seriousness of [Mr. Spear's] conduct.

These findings are also reflected in the trial court's sentencing entry. Therefore, because the trial court complied with the dictates of R.C. 2929.14(C)(4), this Court will not disrupt the trial court's sentence absent an abuse of discretion. *See Kalish* at ¶ 26.

{¶11} After a thorough review of the record, we conclude that Mr. Spear's sentence was within the trial court's discretion as the record amply supports its findings. At the sentencing hearing, the trial court imposed sentence after reviewing the presentence investigation report, along with the confidential impressions section, and after considering two victim impact statements, and statements from the prosecuting attorney, defense counsel, and Mr. Spear. The presentence investigation report contained Mr. Spear's juvenile record and recounted Mr. Spear's continued denial of being the triggerman during the robbery. Also, during the sentencing

hearing, Mr. Spear refused to take responsibility for his grave actions by again denying that he shot the victims and maintained that the witnesses who identified him as the shooter were lying.

{¶12} The trial court also considered the principles and purposes of felony sentencing, the seriousness and recidivism factors that are required to be evaluated under the law, as well as those portions of the sentence that are mandatory by law. While Mr. Spear contends that a number of mitigating factors existed in this case demonstrating that he is unlikely to commit future crimes, that his sentence was disproportionate to the seriousness of the offenses, and that his sentence was disproportionate to the danger that he presents to the public, nothing in the record indicates that the trial court did not consider these arguments. All of the mitigating arguments that Mr. Spear raises on appeal, such as his young age at the time of the crime, his chronic drug and alcohol addictions, his lack of formal education, his impoverished upbringing, his mental health issues, and his being the victim of sexual abuse at a very young age, were all before the trial court at the time of sentencing. While the trial court did not provide specific reasons to support its findings that consecutive sentences were appropriate in this case, it was not required to do so. *See Bonnell* at syllabus. Therefore, we conclude that the trial court did not abuse its discretion when it imposed consecutive sentences.

{¶13} Mr. Spear's sole assignment of error is overruled.

III.

{¶14} Mr. Spear's sole assignment of error is overruled and the judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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 Summit, 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.

JULIE SCHAFER
FOR THE COURT

HENSAL, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

DONALD J. MALARCIK, Attorney at Law, for Appellant.

REBECCA M. BLACK, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RACHEL M. RICHARDSON, Assistant Prosecuting Attorney, for Appellee.