

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	CASE NO. 2015-L-019
- VS -	:	
DEREK A. WARNER, JR.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas.
Case No. 13 CR 000299.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077; *Stephanie G. Snel*, Special Prosecutor, P.O. Box 572, Wickliffe, OH 44092 (For Plaintiff-Appellee).

Charles R. Grieshammer, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Derek A. Warner Jr., timely appeals the trial court's decision sentencing him to a thirty-month prison term following his guilty plea to one count of possession of cocaine, a third-degree felony. He argues that the trial court failed to adequately consider the requisite factors under R.C. 2929.12 and that it improperly

made his sentence consecutive to his federal prison term. For the following reasons, we affirm.

{¶2} Warner was charged with one count of possession of cocaine in the amount of 10.14 grams, in violation of R.C. 2925.11 with a forfeiture specification for the cell phone and U.S. currency in his possession at the time of his arrest.

{¶3} Warner twice continued his plea hearing to avoid a higher sentence in his simultaneously pending federal case. The trial court denied his third continuance request. He pleaded guilty on August 22, 2014. Defense counsel requested the trial court to delay his sentencing again based on his pending federal case. Sentencing was held January 15, 2015. Following extensive arguments by Warner's attorneys, the trial court sentenced him to thirty months to be served consecutive to his federal prison term issued in *United States v. Warner*, case number 13CR436-001.

{¶4} The presentencing report reveals that Warner's cocaine possession charge arose after he entered a Walmart store to call police after being robbed and beaten in the parking lot. He had been waiting for a girl, whom he had planned "to party with and have fun with cocaine." This possession offense occurred in April 2013, less than three months after he was released from prison on January 24, 2013. At the time of his sentencing in this case, he was awaiting sentencing on 11 counts of possession with the intent to distribute in his federal case. He also had numerous juvenile delinquency allegations which were found to be true.

{¶5} Appellant's sole assignment of error asserts:

{¶6} "The trial court erred by sentencing the Defendant-Appellant to a consecutive thirty-month prison term."

{¶7} Warner's argument consists of two subparts. First, he argues that his sentence is not supported by the record because the trial court ignored certain statutory factors supporting his request for a shorter prison term. Second, he claims that the trial court erred in ordering his sentence consecutive to his federal prison term.

{¶8} Warner's third-degree felony offense of possession of cocaine has a presumption of a prison term and a maximum, thirty-six-month term. R.C. 2925.11(C)(4)(c) and 2929.14(A)(3)(b).

{¶9} R.C. 2953.08(G)(2) governs felony sentencing issues on appeal and provides in part:

The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

- (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;
- (b) That the sentence is otherwise contrary to law.

{¶10} Warner claims that the trial court failed to consider these factors establishing that his conduct was less serious than the normal offense of this type: he complied with the arresting officers, he cooperated with the investigation, and he accepted a plea agreement.

{¶11} Warner also claims that the trial court erroneously concluded that he lacked remorse for the offense. He claims that his rehabilitation during his time in custody to cope with his ongoing addiction issues and to deal with issues stemming

from the murder of his mother without corresponding “credit” for his therapy reflect remorse on his behalf. However, in-custody rehabilitation to deal with one’s personal grief and addiction issues does not establish remorse. Instead, remorse is generally one’s deep regret for one’s actions or a demonstration of concern or compassion for the victim. *State v. White*, 85 Ohio St.3d 433, 456 (1999).

{¶12} Next, Warner alleges the trial court failed to consider the fact that his federal sentence was increased by nine to eleven months based on his guilty plea in this case. However, Warner’s federal counsel appeared at his sentencing and explained this increase in his federal sentence in detail to the trial court. Further, Warner twice had his plea hearing continued based on his pending federal case. Thus, the trial court was well aware of the increase in Warner’s federal sentence as a result of his guilty plea in this case, but disagreed that it warranted a shorter or concurrent sentence in this case.

{¶13} Finally, Warner asserts that the trial court erroneously concluded that he posed the greatest likelihood of recidivism. He again relies on his lengthy federal sentence and claims that he will secure rehabilitation at the federal facility and during his three years of federal supervised release, and that this rehabilitation will greatly reduce his risk of recidivism.

{¶14} Contrary to Warner’s claims, the trial court fully addressed the seriousness and recidivism factors in sentencing Warner to thirty months in prison consecutive to his federal prison term. It explained in part:

I have considered all relevant factors including the seriousness and the recidivism set forth in Revised Code 2929.12. In that regard, the offense is no more serious and no less serious than the normal offense of this type. However, when it comes to recidivism, the

Court finds that the Defendant has a previous criminal history, previous history of delinquency adjudications. That there's been a rehabilitation failure and a failure to respond to probation. That there is no genuine remorse. The Court finds no factors making recidivism unlikely. The Court determines that a prison sentence is needed to protect the public from future crime. There is a presumption in favor of prison. The Court finds that a minimum sentence would demean the seriousness of this offender's conduct. The Court further finds that the offender poses the greatest likelihood of recidivism. Accordingly, it's the sentence of this Court you serve a period of incarceration in the state penitentiary on Count 1 for 30 months consecutive to the current federal prison term being served.

{¶15} Based on the foregoing, Warner's first sub-issue under his sole assignment of error lacks merit. The record fully supports the trial court's findings.

{¶16} Warner also challenges the trial court's decision to make his sentence consecutive to his federal prison term. R.C. 2929.14(C)(4) provides that a trial court may require an offender to serve consecutive prison terms if it 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 finds any of the following: * * * (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crimes by the offender.

{¶17} Although a trial court must make the statutory findings to support its decision to impose consecutive cases, it has no obligation to set forth its reasons to support its findings as long as they are discernible in the record. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶28-29; *State v. Jenkins*, 8th Dist. Cuyahoga No. 101899, 2015-Ohio-2762, ¶9.

{¶18} The trial court satisfied the requisite R.C. 2929.14(C)(4) findings in this case at the hearing and in its entry. It states in its judgment entry:

Pursuant to R.C. 2929.14(C)(4) * * * the Court finds for the reasons stated on the record that consecutive sentences are necessary to protect the public from future crime or to punish the Defendant and are not disproportionate to the Defendant's conduct and the danger the Defendant poses to the public. The Court also finds that the Defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the Defendant.

{¶19} Accordingly, the trial court made the requisite findings warranting the imposition of a consecutive sentence in this case, and its findings are supported by the record. Thus, this argument lacks merit.

{¶20} For the foregoing reasons, Warner's sole assignment of error is overruled. The decision of the Lake County Court of Common Pleas is affirmed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.