

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ADAMS COUNTY

STATE OF OHIO,	:	Case Nos. 21CA1149
		21CA1150
Plaintiff-Appellee,	:	
v.	:	<u>DECISION AND</u>
		<u>JUDGMENT ENTRY</u>
BRIAN HELTERBRIDLE,	:	
Defendant-Appellant.	:	RELEASED 8/02/2022

APPEARANCES:

Brian T. Goldberg, Cincinnati, Ohio, for appellant.

C. David Kelley, Adams County Prosecutor, Anthony Hurst, Adams County Assistant Prosecutor, West Union, Ohio, for appellee.

Hess, J.

{¶1} Brian Helterbridle appeals his conviction for having weapons while under disability after he pleaded guilty and was sentenced to 30 months in prison. Because he was on community control at the time, the trial court revoked community control and imposed the suspended consecutive sentences of 15 months and 9 months, which were ordered to be served consecutive to his 30-month term, for a total prison term of 54 months. In his sole assignment of error, Helterbridle contends that the trial court improperly sentenced him to consecutive prison terms. Helterbridle argues that the trial court failed to make the findings required for the imposition of consecutive sentences under R.C. 2929.14(C)(4). However the sentencing entry and the sentencing hearing transcript both show that the trial court complied with R.C 2929.14(C)(4) prior to imposing

consecutive sentences, therefore we overrule his assignment of error and affirm the trial court's judgment.

I. PROCEDURAL HISTORY

{¶2} In March 2019, the Adams County grand jury indicted Helterbridle on one count of carrying concealed weapons in violation of R.C. 2923.12(A)(2), a fourth-degree felony (Count 1); one count of improper handling of firearms in a motor vehicle in violation of R.C. 2923.16(B), a fourth-degree felony (Count 2); and one count of possession of controlled substance in violation of R.C. 2925.11(A) a fifth-degree felony (Count 3). He pleaded guilty to Counts 2 and 3; Count 1 was dismissed. The trial court imposed two years of community control. If the terms of community control were not successfully completed, Helterbridle would serve a 15-month sentence on Count 2 and a 9 month sentence on Count 3, to run consecutively for a total term of 24 months.

{¶3} In July 2021, Helterbridle was indicted on one count of having weapons under disability in violation of R.C. 2923.13(A)(3) a third-degree felony, to which Helterbridle pleaded guilty. The trial court sentenced him to a 30-month prison term, revoked his community control, and ordered him to serve the suspended 24-month sentence (the 15-month and 9-month consecutive sentences on Counts 2 and 3, respectively) from the prior case. The trial court ordered all sentences to be served consecutively for a 54-month prison term.

{¶4} At the sentencing hearing in November 2021, the trial court stated that it was sentencing Helterbridle on both the 2019 and the 2021 cases. The trial court stated that it considered the record, oral statements, any victim impact statements, and the presentence investigation report. The trial court expressly acknowledged that its felony

sentence “shall be guided by the overriding purposes of felony sentencing” which included “to protect the public, * * * from future crime by the offender,” “to punish the offender, using the minimum sanctions that the court determines accomplishes those purposes without imposing an unnecessary burden on the state or local government resource.” The court stated that it “considered the need for incapacitating the offender, deterring the offender and others from future crimes, rehabilitating the offender, as well as making restitution to the victim” and/or the public. The court stated that in both cases it had balanced “the seriousness recidivism factors” of R.C. 2929.12.

{¶15} Next, the trial court reviewed the specific details of the charge as well as Helterbridle’s criminal history dating back well over a decade. It noted the difficulties Helterbridle has had maintaining compliance with community control and his repeated failures to pass drug and alcohol tests. The trial court then discussed the impact Helterbridle’s repeated methamphetamine use has had on his family and the community and commented on the exceptional letter Helterbridle’s teenage daughter wrote on his behalf. The trial court also remarked on Helterbridle’s repeated failure to comply with drug and gun laws, his recidivism related to these laws while on community control, multiple bond violations, and his lack of genuine remorse.

{¶16} The trial court issued sentencing entries in which it sentenced Helterbridle to a 30-month prison term for having weapons under disability and in which it revoked community control and imposed the 24-month prison term. In the sentencing entry in which the trial court revoked community control, it imposed consecutive sentences in both cases and stated that it could impose consecutive sentences if it found consecutive sentences were:

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:

(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.

For each of the three findings listed in (a) – (c) the trial court indicated its findings by placing the trial judge's initial next to each.

II. ASSIGNMENT OF ERROR

{¶7} Helterbridle presents one assignment of error:

I. The trial court erred to the prejudice of Mr. Helterbridle by improperly sentencing him to consecutive prison terms without making the necessary findings.¹

III. LAW AND ANALYSIS

{¶8} Helterbridle contends that the trial court failed to make the findings required under R.C. 2929.14(C)(4) for the imposition of consecutive sentences. He argues that while the trial court made appropriate findings at the original sentencing and in the original sentencing entry for the 2019 case, the trial court failed to make consecutive findings at

¹ The assignment of error is stated differently in the Table of Contents and Assignments of Error section of the brief than it is in the Argument section of the brief. We use the version set forth in the Argument section as it is more specific.

sentencing or in the sentencing entry for the 2021 case. Therefore, he asks that we remand the matter back to the trial court for a new sentencing hearing.

{¶9} A defendant bears the burden to establish, by clear and convincing evidence, that a sentence is either contrary to law or that the record does not support the specified findings. *State v. Behrle*, 4th Dist. Adams No. 20CA1110, 2021-Ohio-1386, ¶ 48. “[C]lear and convincing evidence is that measure or degree of proof which is more than a mere ‘preponderance of the evidence,’ but not to the extent of such certainty as is required ‘beyond a reasonable doubt’ in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus; *State v. Whitehead*, 4th Dist. Scioto No. 20CA3931, 2022-Ohio-479, ¶ 107.

{¶10} R.C. 2953.08(G)(2) provides:

The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

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 the 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.

{¶11} R.C. 2929.14(C)(4) governs the imposition of consecutive sentences and allows the trial court to require the offender to serve consecutive prison terms if “the

consecutive service is necessary to protect the public from future crime or to punish the offender,” they “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 makes any one of the following findings:

- (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.

{¶12} The Supreme Court of Ohio has explained that a word-for-word recitation of the statutory language in R.C. 2929.14(C) is not required as long as the reviewing court can discern that the trial court engaged in the proper analysis:

When imposing consecutive sentences, a trial court must state the required findings as part of the sentencing hearing, and by doing so it affords notice to the offender and to defense counsel. See *Crim.R. 32(A)(4)*. And because a court speaks through its journal, *State v. Brooke*, 113 Ohio St.3d 199, 2007-Ohio-1533, 863 N.E.2d 1024, ¶ 47, the court should also incorporate its statutory findings into the sentencing entry. However, a word-for-word recitation of the language of the statute is not required, and as 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.

State v. Bonnell, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29. In analyzing the trial court's statements at the sentencing hearing in *Bonnell*, the Supreme Court of Ohio found that the trial court made only two of the three findings:

We can discern from the trial court's statement that Bonnell had "shown very little respect for society and the rules of society" that it found a need to protect the public from future crime or to punish Bonnell. We also can conclude that the court found that Bonnell's "atrocious" record related to a history of criminal conduct that demonstrated the need for consecutive sentences to protect the public from future crime. But it never addressed the proportionality of consecutive sentences to the seriousness of Bonnell's conduct and the danger he posed to the public, which in this case involved an aggregate sentence of eight years and five months in prison for taking \$117 in change from vending machines.

Thus, the court's description of Bonnell's criminal record as atrocious and its notation of his lack of respect for society do not permit us to conclude that the trial court had made the mandated statutory findings in accordance with R.C. 2929.14(C)(4).

Id. at ¶ 33-34.

{¶13} Here the trial court stated at the sentencing hearing that in considering the sentence to impose it was considering the need to protect the public and punish the offender. The trial court acknowledged Helterbridle's problem with recidivism and his long criminal history and we can conclude that this demonstrated the need for consecutive sentences to protect the public from his future crimes and to punish him. Additionally, the court reviewed Helterbridle's lack of remorse, repeated failures to abide by drug and gun laws, and the problematic mix of drugs, alcohol, and firearms and admonished him, "we're lucky yet you're not sitting here and we're talking about a murder case." We can discern from this that the trial court found that consecutive sentences were not disproportionate to the seriousness of the offender's conduct and the danger he posed to the public. Finally, based on the trial court's finding that Helterbridle was under community control sanctions at the time he committed the offense of having weapons under disability, the record clearly supports the finding in R.C. 2929.14(E)(4)(a). Any one of the three

alternative findings in R.C. 2929.14(E)(4)(a)-(c) is sufficient for consecutive sentences. Thus, we find the trial court complied with R.C. 2929.14(C)(4) at the sentencing hearing.

{¶14} The sentencing entry likewise complies with R.C. 2929.14(C)(4). It states that the trial court may require consecutive sentences where it is necessary to protect the public from future crime or to punish the offender and that the sentence is not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. Then, the trial judge initialed all three of the findings under R.C. 2929.14(C)(4)(a)-(c), showing that he considered all three and found them to be applicable.

{¶15} Helterbridle failed to establish, by clear and convincing evidence, that the trial court's imposition of consecutive sentences is contrary to law or that the record does not support the specified findings. Accordingly, we overrule Helterbridle's assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the ADAMS COUNTY COMMON PLEAS COURT to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Smith, P.J. & Wilkin, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.