

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. John F. Boggins, J.
-vs-	:	
	:	Case No. 04 CA-A-03-023
KIMBERLY DEE EDWARDS	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal Appeal from Delaware County
Common Pleas Court, Case No. 03CR-I-
06-238

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: NOVEMBER 8, 2004

APPEARANCES:

For Plaintiff-Appellee

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Boggins, J.

{¶1} This is an appeal from Appellant Kimberly Dee Edwards's conviction and sentence on one count of Theft From an Elderly Person, in violation of R.C. §2913.02(A)(3), three counts of Forgery, in violation of R.C. §2913.31(A)(3) and one count of Taking the Identity of Another , in violation of R.C. §2913.49(B)(1).

{¶2} Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} On January 19, 20 and 21, 2003, Appellant wrote checks on the account of one Dorothy Wilson, an elderly person as defined by statute, without her knowledge or consent, resulting in Appellant receiving cash and merchandise.

{¶4} On June 20, 2003, Appellant was indicted by the Delaware County Grand Jury on one count of theft by deception, in violation of R.C. 2913.03(A)(3), one count of passing bad checks, in violation of R.C. 2913.11(A) for passing 32 checks drawn on the victim's account, one count of identity fraud, in violation of R.C. 2913.49(B)(1) and thirty four counts of uttering a forged check, in violation of R.C. 2914.31(A)(3).

{¶5} On December 8, 2003, Appellant entered written guilty pleas to the count of Theft From an Elderly Person, three counts of Forgery and one count of Taking the Identity of Another. The trial court ordered a pre-sentence investigation.

{¶6} On March 3, 2004, the trial court sentenced Appellant as follows:

{¶7} Count One: Theft From An Elderly Person: eighteen (18) months in prison, to be served consecutive to the sentences imposed in Wyandot County and Seneca County;

{¶8} Count Three: Forgery: twelve (12) months, to be served concurrent to the sentence imposed in Count One and consecutive to the sentences imposed in Wyandot County and Seneca County;

{¶9} Count Eight: Forgery: twelve (12) months, to be served concurrent to the sentence imposed in Count One and consecutive to the sentence imposed in Count Three and consecutive to the sentences imposed in Wyandot County and Seneca County;

{¶10} Count Sixteen: Forgery: twelve (12) months, to be served concurrent to the sentence imposed in Count One and consecutive to the sentences imposed in Counts Three and Eight and consecutive to the sentences imposed in Wyandot County and Seneca County;

{¶11} Count Thirty-Seven: Taking The Identity of Another: six (6) months in the Delaware County Jail to be served concurrent to the sentences imposed in Counts One, Three, Eight and Sixteen.

{¶12} It is from this sentence Appellant appeals, assigning the following errors for review:

ASSIGNMENTS OF ERROR

{¶13} "I. THE TRIAL COURT ERRED IN ITS IMPOSITION OF MAXIMUM SENTENCES AS TO COUNTS ONE, THREE, EIGHT AND SIXTEEN OF THE INDICTMENT.

{¶14} "II. THE TRIAL COURT ERRED IN ITS ORDERING THAT THE SENTENCE IMPOSED IN COUNT ONE RUN CONSECUTIVELY TO THE SENTENCES IMPOSED IN WYANDOT AND SENECA COUNTIES.

{¶15} "III. THE TRIAL COURT ERRED IN ITS ORDERING THAT THE SENTENCES IMPOSED IN COUNTS THREE, EIGHT, AND SIXTEEN BE SERVED CONSECUTIVELY TO THE SENTENCES IMPOSED IN WYANDOT AND SENECA COUNTIES."

I.

{¶16} In her first assignment of error, Appellant assigns error to the trial court's imposition of maximum sentences on counts one, three, eight and sixteen.

{¶17} Appellant pled guilty to one fourth degree felony and three fifth degree felonies. The trial court sentenced appellant to the maximum sentence available for each of these felony offenses

{¶18} R.C. 2929.14(B) provides:

{¶19} " * * * if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender, the court shall impose the shortest prison term authorized for the offense pursuant to division (A) of this section, unless one or more of the following applies:

{¶20} "(1) The offender was serving a prison term at the time of the offense, or the offender previously had served a prison term.

{¶21} "(2) The court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others."

{¶22} In interpreting this requirement, the Supreme Court of Ohio has held: "R.C. 2929.14(B) does not require that the trial court give its *reasons* for its findings that the seriousness of the offender's conduct will be demeaned or that the public will not be

adequately protected from future crimes before it can lawfully impose more than the minimum authorized sentence." *State v. Edmonson*, 86 Ohio St.3d 324, 715 N.E.2d 131, 1999-Ohio-110, syllabus. (Emphasis in original). Rather, "the record of the sentencing hearing must reflect that the court found that either or both of the two statutorily sanctioned reasons for exceeding the minimum term warranted the longer sentence." *Id.* at 326, 715 N.E.2d 131.

{¶23} At the sentencing hearing, the trial court found that Appellant had sixteen (16) prior convictions and had served prior prison sentences. The trial court also found the shortest prison sentence would demean the seriousness of appellant's conduct and would not adequately protect the public.

{¶24} Specifically, the trial court found :

{¶25} As to count one: "based upon your record the court feels the maximum sentence is the only way to protect the public." (T. at 14).

{¶26} As to count eight: "the court feels very specifically, with your record, how many times you've been in prison, the only way to protect society from your conduct is to give you the maximum sentence." (T. at 14-15).

{¶27} As to count sixteen: "again, the court imposes the maximum sentence, as I said earlier, these crimes were the most serious form, you preyed upon the elderly, and you, with your record, you pose the greatest risk and likelihood of recidivism." (T. at 15).

{¶28} Based on the foregoing, we find the trial court supported its imposition of the maximum sentences with the requisite record findings.

{¶29} Appellant's first assignment of error is overruled.

II.

{¶30} In her second assignment of error, appellant argues that the trial court erred in ordering the sentence imposed in count one run consecutive to the sentences imposed in Wyandot and Seneca Counties.

{¶31} In order to impose consecutive sentences when an offender is convicted of multiple offenses, a trial court must first find consecutive service is necessary to protect the public from future crime or to punish the offender. R.C. 2929.14(E)(4). The court must also find consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. *Id.* Finally, the trial court must find one or more of the following:

{¶32} "a) the offender committed 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;

{¶33} "b) the harm caused by the multiple offenses was so great or unusual that no single prison term for any of the offenses committed as part of a single course of conduct adequately reflects the seriousness of the offender's conduct; or,

{¶34} "c) the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender." *Id.* If a trial court imposes consecutive sentences, the trial court must give its reasons for imposing the given sentence. R.C. 2929.19(B)(2)(c).

{¶35} Appellant's prior record includes felony forgery, aggravated robbery, which he was convicted of and sentenced to prison, and another aggravated robbery charge,

on which he was again convicted and imprisoned. At the sentencing hearing, the trial court stated:

{¶36} “that based upon this criminal history of this defendant, the only way to protect society is consecutively sentence and those consecutive sentences are not disproportionate, in the Court’s mind, to the seriousness of the offenses.” (T. at 20-21).

{¶37} Also, as stated previously, the trial court found that Appellant had sixteen prior convictions and that she had served previous prison terms.

{¶38} Based upon the reasons the trial court expressed at the sentencing hearing, as set forth supra, we find the trial court's imposition of the consecutive maximum sentences was not contrary to law.

{¶39} The second assignment of error is overruled.

III.

{¶40} In her third assignment of error, Appellant argues that the trial court erred in ordering that the sentences imposed in counts three, eight and sixteen be served consecutively to each other and consecutively to the Wyandot and Seneca County sentences.

{¶41} For the same reasons as those contained in Assignment of Error II, we find that the trial court's imposition of the consecutive maximum sentences was not contrary to law.

{¶42} The third assignment of error is overruled.

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Delaware County Court of Common Pleas, Delaware County, Ohio, is affirmed. Costs assessed to Appellant.

JUDGES