

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Andrew J. King, J.
-vs-	:	
	:	
NATETWAN D. JOLLY	:	Case No. CT2023-0001
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. CR2022-0424
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT:	June 29, 2023
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APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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King, J.

{¶ 1} Defendant-Appellant, Natetwan D. Jolly, appeals his December 27, 2022 sentence from the Court of Common Pleas of Muskingum County, Ohio. Plaintiff-Appellee is the state of Ohio. We affirm the trial court.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On August 31, 2022, the Muskingum County Grand Jury filed a fifteen-count indictment against Jolly alleging various drug and firearm offenses. On November 14, 2022, Jolly pled guilty to two counts of trafficking in drugs (Cocaine) (F2) and (Methamphetamine) (F3) in violation of R.C. 2925.03, and one count of having a weapon while under disability (F3) in violation of R.C. 2923.13. The cocaine count carried a firearm specification in violation of R.C. 2941.141 and both trafficking counts included forfeiture specifications. The remaining counts were dismissed. By entry filed December 27, 2022, the trial court sentenced Jolly to a mandatory minimum eight years on the cocaine count with an indefinite maximum of twelve years, a mandatory one year on the firearm specification, twelve months on the methamphetamine count, and thirty-six months on the weapons count; the sentences were ordered to be served consecutively, for a total aggregate minimum sentence of thirteen years, nine years mandatory, to an indefinite seventeen years.

{¶ 3} Jolly filed an appeal with the following assignments of error:

I

{¶ 4} "THE TRIAL COURT'S SENTENCE AS TO COUNT TWO WAS CONTRARY TO LAW, AS THE IMPOSED MINIMUM TERM OF NINE YEARS EXCEEDED THE MAXIMUM TERM OF IMPRISONMENT ALLOWED UNDER R.C. SEC. 2929.14(A)(2)(a)."

II

{¶ 5} "THE TRIAL COURT ERRED BY IMPOSING CONSECUTIVE SENTENCES ON DEFENDANT/APPELLANT, AS SUCH AN IMPOSITION WAS CONTRARY TO LAW AND UNSUPPORTED BY THE RECORD."

III

{¶ 6} "THE TRIAL COURT'S SENTENCE WAS IN VIOLATION OF DEFENDANT/APPELLANT'S EIGHTH AMENDMENT RIGHTS."

I

{¶ 7} In his first assignment of error, Jolly claims his sentence on the cocaine count was contrary to law because it exceeded the maximum prison term for an F2. We disagree.

{¶ 8} This court reviews felony sentences using the standard of review set forth in R.C. 2953.08. *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 22; *State v. Howell*, 5th Dist. Stark No. 2015CA00004, 2015-Ohio-4049, ¶ 31. Subsection (G)(2) sets forth this court's standard of review as follows:

(2) 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.

{¶ 9} "Clear 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.

{¶ 10} In its appellate brief at 2-3, the state makes the argument that Jolly pled guilty to the cocaine count which under R.C. 2925.03(C)(4)(f), is a felony in the first degree and therefore punishable by an indefinite minimum term of three to eleven years. While the count was indicted as an F1, Jolly pled guilty to, and was sentenced to, a felony in the second degree as amended by trial court order granting the state's motion to amend the cocaine count to an F2. Order filed November 7, 2022.

{¶ 11} For felonies in the second degree, "the prison term shall be an indefinite prison term with a stated minimum term selected by the court of two, three, four, five, six, seven, or eight years * * *." R.C. 2929.14(A)(2)(a). The trial court sentenced Jolly to a minimum eight years, within the statutory range.

{¶ 12} Pursuant to R.C. 2929.14(B)(1)(a)(iii), if an offender who is convicted of or pleads guilty to a felony and also is convicted of or pleads guilty to a firearm specification as described in R.C. 2941.141(A), the trial court shall sentence the offender to a prison term of one year. Jolly pled guilty to a firearm specification as described in R.C. 2941.141(A). The trial court sentenced Jolly to a one-year mandatory term for the firearm specification pursuant to statute.

{¶ 13} Jolly was sentenced on the underlying F2 felony plus a sentencing enhancement for the firearm specification; they are required to be served consecutively. *State v. Ford*, 128 Ohio St.3d 398, 2011-Ohio-765, 945 N.E.2d 498, ¶ 16–19; R.C. 2929.14(C)(1)(a) (the offender shall serve any mandatory firearm specification prison term "consecutively to and prior to any prison term imposed for the underlying felony"). Jolly's sentence is not beyond the statutory maximum for an F2 with a firearm specification.

{¶ 14} The record demonstrates the trial court received and reviewed a presentence investigation report, and heard statements from the prosecutor and defense counsel. The trial court reviewed Jolly's lengthy criminal history which included prior misdemeanor and felony convictions spanning eighteen years, from 2004 to 2022. December 21, 2022 T. at 7-8. In many cases, Jolly was declared to be an absconder; he had multiple revocations of community control. *Id.* Jolly was facing fifteen counts and many possible years in prison before he chose to plead guilty to three counts.

{¶ 15} Upon review, we find Jolly's sentence on the cocaine count was not contrary to law.

{¶ 16} Assignment of Error I is denied.

II

{¶ 17} In his second assignment of error, Jolly claims the imposition of consecutive sentences was contrary to law. We disagree.

{¶ 18} R.C. 2929.14(C)(4) governs consecutive sentences and states the following:

(4) 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.

{¶ 19} R.C. 2953.08(G)(2) requires this court to review the record de novo and decide whether the record clearly and convincingly does not support the consecutive-sentence findings. *State v. Gwynne*, --- Ohio St.3d ---, 2022-Ohio-4607, --- N.E.3d ---, ¶ 1. When imposing consecutive sentences, a trial court must state the required findings at the sentencing hearing. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29. Because a court speaks through its journal, the court should also incorporate its statutory findings into the sentencing entry. *Id.* While 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, "it has no obligation to state reasons to support its findings." *Id.* at ¶ 37. As long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine the record contains evidence to support the findings, consecutive sentences should be upheld. *Id.* at ¶ 29.

{¶ 20} Our review is a two-step process. The first step is whether the trial court made the requisite findings under R.C. 2929.14(C)(4); the second step is whether the trial court's decision to impose consecutive sentences is not clearly and convincingly supported by the record. *Gwynne* at ¶ 25-26. We are required "to focus on both the quantity and quality of the evidence in the record that either supports or contradicts the consecutive-sentence findings." *Id.* at ¶ 29.

{¶ 21} In his appellate brief at 9, Jolly admits that the trial court recited the requisite statutory findings on the record regarding consecutive sentences, but failed to specifically

link "every factor to concrete evidence indicating the same on the record," thereby frustrating the legislative intent of the consecutive sentencing statutes. As stated above, a trial court is not required to state reasons to support its findings or in other words, specifically link every factor to concrete evidence in the record. *Bonnell* at ¶ 37.

{¶ 22} As admitted by Jolly, the trial court recited the requisite statutory findings on the record regarding consecutive sentences. During the sentencing hearing, the trial court found consecutive sentences were necessary to protect the public and punish Jolly, and consecutive sentences were not disproportionate to the seriousness of the conduct and the danger posed to the public. December 21, 2022 T. at 13. In addition, the trial court found Jolly's "history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crimes." *Id.* at 13-14; R.C. 2929.14(C)(4)(c). The trial court included these statements in the sentencing entry filed December 27, 2022.

{¶ 23} As noted in Assignment of Error I, the trial court reviewed Jolly's lengthy criminal record. Many times, he was declared an absconder; he had multiple revocations of community control. The trial court noted Jolly's possession of guns even though Jolly affirmed to knowing he was not permitted to have guns. December 21, 2022 T. at 10. Jolly admitted to having the guns because he was dealing drugs and he had to protect himself from being robbed and could not call the police. *Id.* The trial court found Jolly's actions created a "dangerous lifestyle." *Id.* at 11. When Jolly was stopped by the police, his vehicle contained cocaine and methamphetamine and three loaded guns, a Beretta .25 caliber handgun, a Smith & Wesson .32 caliber revolver, and a Hi-Point 9mm handgun. November 14, 2022 T. at 15-16. Each gun had a round in the chamber. *Id.* at 16.

{¶ 24} After reviewing the entire record de novo and weighing the quality and quantity of the evidence, we do not clearly and convincingly find that the evidence in the record did not support the consecutive-sentence findings. In fact, there was ample evidentiary support for the trial court to find that consecutive service was necessary to protect the public from future crime or to punish Jolly, consecutive sentences were not disproportionate to the seriousness of Jolly's conduct and to the danger he posed to the public, and consecutive sentences were necessary to protect the public from future crimes.

{¶ 25} Upon review, we find the trial court's imposition of consecutive sentences is not contrary to law.

{¶ 26} Assignment of Error II is denied.

III

{¶ 27} In his third assignment of error, Jolly claims his sentence violated his eighth amendment rights. We disagree.

{¶ 28} The Eighth Amendment to the United States Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Article I, Section 9, of the Ohio Constitution includes identical prohibitions.

{¶ 29} Jolly argues his overall sentence was not proportional and "shocks the sense of community." However, Jolly's sentence is within the statutory range and the consecutive nature is not clearly and convincingly not supported by the record. R.C. 2929.14(A)(2)(a), (B)(1)(a)(iii), (A)(3)(b), and (C)(4)(c). "As a general rule, a sentence that falls within the terms of a valid statute cannot amount to a cruel and unusual punishment." *McDougle v. Maxwell*, 1 Ohio St.2d 68,69, 203 N.E.2d 334 (1964). *Accord*

State v. Hairston, 118 Ohio St.3d 289, 2008-Ohio-2338, 888 N.E.2d 1073, ¶ 21. Jolly pled guilty to trafficking counts which carried forfeiture specifications. R.C. 2941.1417. The forfeited items were connected to his criminal conduct. R.C. 2981.02. The fines imposed are in accordance with statutory law. R.C. 2929.18.

{¶ 30} Upon review, we find Jolly's sentence is not violative of the Eighth Amendment. His overall sentence is neither excessive nor shocking.

{¶ 31} Assignment of Error III is denied.

{¶ 32} The judgment of the Court of Common Pleas of Muskingum County, Ohio is hereby affirmed.

By King, J.

Hoffman, P.J. and

Wise, J. concur.