

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 112097
 v. :
 :
 EVELYN GIPSON, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 6, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-21-666314-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Benjamin Fuchs, Assistant Prosecuting
Attorney, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and
Aaron T. Baker, Assistant Public Defender, *for appellant*.

MICHAEL JOHN RYAN, J.:

{¶ 1} Defendant-appellant Evelyn Gipson appeals the consecutive nature of her sentence after she pleaded guilty to two counts of passing bad checks and one

count of attempted grand theft. After a thorough review of the facts and the law, we affirm.

{¶ 2} In December 2021, Gipson was charged in a 15-count indictment with seven counts of forgery, pursuant to R.C. 2913.31(A)(2), felonies of the fifth degree; six counts of passing bad checks, pursuant to R.C. 2913.11(B), felonies of the fifth degree; one count of passing bad checks, pursuant to R.C. 2913.11(B), a first-degree misdemeanor; and one count of grand theft, pursuant to R.C. 2913.02(A)(3), a fourth-degree felony. The charges stemmed from multiple incidents at a Staples store located in Mayfield Heights, Ohio, in which Gipson forged and passed bad checks from 2019-2021 for a total loss of \$11,746.

{¶ 3} In August 2022, Gipson entered into a plea agreement with the state of Ohio and pleaded guilty to two counts of passing bad checks, in violation of R.C. 2913.11(B), and one count of attempted grand theft, in violation of R.C. 2923.02 (the attempt statute) and R.C. 2913.02(A)(3), all felonies of the fifth degree.

{¶ 4} The court referred the case to the probation department for a presentence investigation report (“PSI”) and to the court psychiatric clinic for a mitigation of penalty report. At the sentencing hearing, the court emphasized Gipson’s criminal history, which included 36 prior convictions, most of which were for theft-related offenses, and multiple probation violations. The court noted that Gipson had been convicted in both Cuyahoga and Summit County and in the cities of Cleveland, Akron, and Bedford.

{¶ 5} The trial court sentenced Gipson to 12 months in prison on each count, to run consecutive, for a total of three years in prison, a \$250 fine, and restitution.

{¶ 6} Gipson raises one assignment of error for our review:

I. The trial court record does not support the imposition of three consecutive sentences in the aggregate.

{¶ 7} The presumption is that prison sentences will be served concurrently.

R.C. 2929.41(A). There is a statutory exception to the presumption in favor of concurrent sentences. Pursuant to R.C. 2929.14(C)(4), a trial court may impose consecutive sentences if it finds consecutive sentences are “necessary to protect the public from future crime or to punish the offender”; “not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public”; and at least one of the following three factors:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction * * *, 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.

{¶ 8} In her sole assignment of error, Gipson argues that the trial court record does not support the imposition of three consecutive sentences. Gipson can challenge her consecutive sentences in two ways. Gipson can argue that her

consecutive sentences are contrary to law because the court failed to make the necessary findings required by R.C. 2929.14(C)(4). R.C. 2953.08(G)(2)(b); *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29. Gipson can also argue that the record does not support the findings the trial court made pursuant to R.C. 2929.14(C)(4). R.C. 2953.08(G)(2)(a); *State v. Moore*, 2014-Ohio-5135, 24 N.E.3d 1197, ¶ 23 (8th Dist.).

{¶ 9} Pursuant to R.C. 2953.08(G)(2)(a) appellate courts are authorized to modify or vacate a sentence if the court finds by clear and convincing evidence that the record does not support any of the relevant findings under R.C. 2929.14(C)(4). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 22; *see also State v. Gwynne*, Slip Opinion No. 2022-Ohio-4607, ¶ 12. “Clear and convincing evidence is that measure or degree of proof that 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.” *Marcum at id.*, quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶ 10} In *Gwynne*, the Ohio Supreme Court addressed (1) “whether trial courts must consider the overall aggregate prison term to be imposed when making the consecutive-sentence findings under R.C. 2929.14(C)(4)”; and (2) “what the scope of an appellate court’s authority is under R.C. 2953.08(G)(2) to review consecutive sentences.” *Id.* at ¶ 1. The *Gwynne* court determined that, pursuant to

R.C. 2929.14(C)(4), “the consecutive-sentence findings are not simply threshold findings that, once made, permit any amount of consecutively stacked individual sentences. Rather, these findings must be made in consideration of the aggregate term to be imposed.” *Id.* at ¶ 2. The court further found that our review of R.C. 2953.08(G)(2) does not require deference to the sentencing court’s findings; instead, we review the record de novo and “decide whether the record clearly and convincingly does not support the consecutive-sentence findings.” *Id.*

{¶ 11} The trial court made the following findings at the sentencing hearing when it imposed Gipson’s sentences consecutively:

That consecutive sentences are necessary to protect the public from future crimes, that consecutive sentences are necessary to punish the offender. The court finds that consecutive sentences are not disproportionate to the seriousness of the conduct, and the court finds that the offender’s history of criminal conduct of the same nature demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. * * * There’s a high chance of recidivism.

{¶ 12} Although the trial court is required to make the statutory findings both at the sentencing hearing and in the sentencing entry, the court is not obligated to state reasons in support of its findings. *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, at ¶ 37.

{¶ 13} Gipson does not contest that the trial court made the requisite statutory findings under R.C. 2929.14(C)(4), and our review confirms that the appropriate findings were made and incorporated into the journal entry. Therefore, Gipson’s sentence is not contrary to law in that respect.

{¶ 14} Our next step is to consider if the record clearly and convincingly does not support the trial court’s consecutive-sentence findings. Gipson argues that the trial court failed to consider the overall number of consecutive sentences and the aggregate sentence imposed when it decided to run all three counts consecutively for a three-year prison term.

{¶ 15} We recognize that the trial court did not state on the record it was considering the length of each of Gipson’s sentences or the total sentence. The *Gwynne* court did not impose such a requirement:

[E]ach count that a trial court imposes consecutively and the overall aggregate prison term that results is integral to the necessity and proportionality finding. * * * While there are no “magic words” that need to be made by the trial court, those considerations are integral to the consecutive-sentence findings that are made, and each stacked prison term and the overall prison term is wholly reviewable under the standard set forth in R.C. 2953.08(G)(2).

Gwynne, Slip Opinion No. 2022-Ohio-4607, at ¶ 17, fn. 3.

{¶ 16} Thus, contrary to Gipson’s argument, the trial court was not required to affirmatively set forth on the record that it had considered the length of each of her sentences as well as her aggregate sentence; the record must reflect, however, that the court did in fact make that consideration.¹

{¶ 17} We do not agree with Gipson that the record is devoid of evidence to support the imposition of consecutive sentences. The trial court record is but one

¹ *Gwynne* provides that trial courts must consider the length of each sentence as well as the total sentence but does not detail how the court should comply; thus, best practice dictates that the trial court affirmatively state on the record that it considers the length of each sentence as well as the total sentence being imposed, rather than leave it to a reviewing court to dissect whether the court made the proper considerations.

part of the record this court considers on appeal. For the purposes of appeal, we also consider the PSI, psychiatric, and any other investigative report; oral or written statements made to or by the court at the sentencing hearing; and any written findings that the court was required to make in connection to a grant of judicial release. R.C. 2953.08(F).

{¶ 18} According to Gipson's PSI, she used seven different names, six addresses, two P.O. boxes, 31 phone numbers, and 14 different driver's licenses to forge and pass bad checks at Staples stores in Ohio and Alabama from 2013 through August 3, 2021. The total loss to Staples was \$67,056.91.²

{¶ 19} Gipson's lengthy criminal record dates back to 1981 and includes 36 convictions, most of which are for theft-related crimes at Northeast Ohio stores. Gipson has been placed on probation numerous times and frequently violated the terms of her probation. She has been repeatedly incarcerated, either as part of her sentence or for violating the terms of her probation. Prior to this case, Gipson was sentenced to one year in prison for passing bad checks and theft. *See State v. Gipson*, Lake C.P. No. 17CRO01118 (Jun. 19, 2018). Within months after her release for serving time in that case, Gipson recommenced passing bad checks at Staples, committing the crimes that form the basis of the indictment in this case. Even after Gipson was indicted in this case, she continued to pass bad checks and was indicted in two area municipal courts.

² We note that Gipson was indicted for offenses that were committed in Ohio from 2019-2021.

{¶ 20} Gipson has denied a drug or alcohol addiction. At the sentencing hearing, her attorney stated Gipson has an untreated gambling addiction, but Gipson has been sent to counseling as a condition of probation numerous times in the 40 years she has been committing theft offenses and often violated the terms of her probation by committing new theft-related crimes. At oral argument on this matter, Gipson’s attorney stated that Gipson has sought treatment for her gambling addiction. This contention is not supported by the record.³

{¶ 21} After reviewing the entire record de novo, we do not clearly and convincingly find that the evidence in the record did not support Gipson’s consecutive sentences. There was ample evidentiary support for the trial court’s findings that consecutive service was necessary to protect the public from future crime and to punish Gipson, that consecutive sentences were not disproportionate to the seriousness of Gipson’s conduct and to the danger she posed to the public, and that Gipson’s extraordinary criminal history demonstrated that consecutive sentences are necessary to protect the public from future crime. We further find that the evidence in the record supports three consecutive 12-month sentences for a total of three years in prison. Accordingly, the trial court’s decision to impose consecutive sentences was not contrary to law.

{¶ 22} The sole assignment of error is overruled.

{¶ 23} Judgment affirmed.

³ In Gipson’s motion for judicial release, filed April 2023, she stated that she will seek help for her gambling addiction once she is released because the prison does not offer an applicable program. The trial court denied her motion.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

MICHAEL JOHN RYAN, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
EMANUELLA D. GROVES, J., CONCUR