

Gwin, P.J.

{¶1} Defendant Alexander M. Waffle appeals a judgment of the Court of Common Pleas of Ashland County, Ohio, which convicted and sentenced him to twelve months incarceration for attempted grand theft of a motor vehicle, and eight years for robbery, after appellant pled guilty. The court ordered the two sentences be served consecutively. Appellant assigns a single error to the trial court:

{¶2} “THE IMPOSITION OF CONSECUTIVE SENTENCES IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW.”

{¶3} On March 8, 2004, the trial court held a sentencing hearing at which appellant, his counsel, and the prosecutor addressed the court. The trial court informed the parties it had received and reviewed an updated pre-sentence investigation report. The trial court found its discretion regarding felony sentences must be guided by R.C. 2929.11, which provides the overriding purposes of sentencing are to protect the public from future crime by this offender and others, and to punish this offender.

{¶4} The court found there was a possibility of recidivism, and appellant failed to respond favorably in the past to previously imposed sanctions. The court found appellant was on community control for a misdemeanor when he committed these offenses. The court found the victim was a law enforcement officer whose life the appellant threatened. Appellant also threatened a passer-by.

{¶5} The court concluded a prison sentence is necessary to properly protect the public, and the shortest prison term would demean the seriousness of the offense and would not adequately protect the public. The court found maximum prison terms are

appropriate under R.C. 2929.14, because appellant poses the greatest likelihood of committing future crimes.

{¶6} The trial court cited R.C. 2929.14 (E)(4), and found consecutive prison terms are necessary to protect the public. The court found consecutive prison terms are not disproportionate to the harm caused, and the harm caused is so great a single prison term does not adequately reflect the seriousness of the appellant's conduct.

{¶7} In *State v. Comer*, 99 Ohio St. 3d 463, 2003-Ohio-4165, 793 N.E. 2d 473, the Ohio Supreme Court found when a trial court imposes consecutive felony sentences, it must make its statutorily enumerated findings supporting the consecutive sentences, and give reasons supporting those findings, at the sentencing hearing.

{¶8} R.C. 2929.14 (E)(4) provides a court may require an offender to serve prison terms consecutively if the court finds consecutive sentences are 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. The court must also find any one of the following:

{¶9} (a) the offender committed one or more of the multiple offenses while under, inter alia, post-release control for a prior offense;

{¶10} (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 the course of conduct adequately reflects the seriousness of the offender's conduct; or

{¶11} (c) the offender’s history of criminal conduct demonstrates the consecutive sentences are necessary to protect the public from future crime by the offender.

{¶12} The State of Ohio concedes the trial court did not make the requisite findings required by R.C. 2929.14 (E) with respect to the imposition of consecutive sentences. The State joins with appellant in requesting the matter be remanded for re-sentencing.

{¶13} The assignment of error is sustained.

{¶14} For the foregoing reasons, the judgment of the Court of Common Pleas of Ashland County, Ohio, is vacated, and the cause is remanded to that court for re-sentencing in accord with law and consistent with this opinion.

By Gwin, P.J.,
Hoffman, J., and
Boggins, J., concur

JUDGES

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IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO

