

[Cite as *State v. Barry*, 2015-Ohio-2129.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27285

Appellee

v.

JASON BARRY

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 13 08 2360A

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 3, 2015

SCHAFFER, Judge.

{¶1} Appellant-Defendant, Jason D. Barry, appeals a judgment of the Summit County Court of Common Pleas that ordered his sentences for obstructing official business and illegal assembly or possession of chemicals for the manufacture of drugs to run consecutively to his prior sentences from 2012. For the following reasons, we affirm.

I.

{¶1} Jason D. Barry was convicted in 2012 for possession of heroin in violation of R.C. 2925.11(C)(a), a fifth degree felony, and illegal manufacture of drugs in violation of R.C. 2925.04(A), a first degree felony. He was sentenced to a four-year non-mandatory prison term on those charges. However, Mr. Barry failed to surrender to the Ohio Department of Corrections after the trial court gave him some time to get his affairs in order before serving his sentence. Mr. Barry remained at large for more than a year until August 15, 2013, when police arrested Mr. Barry after he purchased pseudoephedrine from a Walgreen's pharmacy.

{¶2} The Summit County Grand Jury indicted Mr. Barry with one count of illegal assembly or possession of chemicals for the manufacture of drugs in violation of R.C. 2925.041(A), a third degree felony, and one count of obstructing official business in violation of R.C. 2921.31(A), a second degree misdemeanor. Mr. Barry pled not guilty to the charges.

{¶3} On the morning that Mr. Barry's trial was set to begin, Mr. Barry withdrew his not guilty pleas and pled guilty to the offenses charged in the indictment. The trial court sentenced Mr. Barry to a mandatory five years in prison on the illegal assembly or possession charge and ordered the sentence to run consecutively to Mr. Barry's non-mandatory four-year prison sentence from 2012. The trial court sentenced Mr. Barry to 90 days in jail on the obstruction charge, to be served concurrently with the five-year prison term. The trial court also imposed a one-year suspension of Mr. Barry's driver's license and credited Mr. Barry with time served in the Summit County Jail.

{¶4} Mr. Barry now appeals his sentence, raising one assignment of error for this Court's review.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED IN IMPOSING CONSECUTIVE SENTENCES UPON JASON BARRY, IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION.

{¶5} Mr. Barry argues in his sole assignment of error that the trial court erred by imposing consecutive sentences because the trial court failed to properly consider the statutory factors enumerated in R.C. 2929.14(C)(4). We disagree.

{¶6} "A plurality of the Supreme Court of Ohio held that appellate courts should implement a two-step process when reviewing a felony sentence." *State v. Clayton*, 9th Dist.

Summit No. 26910, 2014-Ohio-2165, ¶ 43, citing *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶ 26. “First, [we] must examine the sentencing court’s compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law.” *Kalish* at ¶ 26. The standard of review in the first step is de novo. *Id.* If the sentence is not contrary to law, we review the trial court’s decision in imposing a term of imprisonment for an abuse of discretion. *Id.* An abuse of discretion implies that the court's decision is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶7} R.C. 2929.14(C)(4) states:

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.

Thus, a trial court must make three findings before imposing consecutive sentences:

(1) that consecutive sentences are necessary to protect the public from future crime or to punish the offender; (2) 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 (3) that one of the three particular findings set forth in R.C. 2929.14(C)(4)(a)-(c) applies.

State v. Linde, 9th Dist. Summit No. 26714, 2013-Ohio-3503, ¶ 25.

{¶8} In *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, the Ohio Supreme Court stated that:

In order to impose consecutive terms of imprisonment, 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, but it has no obligation to state reasons to support its findings.

(Emphasis added.) *Id.* at syllabus. However, although a trial court must state the required findings as part of the sentencing hearing when imposing consecutive sentences, “a word-for-word recitation of the language of [R.C. 2929.14(C)(4)] is not required[.]” *Id.* at ¶ 29. “[A]s 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.” *Id.* “With exceptions not relevant here, if the trial court does not make the factual findings required by R.C. 2929.14(C)(4), then ‘a prison term, jail term, or sentence of imprisonment shall be served concurrently with any other prison term, jail term, or sentence of imprisonment imposed by a court of this state, another state, or the United States.’” *Id.* at ¶ 23, quoting R.C. 2929.41(A).

{¶9} In the instant matter, the trial judge made the following remarks during Mr. Barry’s sentencing hearing:

Okay. And, you know, I just have to say, Mr. Barry, I don’t like sending people away for long periods of time. It’s not something that I enjoy doing. But you richly deserve this.

You know, you’re out there cooking meth, destroying your life, destroying the lives of those around you who you touch, who you sell to, or give to, or influence with this. It’s a plague on our community.

And you were given more than one chance by this Court to get your act together and you failed miserably. So you are paying a very high price for that.

So the Court will impose a mandatory sentence of five years in the Ohio State Penitentiary that will run consecutive to the four[sic] years that you're already doing. I will give you credit for all time you've served in the Summit County Jail on this case number.

We conclude that this language is sufficient to meet the minimum requirements of R.C. 2929.14(C)(4) even though it is not ideal. *See State v. Venes*, 8th Dist. Cuyahoga No. 98682, 2013-Ohio-1891, ¶ 14 (“But not requiring slavish adherence to the specific wording of the statute is not the same as relieving the court of the duty to make the required ‘findings.’”). First, by stating that Mr. Barry “richly deserve[s]” a lengthy prison sentence and that Mr. Barry is “paying a very high price for” failing to rehabilitate himself following his previous convictions, the trial court makes clear that a consecutive sentence is being imposed in the instant case to punish Mr. Barry. Secondly, the trial court noted that although it generally disfavors lengthy prison terms, a consecutive sentence is warranted in this case, thus denoting the trial court’s belief that a consecutive sentence is not disproportionate either to the seriousness of Mr. Barry’s criminal conduct or to the danger that he poses to the public. Lastly, the trial court reviewed Mr. Barry’s presentence investigation before remarking that cooking methamphetamine destroys the lives of other individuals and is a “plague on our community,” thus demonstrating that the trial court believed that a consecutive sentence is necessary to protect the general public from future crime by Mr. Barry. *See Bonnell* at ¶ 33.

{¶10} Although the trial court never explicitly listed or discussed any of the R.C. 2929.14(C)(4) factors during the sentencing hearing, it was not required to do so. *See id.* at ¶ 37 (a trial court is not “required to give a talismanic incantation of the words of [R.C. 2929.14(C)(4)], provided that the necessary findings can be found in the record and are incorporated into the sentencing entry.”). As the trial court’s findings are supported by the

record and incorporated into the sentencing entry, we determine that the trial court did not err by imposing a consecutive sentence in the instant case.

{¶11} Mr. Barry's sole assignment of error is overruled.

III.

{¶12} Mr. Barry's assignment of error is overruled, and the judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JULIE SCHAFER
FOR THE COURT

HENSAL, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

JEREMY A. VEILLETTE, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.