

[Cite as *State v. Clayton*, 2015-Ohio-2499.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27515

Appellee

v.

DOYLYN D. CLAYTON, JR.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 2012-09-2722

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 24, 2015

CARR, Judge.

{¶1} Appellant, Doylyn Clayton, appeals the judgment of the Summit County Court of Common Pleas. This Court affirms in part, reverses in part, and remands.

I.

{¶2} In June 2012, Clayton posted a sham advertisement on Craigslist regarding the sale of a car. When a married couple expressed interest in the car, they were lured to an Akron residence where they were robbed by three men at gunpoint. The Summit County Grand Jury indicted Clayton on multiple felonies in relation to the incident. A jury subsequently found Clayton guilty of two counts of aggravated robbery as well as two accompanying firearm specifications. The trial court sentenced Clayton to a total prison term of 16 years. On appeal, this Court reversed on the basis that the trial court failed to make the requisite findings in support of its decision to impose consecutive sentences. *State v. Clayton*, 9th Dist. Summit No. 26910, 2014-Ohio-2165.

{¶3} On remand, defense counsel filed a sentencing memorandum and the trial court proceeded to hold a resentencing hearing on September 12, 2014. The trial court imposed a five-year term of incarceration on both counts of aggravated robbery and a three-year term of incarceration on each of the attendant firearm specifications. The trial court ran all of the sentences consecutively for a total prison sentence of 16 years. Both at the resentencing hearing and in its September 17, 2014 judgment entry, the trial court made findings in support of its decision to impose consecutive sentences.

{¶4} Clayton raises two assignments of error.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED BY IMPOSING CONSECUTIVE SENTENCES IN VIOLATION OF R.C. 29[29.]14(C)(4) ON THE TWO CONVICTIONS FOR ROBBERY.

{¶5} In his first assignment of error, Clayton argues that the trial court erred by imposing consecutive sentences without complying with the requirements of R.C. 2929.14. This Court disagrees.

{¶6} 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 [R.C.] 2929.16, 2929.17, or 2929.18, 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.

{¶7} The Supreme Court of Ohio has held that, “[i]n 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.” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, syllabus.

{¶8} A review of the transcript from the resentencing hearing reveals that after imposing sentence on each count of aggravated robbery, as well as the attendant firearm specifications, the trial court determined it was necessary to run the sentences consecutively. In the midst of making findings in support of its decision to impose consecutive sentences, the trial judge asked the attorneys if Clayton was under any sanctions at the time of the offense. The assistant prosecutor answered the question in the negative, and the trial court gathered the attorneys for a side-bar conference. After a discussion off the record, the trial court found that two aggravated robbery offenses involved two separate victims and that the harm caused by the offenses was so great that no single term for the offenses would adequately reflect the seriousness of Clayton's conduct. After underscoring some of the particularly distressing details of the incident, the trial court found that consecutive sentences were necessary to protect the public from future crime and necessary to punish the defendant. The trial court further found that consecutive sentences were not disproportionate to the seriousness of the criminal conduct or to the danger the defendant poses to the community. In conclusion, the trial court reiterated

that its decision to impose consecutive sentences was made after due consideration of the aforementioned factors.

{¶9} Clayton argues that the trial court utilized an unlawful sentencing package plan. Clayton maintains that the trial court's "comprehensive sentencing plan" was evidenced by the fact the trial court shifted its attention at the hearing from whether Clayton was under disability under R.C. 2929.14(C)(4)(a) to the harm caused by the offense pursuant to R.C. 2929.14(C)(4)(b), demonstrating that the trial court went into the hearing with a predetermined intention of imposing a total sentence of 16 years imprisonment.

{¶10} Clayton's sentencing package argument is without merit. The Supreme Court has explained that a sentencing package "requires a 'court to consider the sanctions imposed on multiple offenses as the components of a single, comprehensive sentencing plan.'" *State v. Evans*, 113 Ohio St.3d 100, 2007-Ohio-861, ¶ 11, quoting *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, ¶ 5. A sentencing package is unlawful in Ohio as it "ignores the sentencing scheme set forth by the Revised Code, which provides a particular, independent sanction or range of sanctions for each offense and does not authorize a trial court at sentencing to consider multiple offenses together." *Evans* at ¶ 12. In this case, the trial court took deliberate steps to ensure that it complied with the provisions of R.C. 2929.14(C)(4). While it is true that the trial court inquired of the parties whether Clayton was under a sanction at the time of the offense, this does not demonstrate that the trial court utilized a comprehensive sentencing plan. Instead, the trial court addressed each of the offenses individually at the sentencing hearing. The trial court then articulated specific findings in support of its decision to impose consecutive sentences, making specific reference to the facts of this case and explicitly stating that the harm caused by the two aggravated robberies in this case was so great that no single prison term for either

offense could adequately reflect the seriousness of Clayton's conduct, in accordance with R.C. 2929.14(C)(4)(b). The findings made by the trial court at the hearing were incorporated into the trial court's September 17, 2014 sentencing entry. Under these circumstances, Clayton cannot prevail on his argument that the trial court failed to comply with R.C. 2929.14(C)(4) by employing a sentencing package scheme.

{¶11} The first assignment of error is overruled.

ASSIGNMENT OF ERROR II

IT WAS PLAIN ERROR FOR THE TRIAL COURT TO IMPOSE A NO CONTACT ORDER DUE TO THE DEFENDANT ALREADY INCURRING A PRISON SENTENCE ON THE CASE.

{¶12} In his second assignment of error, Clayton argues that the trial court committed plain error by imposing a no contact order in addition to a prison sentence. The Supreme Court of Ohio recently held that “[a] trial court cannot impose a prison term and a no-contact order for the same felony offense.” *State v. Anderson*, Slip Opinion No. 2014-0674, 2015-Ohio-2089, ¶ 1. In reaching this decision, the high court noted that the General Assembly intended prison and community-control sanctions as alternative sentences for a felony offense, and a trial court must impose either a prison term or a community control sanction absent an express exception. *Id.* at ¶ 31.¹ The Supreme Court vacated the no-contact order imposed by the trial court and the prison sentence remained in place. *Id.* at ¶ 32. In this case, the trial court erred by imposing both a prison sentence and a no-contact order for the felony offense of aggravated robbery. Accordingly, this matter must be remanded for further proceedings consistent with this decision.

¹ Though a trial court cannot impose a no-contact order in addition to a prison sentence, we note that a victim may request in writing a cease and desist order from the penal institution, directing the inmate to stop inappropriate contact. *See* State of Ohio Department of Rehabilitation and Correction Policy No. 03-OVS-1, eff. June 24, 2013, VI(A)(4)(a). Penal institutions may also establish rules prohibiting inmates from having contact with victims. *See* OAC 5120-9-06(C)(61).

{¶13} The second assignment of error is sustained.

III.

{¶14} Clayton's first assignment of error is overruled. The second assignment of error is sustained. The judgment of the Summit County Court of Common Pleas is affirmed in part, and reversed in part, and the cause remanded for further proceedings consistent with this decision.

Judgment affirmed in part,
reversed in part,
and cause remanded.

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 equally to both parties.

DONNA J. CARR
FOR THE COURT

HENSAL, P. J.
SCHAFFER, J.
CONCUR.

APPEARANCES:

DONALD GALLICK, Attorney at Law, for Appellant.

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