

[Cite as *State v. Jackson*, 2015-Ohio-1365.]
DONOFRIO, J.

{¶1} Defendant-appellant Sherrick Jackson appeals a resentencing decision entered in the Mahoning County Common Pleas Court following a remand from this court.

{¶2} On November 23, 2011, Jackson and his younger brother, Dawan Fuller, shot Robert Shaffer and his mother, Michele Holmes, each several times while in their home on Youngstown's west side. A Mahoning County grand jury indicted Jackson and Fuller, on December 15, 2011, on two counts of attempted murder in violation of R.C. 2903.02(A)(D) and R.C. 2923.02(A)(F), first-degree felonies, and two counts of felonious assault in violation of R.C. 2903.11(A)(2)(D), second-degree felonies. A firearm specification accompanied each count. Jackson initially pleaded not guilty and the matter proceeded to discovery and other pretrial matters.

{¶3} On August 20, 2012, Jackson changed his plea to guilty on all charges and the trial court accepted Jackson's pleas. The following day, Fuller's case proceeded to a bench trial where he was found guilty as charged and given an aggregate sentence of 26 years in prison. He appealed his conviction and sentence. *State v. Fuller*, 7th Dist. No. 12 MA 185, 2014-Ohio-1351. This court affirmed Fuller's conviction but reversed Fuller's consecutive sentences due to the trial court's failure to make the requisite findings under R.C. 2929.14(C)(4) and remanded for resentencing. *Id.*

{¶4} Meanwhile, Jackson's case proceeded to sentencing. At the sentencing hearing, the trial court found that the two felonious assault counts merged with the two attempted murder counts and the felonious assault firearm specifications merged with the attempted murder firearm specifications. It then sentenced appellant to 10 years on each of the attempted murder counts and 3 years on each of the firearm specifications. The court ordered the sentences to run consecutively for a total of 26 years in prison. Jackson appealed his sentence to this court. *State v. Jackson*, 7th Dist. No. 12 MA 199, 2014-Ohio-777. While not taking issue with his individual sentences, he argued that the court erred in ordering consecutive sentences and that the aggregate sentence was disproportionate to sentences imposed upon similar

offenders. This court did not find merit to Jackson's proportionality argument, but did reverse and remand for resentencing because the trial court did not make any of the three findings required under R.C. 2929.14(C)(4) for imposition of consecutive sentences.

{¶15} The trial court conducted the resentencing hearing on July 1, 2014. The court inquired of counsel why the case had been sent back to it for resentencing. The assistant prosecuting attorney advised the court, and Jackson's attorney confirmed, that the case had been remanded because it did not make the required findings for imposition of consecutive sentences. The court then proceeded to impose the same sentence as it had before and, again, failed to make any of the necessary findings under R.C. 2929.14(C)(4) for imposition of consecutive sentences. There is no reference to the required findings in the court's August 11, 2014 judgment entry of sentence either. This appeal followed.

{¶16} Jackson raises only one assignment of error directed at the trial court's imposition of consecutive sentences:

The trial court erred by sentencing Appellant Sherrick Jackson to consecutive prison term sentences.

{¶17} The sole argument on appeal is that the trial court's sentence is clearly and convincingly contrary to law because the court did not make any statutorily required finding for imposing consecutive sentences at the sentencing hearing and in the sentencing entry. The state filed a one sentence confession of judgment agreeing that the court failed to make the requisite findings under R.C. 2929.14(C) when it imposed consecutive sentences.

{¶18} Pursuant to 2011 H.B. 86, effective September 20, 2011, a court imposing consecutive sentencing must make certain findings. This legislation was enacted in response to the Ohio Supreme Court's statement that its *Foster* decision was incorrect in striking down statutory consecutive sentence provisions and that the legislature would need to enact a new statute to revive any requirement of findings

for consecutive sentences. *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768, paragraph three of the syllabus.

{¶9} R.C. 2929.14(C)(4) sets forth the findings required for imposition of consecutive sentences:

(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.

{¶10} Thus, the sentencing court must find that (1) 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 defendant's

conduct and to the danger he poses to the public, and (3) one of the findings described in subsections (a), (b) or (c). R.C. 2929.14(C)(4); *State v. Bellard*, 7th Dist. No. 12 MA 97, 2013-Ohio-2956, ¶ 17. See also *State v. Power*, 7th Dist. No. 12 CO 14, 2013-Ohio-4254, ¶ 37. In analyzing whether a sentencing court complied with R.C. 2929.14(C)(4), this court had held that a trial court was not required to recite any magic or talismanic words when imposing consecutive sentences but that it must be clear from the record that the trial court had engaged in the appropriate analysis. *Power* at ¶ 40; *Bellard* at ¶ 17.

{¶11} Appellate case law had been in flux concerning the extent to which a sentencing court was required to make these findings, particularly as it regarded the extent to which the court needed to make those findings at the sentencing hearing and in the subsequent sentencing entry. Here, however, the trial court did not make *any* of the findings either at the sentencing hearing or in the judgment entry of sentence.

{¶12} Following Jackson’s sentencing hearing but before the trial court’s filing of the judgment entry of sentence in this case, the Ohio Supreme Court in *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, provided clarification holding that the findings required by R.C. 2929.14(C)(4) must be made at the sentencing hearing *and* included in the sentencing entry. *Id.* at the syllabus. The Court confirmed that a sentencing court is not required to recite “a talismanic incantation of the words” of the consecutive sentences provision of the felony sentencing statute, so long as the required findings can be gleaned from the record. *Id.* at ¶¶ 36-37. Additionally, the Court also held that the sentencing court “has no obligation to state reasons to support its findings.” *Id.*

{¶13} In sentencing Jackson, the trial court made the following pertinent statements:

THE COURT: * * * Let the record reflect the Defendant was present this day in court for a sentencing hearing held pursuant to Ohio Revised Code Section 2929.19. The Defendant was present,

represented by Attorney Smith. The State was represented by Attorney Andrews. The Defendant was afforded all his rights pursuant to Criminal Rule 32.

The Court has considered the record, the oral statements made, and reviewed the presentence investigation that was previously prepared in this matter.

The Court also considered the principles and purposes of sentencing under Ohio Revised Code 2929.11, and has balanced the seriousness and recidivism factors under Ohio Revised Code 2929.12.

The Court finds the Defendant did plead guilty to one count of Attempted Murder, a violation of Ohio Revised Code Section 2903.02(A)(D), a felony of the first degree;

To another count of Attempted Murder, a violation of Ohio Revised Code Section 2903.02(A)(D), a felony of the first degree;

One count of Felonious Assault, a violation of Ohio Revised Code 2903.11(A)(2)(D), a felony of the second degree;

Another count of Felonious Assault, a violation of Ohio Revised Code 2903.11(A)(2)(D), a felony of the second degree.

The Defendant also pled guilty to the firearm specifications that are attached to all four counts in violation of Ohio Revised Code 2941.145(A).

The Court believes that the Defendant is not amenable to community control and that prison is consistent with the principles and purposes of sentencing.

The Court also finds the victims were severely injured in this matter and that the firearm injured two persons. Therefore, the Court's going to sentence the Defendant to ten years in the Department of Rehabilitation & Corrections on Count One; and ten years in the

Department of Rehabilitation & Corrections in Count Two, to run consecutive to each other.

The Court further finds that there's two firearm specifications for three years each that run consecutive to Count One and Count-Two, for a total of 26 years.

The Court finds Count Three merges with Count One along with the firearm specification attached, and Count Four merges with Count Two, along with the firearm specification attached to it.

Mr. Jackson, as I told you when I first sentenced you, when you're released from prison, you will be subject to a mandatory post-release control time of five years.

You have the right to appeal this sentence. If you cannot afford an attorney one will be appointed to represent you in that appeal. All fines and costs will be suspended.

(Sentencing Tr. 7-10.)

{¶14} The judgment entry of sentence does not add any other findings by the trial court. It simply repeats the findings the court made at the sentencing hearing.

{¶15} The trial court failed to comply with R.C. 2929.14(C)(4) in sentencing appellant to consecutive sentences. The court did not make a finding that consecutive sentences were necessary to protect the public from future crime or to punish appellant. The court did not make a finding that consecutive sentences were not disproportionate to the seriousness of appellant's conduct and to the danger posed to the public. And the court did not find any of the three situations set out in R.C. 2929.14(C)(4)(a)(b)(c). Thus, because the trial court failed to comply with R.C. 2929.14(C)(4), Jackson's consecutive sentences are contrary to law.

{¶16} Accordingly, Jackson's sole assignment of error has merit.

{¶17} The judgment of the trial court is reversed and this matter is remanded for resentencing with instructions to the court to either (1) impose concurrent sentences or (2) impose consecutive sentences with the findings required by R.C.

2929.14(C)(4) to be made at the sentencing hearing and incorporated into the judgment entry of sentence as dictated by the Ohio Supreme Court in *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659.

DeGenaro, J., concurs.

Robb, J., concurs.