[Cite as *State v. Harmon*, 2022-Ohio-3617.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

CODY HARMON,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 21 CO 0015

Criminal Appeal from the
Court of Common Pleas of Columbiana County, Ohio
Case No. 2019 CR 562

BEFORE:
Cheryl L. Waite, Gene Donofrio, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Atty. Vito Abruzzino, Columbiana County Prosecutor and *Atty. Steven V. Yacovone*, Assistant Prosecuting Attorney, 135 South Market Street, Lisbon, Ohio 44432, for Plaintiff-Appellee

Atty. John M. Jurco, John M. Jurco, LLC, P.O. Box 783, St. Clairsville, Ohio 43950, for Defendant-Appellant.

Dated: September 28, 2022

WAITE, J.

{¶1} Appellant appeals an April 19, 2021 judgment entry of the Columbiana County Court of Common Pleas and contests various aspects of his sentence. For the reasons provided, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} On September 21, 2019, Appellant broke into the home of a 91-year-old woman. While he was inside and sorting through the woman's closet, she awoke and attempted to barricade herself in her bedroom. Appellant used an axe to gain entrance into the bedroom. He tied her to the bedframe and repeatedly punched her in the face before she managed to break free. Appellant retied her to the bedframe before fleeing in her vehicle. The vehicle was later located in Pennsylvania but had been set on fire. Although Appellant denied his involvement to law enforcement, both physical and DNA evidence implicated him. Additionally, he had burn marks on his arms when brought in for questioning.

{¶3} Before charges were filed in this case, Appellant was taken into custody on unrelated charges pertaining to case number 19CR00465. The record is unclear, but it appears that Appellant was brought into custody on those charges in October of 2019. Then, on December 11, 2019, Appellant was indicted in the instant matter on one count of aggravated burglary, a felony of the first degree in violation of R.C. 2911.11(A)(1); one count of kidnapping, a felony of the first degree in violation of R.C. 2905.01(A)(2); one count of felonious assault, a felony of the third degree in violation of R.C. 2903.11(A)(1); aggravated robbery, a felony of the first degree in violation of R.C. 2911.01(A)(3);

tampering with evidence, a felony of the third degree in violation of R.C. 2921.12(A)(1); and grand theft of a motor vehicle, a felony of the fourth degree in violation of R.C. 2913.02(A)(1).

{¶4} On December 16, 2019, the trial court set Appellant's bond at $100,000. Apparently he did not make bond. In March of 2020, a different trial court judge sentenced Appellant to an indefinite term of four to five years of incarceration in case number 19CR00465. *State v. Harmon*, 7th Dist. Columbiana No. 20 CO 0006, 2021-Ohio-2013, ¶ 4. On March 19, 2021, Appellant pleaded guilty in the instant matter to aggravated burglary, felonious assault, tampering with evidence, and grand theft of a motor vehicle. The remaining charges (kidnapping and aggravated robbery) were dismissed.

{¶5} The trial court sentenced Appellant to an aggregate prison term having an indefinite term of nine years and an indefinite term of thirteen and one-half years. The sentence was ordered to run consecutively to Appellant's sentence in case number 19 CR 00465. It is from this entry that Appellant timely appeals.

{¶6} On February 22, 2022, we *sua sponte* remanded the matter after finding that since the trial court left open the issue of jail-time credit the sentencing entry was not a final appealable order. We granted the trial court an extension of time on remand to allow the parties to brief the issue. On March 31, 2022, the court issued a judgment entry awarding Appellant zero days of jail-time credit.

ASSIGNMENT OF ERROR NO. 1

> The trial court erred in sentencing the appellant to prison terms running consecutive to his prison term in his other case.

{¶7} The trial court ordered Appellant's individual sentences in the instant case to run concurrent to one another. However, the court ordered this aggregate sentence to run consecutive to Appellant's sentence in case number 19CR00465. While Appellant concedes that a court is permitted to run a sentence consecutively to another sentence in an unrelated case, he argues that the court must still comply with the requirements of R.C. 2929.14. Here, Appellant contends that the court improperly found that he has a history of criminal conduct where his prior criminal record contains only theft offenses. Appellant also appears to contest the length of his sentence, arguing that it is unsupported by the record.

{¶8} The state responds by distinguishing the cases cited by Appellant, as those cases largely involved defendants who did not have a significant criminal history or were sentenced to extraordinary sentences without justification.

{¶9} "[A]n appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court's findings under relevant statutes or that the sentence is otherwise contrary to law." *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1.

> A sentence is considered to be clearly and convincingly contrary to law if it falls outside of the statutory range for the particular degree of offense; if the trial court failed to properly consider the purposes and principles of felony sentencing as enumerated in R.C. 2929.11 and the seriousness and recidivism factors set forth in R.C. 2929.12; or if the trial court orders consecutive sentences and does not make the necessary consecutive sentence findings.

State v. Pendland, 7th Dist. Mahoning No. 19 MA 0088, 2021-Ohio-1313, ¶ 41; citing *State v. Collins*, 7th Dist. Noble No. 15 NO 0429, 2017-Ohio-1264, ¶ 9; *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 30.

{¶10} R.C. 2929.14(C)(4) provides that, before a trial court can impose consecutive sentences on a defendant, the court must find:

> [T]hat 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.

{¶11} A trial court must make the consecutive sentence findings at the sentencing hearing and must additionally incorporate these findings into the sentencing entry. *State v. Williams*, 2015-Ohio-4100, 43 N.E.3d 797, ¶ 33-34 (7th Dist.), citing *Bonnell*, *supra*, ¶ 37. The court is not required to state reasons in support nor is it required to use any "magic" or "talismanic" words, so long as it is apparent that the court conducted the appropriate analysis. *Williams* at ¶ 34, citing *State v. Jones*, 7th Dist. Mahoning No. 13 MA 101, 2014-Ohio-2248, ¶ 6; *State v. Verity*, 7th Dist. Mahoning No. 12 MA 139, 2013-Ohio-1158, ¶ 28-29.

{¶12} Appellant incorrectly claims that his criminal record contains only theft offenses. At the sentencing hearing, the state discussed Appellant's lengthy criminal record: unlawful sexual conduct with a minor, multiple failures to verify change of address, multiple burglary charges, multiple theft charges, probation violation, community control violation, and assault. (Sentencing Hrg., p. 6.)

{¶13} These offenses are confirmed by a review of Appellant's PSI. In addition, the PSI contains offenses not mentioned by the state: breaking and entering, obstructing official business, and criminal trespass.

{¶14} The Eighth District reviewed an appellant's prior criminal history in *State v. Boros*, 8th Dist. Cuyahoga No. 105173, 2017-Ohio-7405. In *Boros*, the appellant had a prior record consisting of the following offenses: 38 traffic citations, criminal damages, building housing violations, failure to remove a nuisance, building code violations, a DUI,

passing bad checks, drug possession, petty theft, and theft. It appears that each of these convictions involved misdemeanors. *Id.* at ¶ 20. The *Boros* court affirmed the imposition of consecutive sentences even though primarily based on theft offenses. *Id.* at ¶ 21.

{¶15} Here, Appellant's record contained more than "a few theft offenses." Whether the court relied more heavily on the theft offenses as Appellant claimed at oral argument is irrelevant, as the court was clearly aware of Appellant's entire record. The court also indicated that it had reviewed Appellant's PSI report, which Appellant does not contest as inaccurate. The record demonstrates that the court considered all of Appellant's offenses, regardless which the court found more relevant. We also note there is no precedent stating that theft offenses alone are an insufficient basis to allow a court to find an offender has engaged in a course of criminal history.

{¶16} The court made the requisite R.C. 2929.14(C)(4) findings at the sentencing hearing and in its sentencing entry. Thus, the court's imposition of consecutive sentences is supported by the record.

{¶17} Many of the cases cited by Appellant involve the imposition of significant prison sentences without justification in this record. To the extent that Appellant challenges the length of his sentence, the court did not impose a maximum sentence in this matter. Appellant's aggregate sentence is nine to thirteen years. Appellant was subject to a maximum sentence of up to twenty-three and one-half years following his plea deal. Even with the consecutive nature of his sentence, Appellant will serve a sentence well below the maximum.

{¶18} Although Appellant correctly states that he attempted to take some responsibility for his actions, he also downplayed this incident. He claimed that he did

not assault the victim, despite her injuries. He also claimed that he tied the restraints loosely so that she would be able to free herself and that he only restrained her to slow her ability to get to a phone. (Sentencing Hrg., p. 9.) While Appellant presents this as a form of mitigation, his attempt to prevent an elderly woman from immediately calling for help does not appear to be a mitigating factor.

{¶19} Based on this record, the court made the requisite R.C. 2929.14(C)(4) findings and did not impose an unreasonably long sentence. As such, Appellant's first assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

The trial court erred in not calculating jail time credit.

{¶20} Appellant argues that the trial court erred in failing to award him credit for the time he spent incarcerated during the pendency of his case. Appellant claims that the state should not benefit from its strategy of delaying his indictment in the instant matter.

{¶21} The state responds that Appellant had already been detained for almost two months in case number 19CR00465 at the time of the instant indictment. The states notes that Appellant had been sentenced in that case before he pleaded guilty in the instant matter. Further, Appellant received credit for 148 days in that case and is not entitled to receive the benefit of those same days served in this matter, as well.

{¶22} A defendant is not entitled to jail-time credit for any period of incarceration arising from a separate matter. R.C. 2967.191; *State v. Mason*, 7th Dist. Columbiana No. 10 CO 20, 2011-Ohio-3167, ¶ 16. A defendant will not receive jail-time credit for time served on an unrelated offense regardless of whether the time served occurred during

the pre-detention phase of the other case. *State v. Childs*, 7th Dist. Columbiana No. 16 CO 0016, 2018-Ohio-2762, ¶ 31, citing *State v. Cook*, 7th Dist. Mahoning No. 00CA184, 2002-Ohio-7170; *State v. Daughenbaugh*, 3d Dist. Wyandot No. 16-09-05, 2009-Ohio-3823.

{¶23} Appellant provides no support for his argument that a delay in filing the indictment affects an award of jail-time credit. In fact, Appellant has not shown that the state delayed the indictment, either reasonably or unreasonably.

{¶24} Appellant also made an unsupported argument in his trial court brief that where sentences are ordered to run consecutively based on a continuing course of criminal conduct, a defendant is entitled to credit for time served. Even if such law exists, the trial court did not base the consecutive sentence on a continued course of criminal conduct.

{¶25} Pursuant to the well-settled law, Appellant's second assignment of error is without merit and is overruled.

Conclusion

{¶26} Appellant's arguments focus on his sentence. He argues that his sentence is contrary to law as the trial court improperly found a course of criminal conduct, sentenced him to an unsupported prison term, and failed to award him credit for time served. For the reasons provided, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Donofrio, P.J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Columbiana County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.