

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : Nos. 12AP-934
 : (C.P.C. No. 09-CR-879)
 Bradley D. Bender, : and 12AP-935
 : (C.P.C. No. 09-CR-878)
 Defendant-Appellant. :
 (REGULAR CALENDAR)

D E C I S I O N

Rendered on June 28, 2013

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*,
for appellee.

Yeura Venters, Public Defender, and *Allen V. Adair*, for
appellant.

APPEALS from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Bradley D. Bender is appealing from the sentences imposed following his guilty plea to two counts of theft as felonies of the fourth degree. He assigns a single error for our consideration:

The Trial Court Erred by Imposing Consecutive Sentences
Without Making Findings Required by R.C. 2929.14(C)(4).

{¶ 2} At the time Bender was sentenced, which was approximately six years after he committed his crime, the trial court was bound by R.C. 2929.14(C)(4) which read:

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.

{¶ 3} The trial court explained why Bender was not receiving community control, but did not precisely address the findings now required by R.C. 2929.14(C)(4) for consecutive sentences to be imposed.

{¶ 4} The State of Ohio argues that the trial court's sentences should not be overturned for two reasons. First, the state asserts that because the offenses were committed before the new sentencing statute was enacted, Bender should be sentenced under the former sentencing statute. We have rejected this argument based on R.C. 1.58(B) which reads:

If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

{¶ 5} Sparing a criminal defendant from consecutive sentences is reducing the penalty. Bender was entitled to the benefit of the new sentencing statute.

{¶ 6} The state's second argument is that a plain error standard should be applied and plain error has not been demonstrated here. Generally, trial court judges know the law applicable to criminal sentencing and can be presumed to follow it. The trial judge here did not make the required factual findings and therefore erred. However, had the trial court been advised that the requirement of R.C. 2929.14(C)(4) had not been met, the trial court could have easily announced the findings in open court instead of requiring that Bender now be returned from prison to hear the trial court make the required findings. The trial court judge did indicate in open court that the judge had reviewed the file on three occasions, including the morning of the sentencing. The trial court judge labeled Bender as a con artist, a career criminal of sorts. The trial judge indicated that Bender had done some very terrible things to a lot of people.

{¶ 7} These comments do not precisely correspond with what is required by R.C. 2929.14(C)(4). Our recent cases indicate a tendency of this court to view a failure to precisely comply with R.C. 2929.14 as plain error as a matter of law. *See State v. Wilson*, 10th Dist. No. 12AP-551, 2013-Ohio-1520.

{¶ 8} Under the circumstances, we find plain error. We, therefore, sustain the sole assignment of error and reverse and remand the judgments of the Franklin County Court of Common Pleas for resentencing.

*Judgments reversed and remanded
for resentencing.*

KLATT, P.J., and SADLER, J., concur.
