

[Cite as *State v. Banks*, 2004-Ohio-2842.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 03AP-975 (C.P.C. No. 99CR-1808)
Antonio Banks,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

O P I N I O N

Rendered on June 3, 2004

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

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

APPEAL from the Franklin County Court of Common Pleas.

KLATT, J.

{¶1} Defendant-appellant, Antonio Banks, appeals from the sentence imposed by the Franklin County Court of Common Pleas. For the following reasons, we affirm appellant's sentence.

{¶2} On January 10, 1997, between 1:00 a.m., and 2:00 a.m., one of appellant's friends was involved in an altercation with a bouncer at a bar known as The Place, on

Mount Vernon Avenue in Franklin County, Ohio. The bouncer drew a knife during the altercation, but no one was hurt. Appellant and his associates were ordered to leave the bar.

{¶3} The bouncer, angry at what had just occurred in the bar, retrieved a gun and went outside. He looked around both sides of the building and then reentered the bar. The evidence was conflicting as to whether any gunshots were fired while the bouncer was outside the building. Upon reentering the bar, another member of the bar's security team took the gun from the bouncer and put it away.

{¶4} Shortly thereafter, appellant reentered the bar with a gun and fired multiple shots into the bar from the doorway hitting two patrons. One victim was left paralyzed. The other victim was not seriously injured. Several witnesses saw appellant fire the gun into the bar.

{¶5} Appellant was convicted of two counts of attempted murder in violation of R.C. 2923.02 and 2903.02, and two counts of felonious assault in violation of R.C. 2903.11, all with firearm specifications pursuant to former R.C. 2941.145. The trial court merged the felonious assault convictions with the attempted murder convictions and sentenced appellant to ten years for one count of attempted murder and three years for the other count. The trial court ordered these sentences to run consecutively. The trial court also merged the firearm specifications and imposed a mandatory three-year prison sentence to be served consecutively to the attempted murder sentences for a total sentence of 16 years. This court affirmed appellant's convictions but reversed and remanded the matter for resentencing due to the trial court's failure to comply with the

applicable sentencing statutes. *State v. Banks*, Franklin App. No. 01AP-1179, 2002-Ohio-3341, at ¶37-44.

{¶6} The trial court imposed the same sentences on remand. This court again reversed and remanded the matter for resentencing due to the trial court's failure to state its reasons for the imposition of maximum and consecutive sentences as required by law. *State v. Banks* (Aug. 7, 2003), Franklin App. No. 02AP-1426 (Memorandum Decision). On remand for the second time, the trial court again imposed the same sentences.

{¶7} Appellant appeals, assigning the following errors:

FIRST ASSIGNMENT OF ERROR: The trial court erroneously imposed the maximum sentence on the most serious charge among a group of related charges.

SECOND ASSIGNMENT OF ERROR: The trial court erroneously imposed consecutive sentences.

{¶8} In his first assignment of error, appellant objects to the trial court's imposition of a ten-year maximum sentence and requests this court to impose a reduced sentence. R.C. 2953.08(A) provides appellant the right to appeal his sentence. However, appellant's maximum sentence cannot be disturbed on appeal unless this court clearly and convincingly finds that the sentence is contrary to law. R.C. 2953.08(G)(2)(b). Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *State v. Eppinger* (2001), 91 Ohio St.3d 158, 164.

{¶9} In imposing a maximum sentence, the trial court found that appellant committed the worst form of the offense and posed the greatest likelihood of committing future crimes. R.C. 2929.14(C). The trial court also stated its reasons for these findings.

R.C. 2929.19(B)(2)(d). Appellant fired multiple gunshots into a crowded bar. The trial court emphasized that appellant's wanton violence paralyzed one man. These facts support the trial court's findings and the trial court adequately stated its reasons for imposing a maximum sentence. Because the trial court complied with the appropriate sentencing statutes by making findings and giving its reasons for those findings, we cannot clearly and convincingly find that appellant's maximum sentence was contrary to law. *State v. Unrue*, Summit App. No. 21105, 2002-Ohio-7002, at ¶46. Accordingly, this court may not disturb that sentence. R.C. 2953.08(G). Appellant's first assignment of error is overruled.

{¶10} Appellant contends in his second assignment of error that the trial court erred in imposing consecutive sentences. However, the record supports the imposition of consecutive sentences.

{¶11} To impose consecutive sentences, a trial court must expressly find that consecutive sentences are necessary to protect the public from future crime or to punish the defendant, that the consecutive sentences are not disproportionate to the seriousness of defendant's conduct and to the danger he posed to the public, and that the harm defendant caused is so great or unusual that a single prison term would not adequately reflect the seriousness of his conduct. R.C. 2929.14(E)(4). In the case at bar, the trial court made these express findings and adequately stated its reasons for these findings.

{¶12} Appellant fired multiple gunshots into a bar, thereby displaying a complete disregard for the lives of the people in the bar. Appellant's extreme wanton and reckless conduct constitutes clear and convincing evidence supporting the trial court's findings that consecutive sentences were necessary to protect the public from future crime and were

not disproportionate to the seriousness of appellant's conduct and to the danger he posed to the public. In addition, one person appellant shot was left paralyzed from his gunshot wound. This is further clear and convincing evidence supporting the trial court's finding that consecutive sentences were not disproportionate to the seriousness of appellant's conduct and that the harm appellant caused was so great or unusual that a single prison term would not adequately reflect the seriousness of his conduct. Clear and convincing evidence supports all of the trial court's findings necessary to impose consecutive sentences. The trial court also adequately stated its reasons for these findings. Therefore, this court will not disturb these sentences. R.C. 2953.08(G)(2)(a) and (b). Appellant's second assignment of error is overruled.

{¶13} In conclusion, appellant's maximum sentence was not contrary to law and his consecutive sentences were supported by clear and convincing evidence and not otherwise contrary to law. Therefore, this court may not disturb appellant's sentences. R.C. 2953.08(G)(2). Appellant's first and second assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and WATSON, JJ., concur.
