

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	Nos. 18AP-249
	:	and
	:	18AP-377
v.	:	(C.P.C. No. 16CR-1322)
Johnny R. Marcum,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	
State of Ohio,	:	
Plaintiff-Appellee,	:	Nos. 18AP-250
	:	and
	:	18AP-378
v.	:	(C.P.C. No. 16CR-5353)
Johnny R. Marcum,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	
State of Ohio,	:	
Plaintiff-Appellee,	:	Nos. 18AP-251
	:	and
	:	18AP-379
v.	:	(C.P.C. No. 17CR-2504)
Johnny R. Marcum,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	
State of Ohio,	:	
Plaintiff-Appellee,	:	Nos. 18AP-252
	:	and
	:	18AP-381
v.	:	(C.P.C. No. 17CR-2700)
Johnny R. Marcum,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

State of Ohio, :
Plaintiff-Appellee, : Nos. 18AP-253
v. : and
 : 18AP-380
 : (C.P.C. No. 17CR-2795)
Johnny R. Marcum, : (REGULAR CALENDAR)
Defendant-Appellant. :
State of Ohio, :
Plaintiff-Appellee, : Nos. 18AP-254
v. : and
 : 18AP-382
 : (C.P.C. No. 17CR-3666)
Johnny R. Marcum, : (REGULAR CALENDAR)
Defendant-Appellant. :
State of Ohio, :
Plaintiff-Appellee, : Nos. 18AP-255
v. : and
 : 18AP-383
 : (C.P.C. No. 17CR-4914)
Johnny R. Marcum, : (REGULAR CALENDAR)
Defendant-Appellant. :

D E C I S I O N

Rendered on March 21, 2019

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Kimberly M. Bond*, for appellee.

On brief: *Yeura R. Venters*, Public Defender, and *Ian J. Jones*, for appellant. **Argued:** *Ian J. Jones*.

APPEALS from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Defendant-appellant, Johnny R. Marcum, appeals from judgments of the Franklin County Court of Common Pleas convicting him pursuant to guilty pleas and imposing sentences. For the following reasons, we reverse the judgments in certain cases and dismiss the remainder of Marcum's appeals.

I. Facts and Procedural History

{¶ 2} These consolidated appeals arise from Marcum's convictions pursuant to guilty pleas in seven criminal cases in the Franklin County Court of Common Pleas. For purposes of clarity, we set forth the details of each guilty plea below:

Case No. Charges to which guilty plea was entered

16CR-1322 Passing bad checks, a fourth-degree felony violation of R.C. 2913.11 (1 count);
Passing bad checks, a fifth-degree felony violation of R.C. 2913.11 (1 count);
Identity fraud, a fifth-degree felony violation of R.C. 2913.49 (3 counts);
Forgery, a fifth-degree felony violation of R.C. 2913.31 (1 count).

16CR-5353 Failure to appear, a first-degree misdemeanor violation of R.C. 2937.99
(1 count).

17CR-2504 Theft, a fifth-degree felony violation of R.C. 2913.02 (1 count);
Receiving stolen property, a fifth-degree felony violation of R.C. 2913.51
(1 count).

17CR-2700 Theft, a fifth-degree felony violation of R.C. 2913.02 (1 count).

17CR-2795 Passing bad checks, a fifth-degree felony violation of R.C. 2913.11 (1 count);
Passing bad checks, a fourth-degree felony violation of R.C. 2913.11 (1 count).

17AP-3666 Tampering with records, a third-degree felony violation of R.C. 2913.42 (1
count).

17CR-4914 Theft, a fifth-degree felony violation of R.C. 2913.02 (1 count).

{¶ 3} On March 1, 2018, the common pleas court held a sentencing hearing on all seven cases. That same day, the trial court issued a judgment entry in each case imposing sentence. The sentence imposed in each case is set forth below:

16CR-1322 12 months imprisonment on each count (6 total counts), to be served
concurrent with each other and consecutive to all other cases.

Case No. Sentence imposed

16CR-5353 127 days imprisonment, suspended for time served.

17CR-2504 12 months imprisonment on each count (2 total counts), to be served consecutive to all other cases.¹

17CR-2700 12 months imprisonment, to be served concurrent with all other cases.

17CR-2795 12 months imprisonment on the fifth-degree passing bad checks conviction and 18 months on the fourth-degree passing bad checks conviction, to be served concurrent with each other and consecutive to all other cases.

17AP-3666 36 months imprisonment, to be served consecutive to all other cases.

17CR-4914 12 months imprisonment.

{¶ 4} Subsequent to the sentencing hearing, on March 12, 2018, Marcum filed pro se motions for bond hearing and to remove counsel. The trial court issued judgment entries on March 19, 2018 denying these motions as moot.

{¶ 5} Marcum failed to timely appeal the March 1, 2018 judgment entries imposing sentences but filed a pro se motion for delayed appeal on April 10, 2018, which this court granted. Marcum also filed pro se appeals from the trial court's March 19, 2018 judgment entries denying his motions for bond hearing and to remove counsel. This court sua sponte appointed counsel for Marcum and consolidated all his appeals.

II. Assignment of Error

{¶ 6} Marcum assigns the following sole assignment of error for our review:

The trial court committed plain error by imposing consecutive sentences without making the required statutory findings and by not engaging in the correct analysis required by R.C. 2929.14(C)(4) and R.C. 2929.41(A), and mandated by the Ohio Supreme Court in *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177.

¹ The trial court's March 1, 2018 judgment entry in case No. 17CR-2504 only imposed sentence on the receiving stolen property conviction. An amended judgment entry was filed on March 27, 2018 imposing sentence on both charges to which Marcum pled guilty in that case.

III. Analysis

{¶ 7} In his sole assignment of error, Marcum asserts the trial court failed to make the required findings under R.C. 2929.14(C)(4) at the sentencing hearing to impose consecutive sentences.

{¶ 8} We begin by noting the trial court only imposed consecutive sentences in four of Marcum's seven criminal cases. The trial court did not impose consecutive sentences in case Nos. 16CR-5353 (appeal No. 18AP-250), 17CR-2700 (appeal No. 18AP-252), and 17CR-4914 (appeal No. 18AP-255).² Therefore, because Marcum's appeal only challenges the imposition of consecutive sentences, his appeals from the judgments in cases where the trial court did not impose consecutive sentences are dismissed.

{¶ 9} Generally, there is a presumption under Ohio law that multiple terms of imprisonment will be imposed concurrently. R.C. 2929.41(A). *See also State v. Sergeant*, 148 Ohio St.3d 94, 2016-Ohio-2696, ¶ 16 ("Under Ohio law, absent an order requiring sentences to be served consecutively, terms of incarceration are to be served concurrently."). A trial court may, however, exercise its discretion and order multiple sentences to be served consecutively pursuant to R.C. 2929.14(C)(4). *Sergeant* at ¶ 16. R.C. 2929.14(C)(4) sets forth the findings the trial court must make before imposing consecutive sentences:

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.

² The judgment entry in case No. 17CR-4914 does not expressly state whether the sentence imposed in that case was to be served concurrently with or consecutive to Marcum's sentences in the other cases, but at the sentencing hearing the trial court indicated it was to be served concurrently.

(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} 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." (Emphasis added.) *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, syllabus. A trial court is not "required to give a talismanic incantation of the words of the statute, provided that the necessary findings can be found in the record and are incorporated into the sentencing entry." *Id.* at ¶ 37. Thus, in determining whether a trial court engaged in the correct analysis under R.C. 2929.14(C)(4), an appellate court may liberally review the entire sentencing transcript to discern whether the trial court made the required findings. *State v. Hairston*, 10th Dist. No. 17AP-416, 2017-Ohio-8719, ¶ 8. *See also Bonnell* at ¶ 29 ("[A] word-for-word recitation of the language of the statute is not required, and as long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld."). The trial court must make the required findings at the time of sentencing and incorporate them into the sentencing entry. *Bonnell* at ¶ 26, 30.

{¶ 11} Under R.C. 2929.14(C)(4), the trial court must make three findings in order to impose consecutive sentences. The court must find that: (1) consecutive sentences are necessary to protect the public from future crime or punish the offender, and (2) consecutive sentences are not disproportionate to the seriousness of the offender's conduct. The court must then find (3) whether one or more of the factors under R.C. 2929.14(C)(4)(a) through (c) apply. Those factors pertain to offenses committed while the offender was awaiting trial or sentencing on other offenses, offenses committed as part of

one or more courses of conduct and the harm caused by two or more of the offenses was so great or unusual that no single prison term adequately reflects the seriousness of the conduct, and defendants who present a criminal history that demonstrates the necessity to protect the public from future crime. *State v. Bluhm*, 10th Dist. No. 15AP-938, 2016-Ohio-7126, ¶ 56.

{¶ 12} Marcum argues the trial court failed to make the findings required by R.C. 2929.14(C)(4) for consecutive sentences at the sentencing hearing, asserting the trial court failed to find that consecutive sentences were not disproportionate to the seriousness of his conduct and the danger he posed to the public or that consecutive sentences were necessary to protect the public or to punish him, and Marcum further asserts the trial court failed to make any of the additional findings required under R.C. 2929.14(a) through (c).

{¶ 13} Plaintiff-appellee, State of Ohio, concedes in its brief on appeal that "there is no clear indication in the record that the court considered the R.C. 2929.14(C)(4) factors during the sentencing hearing." (Appellee's Brief at 4.) Our review of the sentencing hearing transcript leads us to conclude the trial court did not make the requisite findings under R.C. 2929.14(C)(4). The trial court broadly referred to Marcum's prior criminal record, the fact that Marcum took advantage of individuals who sought help from him, and Marcum's continuing course of conduct, suggesting the court was considering the seriousness of his conduct and the need to protect the public from future crime. However, this court has previously held that although a trial court is not required to recite the precise language of the statute, mere "consideration of some aspects of the crime is not sufficient to support findings required by R.C. 2929.14(C)(4)." *Bluhm* at ¶ 57. Although the trial court appears to have considered the vulnerability of Marcum's victims and the likelihood that he would commit future offenses, there was no indication the court reached a finding on whether consecutive sentences were disproportionate to the seriousness of his conduct and the danger he posed to the public. Likewise, the trial court did not reach any finding about whether consecutive sentences were necessary to protect the public or to punish Marcum.

{¶ 14} The state asserts Marcum failed to establish that the trial court would have imposed concurrent sentences if it had reviewed the R.C. 2929.14(C)(4) factors at the sentencing hearing—i.e., that Marcum has failed to show prejudice due to the court's failure

to consider the consecutive sentencing factors. However, "[t]his court has consistently held that when the record demonstrates that the trial court failed to make the findings required by R.C. 2929.14(C)(4) before imposing consecutive sentences on multiple offenses, the sentence is contrary to law and constitutes plain error." *Bluhm* at ¶ 58. *See also State v. Greene*, 10th Dist. No. 17AP-667, 2018-Ohio-3135, ¶ 15 ("[N]ot meeting the statutory requirements for imposing one or more prison sentences is an obvious error that results in prejudice to the substantial rights of the defendant.").

{¶ 15} Because the trial court failed to make the required findings under R.C. 2929.14(C)(4) at the sentencing hearing in imposing consecutive sentences in case Nos. 16CR-1322 (appeal No. 18AP-249), 17CR-2504 (appeal No. 18AP-251), 17CR-2795 (appeal No. 18AP-253), and 17CR-3666 (appeal No. 18AP-254), we sustain Marcum's sole assignment of error in his appeals from the judgments imposing sentence in those cases. Therefore, the judgments imposing sentence in those cases are reversed. As explained above, we dismiss Marcum's appeals from the judgments imposing sentence in case Nos. 16CR-5353 (appeal No. 18AP-250), 17CR-2700 (appeal No. 18AP-252), and 17CR-4914 (appeal No. 18AP-255) because the trial court did not impose consecutive sentences in those cases.

{¶ 16} Marcum also filed pro se notices of appeal in each of his seven criminal cases from the trial court's March 19, 2018 judgment entries denying as moot his motions for bond hearing and to remove counsel. Those appeals comprise case Nos. 18AP-377 through 18AP-383 in this court. Pursuant to App.R. 16(A)(3), an appellant's brief must include "[a] statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected." Further, pursuant to App.R. 16(A)(7), an appellant's brief must include "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which the appellant relies." App.R. 12(A)(2) provides that "[t]he court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A)." Marcum's brief on appeal fails to assign any error related to either of the trial court's March 19, 2018 judgments and does not

contain any argument relating to those judgments. "It is the duty of the appellant, not the appellate court, to construct the legal arguments necessary to support the appellant's assignments of error." *Bond v. Canal Winchester*, 10th Dist. No. 07AP-556, 2008-Ohio-945, ¶ 16. To the extent Marcum sought to appeal the trial court's March 19, 2018 judgments, he has failed to comply with App.R. 16(A); accordingly, we dismiss the appeals in case numbers 18AP-377 through 18AP-383.

IV. Conclusion

{¶ 17} For the foregoing reasons, Marcum's sole assignment of error is sustained in case Nos. 18AP-249, 18AP-251, 18AP-253, and 18AP-254, and the judgments imposing sentences in those cases (16CR-1322, 17CR-2504, 17CR-2795, and 17CR-3666) are reversed. The remainder of Marcum's appeals in case Nos. 18AP-250, 18AP-252, 18AP-255, 18AP-377, 18AP-378, 18AP-379, 18AP-380, 18AP-381, 18AP-382, and 18AP-383 are dismissed. These matters are remanded to the Franklin County Court of Common Pleas for resentencing in compliance with R.C. 2929.14(C)(4), *Bonnell*, and this decision.

Judgments imposing sentence in Nos. 18AP-249, 18AP-251, 18AP-253 and 18AP-254 are reversed and remanded; appeal Nos. 18AP-250, 18AP-252, 18AP-255, and 18AP-377, 18AP-378, 18AP-379, 18AP-380, 18AP-381, 18AP-382 and 18AP-383 are dismissed.

KLATT, P.J., and LUPER SCHUSTER, J., concur.
