

[Cite as *State v. Lawson*, 2017-Ohio-4189.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105038

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANTHONY LAWSON

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-15-597706-A and CR-16-607588-A

BEFORE: McCormack, P.J., Laster Mays, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: June 8, 2017

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TIM McCORMACK, P.J.:

{¶1} Defendant-appellant Anthony Lawson appeals from a judgment of the Cuyahoga Court of Common Pleas that imposed consecutive sentences for his offenses of escape and obstruction of justice in two separate cases. He claims the trial court did not make the requisite findings before imposing consecutive sentences. He also claims the trial court improperly imposed court costs in the escape case. Upon a review of the record, we find merit to these claims.

{¶2} Lawson was on the court's mental health docket for schizophrenia. In Cuyahoga C.P. No. CR-15-597706-A, he was charged in July 2015 for escape. He left a community-based correctional facility ("CBCF") before the end of his term because he felt the facility was ridden with drug activities. In September 2015, he pleaded guilty to escape and was sentenced to two years of community control. However, he stopped reporting to his probation officer in March 2016. A *capias* was issued in May 2016.

{¶3} An incident on June 26, 2016, led to a charge of obstructing official business against Lawson in Cuyahoga C.P. No. CR-16-607588-A. Lawson visited Edgewater Park with his fiancée. When their vehicle, driven by his fiancée, left the park and got on Route 2, the vehicle was pulled over by a Metroparks police officer for a license plate violation. According to Lawson, after the vehicle stopped, the officer immediately pointed his gun at him. Frightened by the gun, he got out of the vehicle, and ran across Route 2. The officer apprehended him quickly and used his Taser twice to

subdue him. Lawson was charged with obstructing official business, a felony of the fifth degree, for putting the life of the officer at substantial risk of harm.

{¶4} Lawson pleaded guilty in both cases — escape in 597706 and obstructing official business in 607588. The trial court sentenced him to one year in prison in the escape case and one year in prison in the obstruction case. Noting Lawson had several prior offenses, one of them involved violence — in that he hit a neighbor with a shovel — the court ordered the two prison terms to be served consecutively. Regarding the statutory findings required for consecutive sentences, the court stated only that “consecutive sentences are necessary to protect the public.” The journal entries in both cases are devoid of any findings for the imposition of consecutive sentences.

{¶5} On appeal, Lawson raises three assignments of error:

1. The trial court erred by ordering Appellant to serve a consecutive sentence without making the appropriate findings required by R.C. 2929.14 and HB 86.
2. The trial court erred by ordering Appellant to pay costs when it did not properly comply with the statute.
3. The court costs imposed at the sentencing hearing infringes upon appellant’s rights under the Eighth and Fourteenth Amendments to the United States Constitution, R.C. 2929.18, [R.C. 2929.19(B)(5)], R.C. 2947.14, and related sections of the Ohio Constitution.

{¶6} Under the first assignment of error, Lawson contends the trial court imposed consecutive sentences without making the necessary statutory findings.

{¶7} H.B. 86, enacted in 2011, revived a presumption of concurrent sentences. Consecutive sentences can be imposed only if the trial court makes the required findings

pursuant to R.C. 2929.14(C)(4). *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659. Consecutive sentencing findings are required even when, as here, the sentences are imposed in separate cases. *State v. Hill*, 7th Dist. Carroll No. 13CA892, 2014-Ohio-1965, ¶ 20; *State v. Kilmire*, 9th Dist. Summit Nos. 27319 and 27320, 2015-Ohio-665, ¶ 18.

{¶8} Pursuant to R.C. 2929.14(C)(4), in order to impose consecutive sentences, the trial court must find that consecutive sentences are “necessary to protect the public from future crime or to punish the offender,” that such sentences “are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public,” and that one of the following applies:

(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 postrelease 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.

{¶9} “When imposing consecutive sentences, a trial court must state the required findings as part of the sentencing hearing, and by doing so it affords notice to the offender

and to defense counsel.” *Bonnell* at ¶ 29, citing Crim.R. 32(A)(4). “Findings,” for these purposes, means that “‘the [trial] court must note that it engaged in the analysis’ and that it ‘has considered the statutory criteria and specific[d] which of the given bases warrants its decision.’” *Id.* at ¶ 26, quoting *State v. Edmonson*, 86 Ohio St.3d 324, 326, 715 N.E.2d 131 (1999). Although a word-for-word recitation of the language of the statute is not required, a reviewing court “must be able to discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings.” *Id.* at ¶ 29. In addition, the trial court must also incorporate its statutory findings into the sentencing entry. *Id.* The failure to make consecutive sentence findings is contrary to law. *State v. Balbi*, 8th Dist. Cuyahoga No. 102321, 2015-Ohio-4075, ¶ 4.

{¶10} The very limited finding made by the trial court in this case — that “consecutive sentences are necessary to protect the public” — fell short of what was required by *Bonnell*. Although a finding under R.C. 2929.14(C)(4)(a) or (c) may be discernable from the record, there was no indication that the trial court engaged in the required analysis regarding the second prong — that “consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public.” Consequently, the trial court’s sentence was contrary to law. The first assignment of error is sustained. Lawson’s sentence is reversed, and the matter is remanded to the trial court to consider whether consecutive sentences should be

imposed under R.C. 2929.14(C)(4) and, if so, to make the findings required by the statute.

See State v. Nia, 2014-Ohio-2527, 15 N.E.3d 892, ¶ 28 (8th Dist.).

{¶11} The second and third assignments of error relate to court costs. The record reflects that the trial court did not mention court costs in open court in either 607588 or 597706. In the journal entry, the trial court waived court costs in 607588, but imposed court costs of “an amount equal to the costs of the prosecution” in 597706. Under Crim.R. 43(A), it was an error for the trial court to impose court costs in the journal entry without imposing such costs in open court at the sentencing hearing. *State v. Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, 926 N.E.2d 278, ¶ 22. When the court costs are imposed in the journal entry only, as here, the defendant is denied the opportunity to claim indigence and to seek a waiver. *Id.* The remedy is a limited remand to the trial court for the defendant to move the court for a waiver of the payment of court costs. *Id.* at ¶ 23. The state concedes the error. The second assignment of error is sustained. The resolution of the second assignment of error renders the third assignment of error moot.

{¶12} The trial court’s sentence is reversed, and the matter is remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

TIM McCORMACK, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR