

[Cite as *State v. Lewis*, 2017-Ohio-9172.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 105631 and 105632

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RAYSHAWN LEWIS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-16-608977-A and CR-16-609456-A

BEFORE: Blackmon, J., Kilbane, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: December 21, 2017

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PATRICIA ANN BLACKMON, J.:

{¶1} Rayshawn Lewis (“Lewis”) appeals his 13-year prison sentence in these two consolidated aggravated robbery cases and assign the following errors for our review:

I. The trial court erred when it imposed an 11 year prison term in CR-608977, and a 10 year prison term in CR-609456, which are not supported by the record.

II. The trial court abused its discretion when it imposed two 1 year firearm specifications in CR-609456.

{¶2} Having reviewed the record and pertinent law, we affirm the decision of the trial court. The apposite facts follow.

{¶3} On February 6, 2017, Lewis pled guilty to three counts of aggravated robbery in violation of R.C. 2911.01(A)(1), a first-degree felony, one three-year firearm specification, and two one-year firearm specifications. On March 2, 2017, the court sentenced Lewis to eight years in prison for each robbery, to run concurrently, plus five years in prison for the gun specifications, to run consecutively, for an aggregate prison term of 13 years. It is from this order that Lewis appeals.

Felony Sentencing Standard of Review

{¶4} R.C. 2953.08(G)(2) provides, in part, that when reviewing felony sentences, the appellate court’s standard is not whether the sentencing court abused its discretion; rather, if this court “clearly and convincingly” finds that (1) “the record does not support the sentencing court’s findings under” R.C. Chapter 2929 or (2) “the sentence is

otherwise contrary to law,” then we may conclude that the court erred in sentencing. *See also State v. Marcum*, 146 Ohio St. 3d 516, 2016-Ohio-1002, 59 N.E.3d 1231.

{¶5} A sentence is not clearly and convincingly contrary to law “where the trial court considers the purposes and principles of sentencing under R.C. 2929.11 as well as the seriousness and recidivism factors listed in R.C. 2929.12, properly applies post-release control, and sentences a defendant within the permissible statutory range.” *State v. A.H.*, 8th Dist. Cuyahoga No. 98622, 2013-Ohio-2525, ¶ 10.

{¶6} Pursuant to R.C. 2929.11(A), the two overriding purposes of felony sentencing are “to protect the public from future crime by the offender and others,” and “to punish the offender using the minimum sanctions that the court determines accomplish those purposes * * *.” Additionally, the sentence imposed shall be “commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact on the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.” R.C. 2929.11(B).

{¶7} Furthermore, in imposing a felony sentence, “the court shall consider the factors set forth in [R.C. 2929.12(B) and (C)] relating to the seriousness of the conduct [and] the factors provided in [R.C. 2929.12(D) and (E)] relating to the likelihood of the offender’s recidivism * * *.” R.C. 2929.12. However, this court has held that “[a]lthough the trial court must consider the principles and purposes of sentencing as well as the mitigating factors, the court is not required to use particular language or make

specific findings on the record regarding its consideration of those factors.” *State v. Carter*, 8th Dist. Cuyahoga No. 103279, 2016-Ohio-2725, ¶ 15.

{¶8} In the case at hand, Lewis does not challenge that his sentence is within the statutory range or the imposition of postrelease control. Rather, he argues that “the trial court failed to properly consider a number of sentencing factors under the law.” Specifically, Lewis argues that the court did not properly consider the “more serious,” “less serious,” and “less likely” factors noted above. Therefore, according to Lewis, there is clear and convincing evidence that the record does not support the trial court’s findings and his prison sentence.

{¶9} The state, on the other hand, argues that the trial court properly considered and weighed the applicable statutory factors and “came to the reasoned conclusion that given the extent of [Lewis’s] reckless conduct, a sentence greater than the absolute minimum would satisfy the overriding purposes of a felony sentence.”

{¶10} At the sentencing hearing, the court noted that it reviewed Lewis’s presentence investigation report, defense counsel’s sentencing memorandum, and various letters from family members supporting Lewis. Additionally, defense counsel spoke on the record regarding mitigating factors, including that Lewis, who was 20 years old at the time he committed the offenses, “is a shy kid” who is more of a follower than a leader and is “susceptible to influence.” Defense counsel also stated that “but for [Lewis’s] associations with a codefendant, this never would have happened.” Defense counsel argued that these factors do not excuse Lewis’s conduct, but they “may put his

involvement in the proper context.” Furthermore, defense counsel stressed that Lewis “has a good strong support structure” within his family.

{¶11} The court heard statements on the record from Lewis’s grandmother, father, and mother, all of whom said that Lewis was “a good kid” who “made a mistake.”

{¶12} The state argued at Lewis’s sentencing hearing as follows: “At the time of these offenses conscious decisions were made to hold these victims at gunpoint, rob them at gunpoint. These were not matters of retaliation but innocent victims in this case that have to deal with the effects now.” The state also noted that the three counts of armed robbery related to three separate victims and occurred over a two-day span.

{¶13} The court noted on the record that Lewis “was the only one with a job” among the codefendants. The court then imposed Lewis’s 13-year prison sentence. The sentencing journal entries state that the court “considered all required factors of the law * * * [and] the court found that prison is consistent with the purpose of R.C. 2929.11.

{¶14} Upon review, we find that Lewis’s prison sentence for three counts of armed robbery is supported by evidence in the record. *See State v. Tate*, 8th Dist. Cuyahoga No. 104342, 2016-Ohio-8309, ¶ 12 (“An appellate court lacks the authority under R.C. 2953.08 to consider the weight given to respective sentencing factors because such discretion rests solely with the trial court”). Accordingly, Lewis’s first assigned error is overruled.

Multiple Firearm Specifications

{¶15} Generally, a trial court is prohibited from imposing multiple consecutive prison terms for firearm specifications associated with offenses “committed as part of the same act or transaction.” R.C. 2929.14(B)(1)(b). However, R.C. 2929.14(B)(1)(g) creates an exception to that rule, and it states, in part, as follows:

If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are * * * aggravated robbery * * * and if the offender is convicted of or pleads guilty to a [firearm] specification * * * the sentencing court shall impose on the offender the [statutory] prison term specified * * * for each of the two most serious specifications * * * and, in its discretion, also may impose [a] prison term * * * for any or all of the remaining specifications.

{¶16} This court has held that, under R.C. 2929.14(B)(1)(g), “where [the defendant] was found guilty of two or more felonies, including * * * aggravated robbery * * * [with] firearm specifications, the trial court is required to impose prison terms for the two most serious specifications and also has discretion to impose a sentence for any other specification.” *State v. Nelson*, 8th Dist. Cuyahoga No. 104336, 2017-Ohio-5568, ¶ 81.

{¶17} In the case at hand, Lewis argues that the court erred “when it imposed two 1 year firearm specifications on counts 1 & 2, in case number CR-609456,” because “the felonies that he pled guilty to were part of the same act and same transaction * * *.” We note here that Lewis is not appealing the imposition of the three-year firearm

specification imposed in the first case. Therefore, our review concerns the two one-year firearm specifications that were imposed in the second case.

{¶18} Upon review, we find that the court properly sentenced Lewis for multiple firearm specifications under R.C. 2929.14(B)(1)(g). *See State v. Vaughn*, 8th Dist. Cuyahoga No. 103330, 2016-Ohio-3320, ¶ 22 (holding that R.C. 2929.14(B)(1)(g)'s directive that the two most serious firearm specification sentences must be run consecutively "is mandated by statute and mechanical in nature").

{¶19} Accordingly, Lewis's second and final assigned error is overruled.

{¶20} Sentence affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

PATRICIA ANN BLACKMON, JUDGE

MARY EILEEN KILBANE, P.J., and
SEAN C. GALLAGHER, J., CONCUR