

[Cite as *State v. Middleton*, 2018-Ohio-2524.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 106197, 106200 & 106202

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

COREY MIDDLETON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-11-556322-A, CR-12-567510-B, and CR-17-614514-A

BEFORE: Stewart, J., McCormack, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: June 28, 2018

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MELODY J. STEWART, J.:

{¶1} Defendant-appellant Corey Middleton pleaded guilty in three separate cases that we have consolidated in this appeal. The court ordered him to serve some of the sentences consecutively, and he complains that the court's findings in support of consecutive sentences are not supported by the record and are contrary to law. He also argues that the court failed to make all the statutory findings required to order consecutive service.

{¶2} In Cuyahoga C.P. No. CR-11-556322-A, Middleton pleaded guilty to a third-degree felony count of drug trafficking. In Cuyahoga C.P. No. CR-12-567510-B, Middleton pleaded guilty to a third-degree felony count of improperly discharging a firearm into a habitation. In Cuyahoga C.P. No. CR-17-614514-A, Middleton pleaded guilty to a third-degree felony count of having a weapon while under disability. The court ordered Middleton to serve concurrent sentences of 18 months in CR-11-556322-A and 24 months in CR-12-567510-B. The court ordered Middleton to serve 36 months in CR-17-614514-A. It also ordered that Middleton serve his sentences in CR-11-556322-A and CR-12-567510-B consecutive to the sentence in CR-17-614514-A, for a total sentence of 60 months.

{¶3} Middleton argues that the court failed to make the findings for imposing consecutive sentences as required by R.C. 2929.14(C)(4). Those findings are, first, "that the consecutive service is necessary to protect the public from future crime or to punish the offender" and, second, "that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public." In addition, the court must make a third finding consisting of 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.

Id.

{¶4} These findings must be made by the court on the record and must also be contained in the court's sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus.

{¶5} The court stated on the record that "the harm is so great or unusual that a single term does not adequately reflect the seriousness of the offense of the conduct and is not disproportionate and is necessary to protect the public and punish the offender." Tr. 33. The court also found that Middleton was on community control at the time he committed his offenses. This was enough to establish the findings required by R.C. 2929.14(C)(4).

{¶6} Although it made the required findings on the record at the time of sentencing, the court’s sentencing entry did not comply with R.C. 2929.14(C)(4). The court stated: “The harm caused is so great or unusual that a single term does not adequately reflect the seriousness of the conduct, is not disproportionate and is necessary to protect the public and punish the offender.” The court’s sentencing entry did not mention the third finding. We therefore order the trial court to issue a nunc pro tunc sentencing entry incorporating the third finding. *See Bonnell* at ¶ 30 (“A trial court’s inadvertent failure to incorporate the statutory findings in the sentencing entry after properly making those findings at the sentencing hearing does not render the sentence contrary to law; rather, such a clerical mistake may be corrected by the court through a nunc pro tunc entry to reflect what actually occurred in open court.”).

{¶7} Judgment affirmed and remanded.

It is ordered that appellant and appellee share the 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.

MELODY J. STEWART, JUDGE

TIM McCORMACK, P.J., and
EILEEN T. GALLAGHER, J., CONCUR