

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 107871
 v. :
 :
 JOHN P. GOSSETT, :
 :
 Defendant-Appellant. :
 :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED AND REMANDED
RELEASED AND JOURNALIZED: August 15, 2019

**Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-18-629694-A**

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecutor, and
Eben McNair, Assistant Prosecuting Attorney, *for
appellee.*

Mancino Mancino & Mancino, and Paul A. Mancino, Jr.,
for appellant.

PATRICIA ANN BLACKMON, J.:

{¶ 1} Defendant-appellant John P. Gossett appeals from his conviction for
burglary. He assigns the following errors for our review:

- I. Defendant was denied due process of law when he was sentenced to a consecutive sentence without any appropriate findings.

II. Defendant was denied due process of law when the court accepted a plea to an amended indictment without determining whether defendant understood the nature of the charge.

{¶ 2} Having reviewed the record and the controlling case law, we affirm but remand for the trial court to issue a nunc pro tunc sentencing journal entry in compliance with *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659.

{¶ 3} On June 20, 2018, Gossett was indicted in a two-count indictment. Count 1 charged him with burglary with notice of a prior conviction and a repeat violent offender specification. Count 2 charged him with petty theft. On August 14, 2018, Gossett pled guilty to burglary, and the remainder of the indictment was dismissed. The following month, he was sentenced to eight years of imprisonment with three years of postrelease control sanctions. The court ordered the sentence to be served consecutively to Gossett's six-year sentence for burglary in Cuyahoga C.P. No. CR-18-623409-A.

Consecutive Sentences

{¶ 4} In the first assigned error, Gossett argues that the trial court failed to make the findings required under R.C. 2929.14(C) before imposing consecutive sentences.

{¶ 5} Pursuant to R.C. 2953.08(G)(2)(a), an appellate court may “increase, reduce, or otherwise modify a sentence * * * or may vacate the sentence and remand the matter to the sentencing court for resentencing” if it “clearly and convincingly”

finds that “the record does not support the sentencing court’s findings” under R.C. 2929.14(C)(4).

{¶ 6} In order to impose consecutive sentences, the trial court must find that (1) consecutive sentences are necessary to protect the public from future crime or to punish the offender, (2) consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public and (3) at least 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 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.

R.C. 2929.14(C)(4).

{¶ 7} The trial court must make the required statutory findings at the sentencing hearing and incorporate those findings into its sentencing journal entry. *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, at syllabus. To make the requisite findings under the statute, “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, 1999-Ohio-110, 715 N.E.2d 131. When imposing consecutive sentences, the trial court is not required to give a “talismanic incantation of the words of the statute.” *Bonnell* at ¶ 37. “[A]s 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.” *Id.* at ¶ 29.

{¶ 8} The R.C. 2929.14(C) findings are also required when a court imposes consecutive sentences in separate cases. *See State v. Nave*, 8th Dist. Cuyahoga No. 107032, 2019-Ohio-348, ¶ 10 (“In the final entry of conviction in Cuyahoga C.P. No. CR-15-600628-C, the trial court expressly incorporated the required findings as would be expected in order to impose the aggregate term of prison to be served consecutive to the term imposed in Cuyahoga C.P. No. CR-15-601090-B.”); *see also State v. Allison*, 8th Dist. Cuyahoga No. 105152, 2017-Ohio-7176, ¶ 26-27.

{¶ 9} In this case, we find that the trial court conducted the necessary analysis and made the requisite findings for imposing consecutive sentences at the sentencing hearing. The trial court found that consecutive sentences were “necessary to protect the public” and “to punish [Gossett’s] serial burglary behavior.” The court also found that consecutive sentences are “not disproportionate to the criminal behavior involved here.” Finally, the court found that Gossett has “a long history of thievery and burglary,” including five burglary convictions in Cuyahoga County, one burglary conviction in Summit County, and a

pending burglary charge in Medina County. The court found that consecutive sentences are necessary to protect the public from future crime.

{¶ 10} However, we note that the trial court failed to incorporate its R.C. 2929.14(C)(4) consecutive-sentence findings into its sentencing journal entry as required by *Bonnell*:

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.

Id., 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, at ¶ 30.

{¶ 11} Consequently, the court's R.C. 2929.14(C) findings made at sentencing must be journalized in a nunc pro tunc entry.

{¶ 12} Gossett's first assigned error is overruled.

Guilty Plea

{¶ 13} In his second assigned error, Gossett also argues that the trial court erred in accepting his guilty plea without determining that he understood the nature of the offense and the maximum penalty.

{¶ 14} Under Crim.R. 11(C)(2), the trial court shall not accept a guilty plea in a felony case without personally addressing the defendant and:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to a jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

{¶ 15} In determining whether a plea was entered knowingly, intelligently, and voluntarily, “an appellate court examines the totality of the circumstances through a de novo review of the record.” *State v. Spock*, 8th Dist. Cuyahoga No. 99950, 2014-Ohio-606, ¶ 7; *see also State v. Petitto*, 8th Dist. Cuyahoga No. 95276, 2011-Ohio-2391, ¶ 4.

{¶ 16} The trial court must strictly comply with those provisions of Crim.R. 11(C) that relate to the waiver of constitutional rights. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, syllabus; *State v. Ballard*, 66 Ohio St.2d 473, 423 N.E.2d 115 (1981), at paragraph one of the syllabus. The constitutional rights include the right to a jury trial, to confront witnesses, to have compulsory process to obtain witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself. Crim.R. 11(C)(2)(c); *State v. Hinton*, 8th Dist. Cuyahoga No. 102710, 2015-Ohio-4907, ¶ 21.

{¶ 17} As to the nonconstitutional rights, substantial compliance is sufficient. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 31; *State v. Hedenberg*, 8th Dist. Cuyahoga No. 102112, 2015-Ohio-4673, ¶ 12; *Veney* at ¶ 14. The nonconstitutional aspects of Crim.R. 11(C)(2) include the defendant’s right to be informed of the nature of the charges, the maximum penalty involved, that the defendant is not eligible for community control sanctions (if applicable), and that the defendant understands the effect of his or her plea. *State v. Austin*, 8th Dist. Cuyahoga No. 105981, 2019-Ohio-1983, ¶ 13. “Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving.” *Id.*, citing *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990).

{¶ 18} When conducting a Crim.R. 11(C)(2) plea colloquy, the trial court “must convey accurate information to the defendant so that the defendant can understand the consequences of his or her decision and enter a valid plea.” *Clark* at ¶ 26. If a defendant receives “proper information,” it can be assumed that he or she understood it. *State v. Gurley*, 8th Dist. Cuyahoga No. 70586, 1997 Ohio App. LEXIS 2414 (June 5, 1997), citing *State v. Carter*, 60 Ohio St.2d 34, 396 N.E.2d 757 (1979). Moreover, as this court stated in *State v. Reeves*, 8th Dist. Cuyahoga No. 100560, 2014-Ohio-3497,

[i]n determining whether a defendant is making a plea with an understanding of the nature of the charge, a trial court has no obligation to advise the defendant of the elements of the crime or to specifically ask whether he or she understands the charge, provided the totality of the circumstances support the trial court’s determination

that the defendant understands the charge. *State v. Miniffee*, 8th Dist. Cuyahoga No. 99202, 2013-Ohio-3146, ¶ 14. In fact, “[w]here a defendant indicates that he understands the nature of the charge, in the absence of evidence to the contrary or anything in the record that indicates confusion, it is typically presumed that the defendant actually understood the nature of the charge against him.” *State v. Wangul*, 8th Dist. Cuyahoga No. 84698, 2005-Ohio-1175, ¶ 10. And where a defendant enters a guilty plea without asserting innocence, it is presumed that the defendant understands that he or she has admitted guilt. *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51, ¶ 19.

Id. at ¶ 12.

{¶ 19} Here, the record indicates that the trial court fully complied with Crim.R. 11. Prior to accepting the guilty plea, the trial court held a hearing and engaged in a colloquy with Gossett. The court outlined the constitutional rights that Gossett was waiving. The court also explained that burglary is a felony of the second degree under R.C. 2911.12(A)(2). The court advised Gossett that the offense carried a potential prison term of two to eight years and a fine of up to \$15,000. The court ascertained that Gossett understood his rights and the potential penalties and that Gossett was not under the influence of alcohol or drugs. The court advised Gossett that he was waiving his rights by entering the guilty plea. Gossett stated that he understood the court’s advisement, no promises, threats, or representations were made in order to induce the plea, and no particular sentence was promised by the state or trial court.

{¶ 20} In accordance with all of the foregoing, we conclude that the trial court complied with Crim.R. 11 and that Gossett knowingly, voluntarily, and intelligently enter a guilty plea to the charge of burglary.

{¶ 21} The second assigned error lacks merit.

{¶ 22} Judgment is affirmed; case remanded for the trial court to issue a nunc pro tunc entry in compliance with the requirements of *Bonnell* by incorporating its consecutive-sentencing findings into the sentencing journal entry.

It is ordered that appellee recover from appellant 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. The defendant's conviction having been affirmed, any bail pending 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 J. BOYLE, P.J., and
EILEEN A. GALLAGHER, J., CONCUR