

[Cite as *State v. Sprachmann*, 2019-Ohio-5125.]

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 108243
 v. :
 :
 COURTNEY SPRACHMANN, :
 :
 Defendant-Appellant. :
 :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED AND REMANDED
RELEASED AND JOURNALIZED: December 12, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-18-633490-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Blaise D. Thomas, Assistant Prosecuting Attorney, *for appellee*.

Thomas A. Rein, *for appellant*.

EILEEN A. GALLAGHER, J.:

{¶ 1} Defendant-appellant Courtney Sprachmann was charged with two counts of obstructing justice for twice obstructing a homicide investigation. Sprachmann pleaded no contest to violations of R.C. 2921.32(A)(3) and 2921.32(A)(5), both third-degree felonies. The court found her guilty and sentenced

Sprachmann to 36 months in prison for each count. It ordered consecutive sentences for a total of 72 months in prison. We affirm Sprachmann's convictions and sentence, but remand the case for a nunc pro tunc entry reflecting that the court waived court costs.

Factual Background and Procedural History

{¶ 2} As discussed at the change of plea and sentencing hearings, Sprachmann's obstructing justice counts arose from her efforts to disrupt a homicide investigation. One afternoon in September 2018, Sprachmann invited her boyfriend, Detrick Walker, to a gathering at the victim's house. Sprachmann knew that Walker and the victim did not get along and that Walker was not welcome at the victim's house.

{¶ 3} An altercation ensued between the victim and Walker. Walker drew a firearm and shot the victim several times, killing him. Walker fled and Sprachmann remained at the house.

{¶ 4} Police arrived at the scene and proceeded to investigate the crime. A detective interviewed Sprachmann during which Sprachmann gave a materially false narrative of the events leading to the shooting in an attempt to shield Walker and provide him a potential defense. She told the detective that the shooting occurred in a different room than it did, claimed that she had witnessed it when she had not and represented that the victim was himself armed.

{¶ 5} Officers asked Sprachmann to let them know if she knew, or learned, of Walker's location. Instead, and substantiating the second obstructing justice

count, Sprachmann communicated with Walker and sent him text messages informing him that he was a suspect and that the police were looking for him. She instructed him to turn his phone off and told him to stay away. Approximately two days later, police located Walker at his grandfather's home, in bed with Sprachmann.

{¶ 6} Before Sprachmann pleaded no contest, the court conducted a Crim.R. 11 colloquy. The court explained the penalty range that Sprachmann faced including the possibility of consecutive sentences. Sprachmann confirmed that she understood and did not have any questions and she proceeded to plead no contest.

{¶ 7} The state provided the factual basis underlying the two counts. The court confirmed with Sprachmann's counsel that the state's account comported with the discovery provided. The court accepted Sprachmann's no contest pleas and found her guilty of both offenses.

{¶ 8} Prior to sentencing, Sprachmann filed a "motion to disqualify counsel" on the basis that "counsel has a conflict of interest or is otherwise disqualified from participation in the case." The attached memorandum contained the statement that "I would like to withdraw my plea deal due to ineffective counsel asap." The court held a hearing on the motion and described it as "a motion to disqualify counsel and withdraw a guilty plea." At the hearing, the court gave Sprachmann the opportunity to substantiate her claims. The court denied the motion.

{¶ 9} At sentencing, the court addressed Sprachmann and discussed the factors it considered in determining the sentence. The court expounded on aspects of the crimes:

[A]fter having interviewed with the police and knowing that the police were attempting to apprehend Mr. Walker in connection with the death of someone that you considered to be a brother and a mentor and a friend, you assisted Mr. Walker, an 18-year-old boy, in avoiding apprehension. You talked to him on the phone and texted with him instructing him on how to avoid apprehension. This is despite the fact that [the victim] had not survived his injuries and you were aware of that.

Mr. Walker was considered armed and dangerous by the police at that point, and most troubling is the fact that it was more important for you to spend one last night with Mr. Walker, and you did this at his grandfather's home without considering the risk of those actions of staying at his grandfather's home, the risk that that posed to his grandfather, anyone else in the home, and the rest of the community.

{¶ 10} The court further discussed Sprachmann's criminal history, noting that she committed these crimes while she had an active probation violation capias and referenced previous convictions, including bank embezzlement and petty theft before concluding "you really haven't responded favorably to sanctions previously imposed * * *." The court further remarked that it found Sprachmann's "lack of genuine remorse" to be "strik[ing]." This appeal follows.

Assignments of Error

{¶ 11} Sprachmann asserts three assignments of error:

1. The trial court erred in not allowing Appellant to withdraw her guilty plea.
2. The trial court erred by ordering Appellant to serve a consecutive sentence without making the appropriate finding required by R.C. 2929.14 and HB 86.

3. The trial court erred by ordering Appellant to pay costs in the Sentencing Journal Entry when it waived court costs on the record.

Law and Analysis

Motion to Withdraw No Contest Plea

{¶ 12} In the first assignment of error, Sprachmann argues that the court erred by denying her presentence motion to withdraw her no contest plea. We disagree.

{¶ 13} In general, “a presentence motion to withdraw a guilty plea should be freely and liberally granted.” *State v. Xie*, 62 Ohio St.3d 521, 527, 584 N.E.2d 715 (1992). However, even before the trial court imposes a sentence, a defendant does not have an “absolute right” to withdraw a plea. *Id.* at paragraph one of the syllabus. Before ruling on a presentence motion to withdraw a plea, the trial court must, therefore, conduct a hearing to determine whether there is a reasonable and legitimate basis for withdrawal of the plea. *Id.*

{¶ 14} Determining whether circumstances exist to warrant withdrawal of a no contest plea is within the “sound discretion of the trial court.” *Id.* at 527. Accordingly, the scope of our review is limited to determining whether the court abused its discretion. *Id.* Unless it is shown that the trial court acted unreasonably, arbitrarily or unconscionably in denying a defendant's motion to withdraw a plea, there is no abuse of discretion and the trial court's decision must be affirmed. *Id.*

{¶ 15} As stated, Sprachmann’s claimed basis for withdrawing her plea was ineffective assistance of counsel. In her motion Sprachmann asserted that counsel

“should have better prepared [her] for [the change of plea hearing].” At the hearing she complained that she did not receive sufficient notice that the change of plea hearing would be held on Christmas Eve and that she “only had like two minutes to actually decide” whether to proceed to trial or plead. She stated “I feel like [counsel] was not on my side and he did not fight for me. In her motion, Sprachmann also claimed that counsel had a conflict of interest. At the hearing on the motion the court inquired into that claim. Sprachmann admitted that she was mistaken and that there was no conflict.

{¶ 16} The court turned to counsel and inquired whether he saw any basis for Sprachmann to withdraw her plea. Counsel responded “I think the no contest plea was made knowingly, intelligently and voluntarily * * *.”

{¶ 17} Even assuming Sprachmann’s statements are true, i.e. that she was given little notice about the time of the change of plea hearing and that she was afforded little time to decide whether to plead, she claimed no prejudice or indicated that she would have otherwise rejected the plea. She gave the trial court no reason to conclude that her claim was supported by anything beyond unpleasant inconvenience. As such, Sprachmann failed to articulate a reasonable and legitimate basis by which the court could have permitted her to withdraw her plea. *See Xie*, 62 Ohio St.3d 521 at 527, 584 N.E.2d 715; *see also State v. Musleh*, 8th Dist. Cuyahoga No. 105305, 2017-Ohio-8166, ¶ 35 (“A mere change of heart regarding a plea is an insufficient justification for the withdrawal of a no contest or guilty plea.”).

Accordingly, we conclude that the trial court did not abuse its discretion in denying the motion. We overrule this assignment of error.

Consecutive Sentences

{¶ 18} In the second assignment of error, Sprachmann argues that the court erred by imposing consecutive sentences. We disagree.

{¶ 19} Sprachmann concedes that the trial court made the requisite consecutive sentence findings and, further, that it incorporated those findings into the sentencing journal entry. Her argument instead challenges consecutive sentences on the basis that the journal entry fails to adequately reflect what transpired at the sentencing hearing. She complains that the journal entry comports with the hearing “to some extent,” as it “contains more of a blanket statement than what was actually stated by the trial court on the record.”

{¶ 20} Under R.C. 2929.14(C)(4), a trial court may impose consecutive sentences if the court finds that (1) “consecutive service is necessary to protect the public from future crime or punish the offender,” (2) “consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and the danger the offender poses to the public” and (3) one or more of the conditions listed in R.C. 2929.14(C)(4)(a) through (c) apply.

{¶ 21} At the sentencing hearing in this case, the trial court made the first two findings and found that both R.C. 2929.14(C)(4)(a) and (c) applied:

The Court finds that because you committed both of these offenses while you were on probation for a prior offense, and your history of

criminal conduct, that this demonstrates that consecutive sentences are necessary to protect the public.

{¶ 22} In order to impose consecutive sentences, a trial court must make these findings at the sentencing hearing and incorporate them into the sentencing journal entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus.

{¶ 23} In relevant part, the court's sentencing journal entry reflects:

The court imposes prison terms consecutively finding that consecutive service is necessary to protect the public from future crime or punish the defendant; that the consecutive sentences are not disproportionate to the seriousness of defendant's conduct and to the danger defendant poses to the public; and that, the defendant committed one or more of the multiple offenses while the defendant was awaiting trial or sentencing or was under a community control or was under post-release control for a prior offense or at least two of the multiple offenses were committed in this case as a part of one or more courses of conduct, and the harm caused by said multiple offenses was so great or unusual that no single prison term reflects the seriousness of defendant's conduct or defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the defendant.

{¶ 24} As stated, Sprachmann does not dispute that the trial court made the required findings before imposing consecutive sentences or claim that the court failed to incorporate the findings into its journal. *See State v. Gunnels*, 8th Dist. Cuyahoga No. 107351, 2019-Ohio-2822, ¶ 6, quoting *State v. Venes*, 2013-Ohio-1891, 992 N.E.2d 453, ¶ 21 (8th Dist.) ("Where the trial court made the requisite consecutive sentencing findings, R.C. 2953.08(G)(2) requires this court to affirm an order of consecutive service unless we 'clearly and convincingly' find that the record does not support the court's findings in support of consecutive sentences."). Based

on the record as previously discussed, we do not find that the record does not support consecutive sentences. We overrule this assignment of error.

Court Costs

{¶ 25} In the third assignment of error, Sprachmann argues that the trial court erred by ordering her to pay court costs in the sentencing journal entry. The state concedes the error. We agree.

{¶ 26} At the sentencing hearing the trial court waived “fines and court costs.” However, the journal entry from the hearing reflects that the court instead imposed costs against Sprachmann. Because a court speaks through its journal, we remand this case for purpose of a nunc pro tunc entry to reflect what actually occurred at sentencing, indicating that the trial court waived court costs. *See State v. Schoenholz*, 8th Dist. Cuyahoga No. 107675, 2019-Ohio-2442, ¶ 16. We sustain this assignment of error.

{¶ 27} Judgment affirmed and remanded.

This cause is affirmed and remanded to the lower court for further proceedings consistent with this opinion.

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 out this judgment into execution.

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

EILEEN A. GALLAGHER, JUDGE

ANITA LASTER MAYS, P.J., and
RAYMOND C. HEADEN, J., CONCUR