

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Nos. 108544, 108629, and 108630
	:	
v.	:	
	:	
MARLIN G. REED, JR.,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: April 23, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case Nos. CR-18-625081-A, CR-16-608551-A, and CR-16-604155-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Denise J. Salerno, Assistant Prosecuting Attorney, *for appellee*.

Matthew O. Williams, *for appellant*.

MARY EILEEN KILBANE, J.:

{¶ 1} Defendant-appellant, Marlin G. Reed, Jr. (“Reed”), appeals his sentence, and asks this court to vacate the sentences imposed by the trial court. For the reasons that follow, we affirm.

Facts

{¶ 2} This appeal arises out of three separate convictions and sentences. We will briefly describe each.

{¶ 3} On May 25, 2016, Reed pled guilty in case number CR-16-604155-A, (“*Reed 1*”) to attempted drug trafficking, a first-degree misdemeanor. At that time he was on postrelease control resulting from a fight with his ex-girlfriend; the trial court advised him that by entering a plea of guilty he could be in violation of the terms of his postrelease control. The court sentenced Reed to a 180-day term, but suspended the sentence. The court also terminated Reed’s postrelease control and placed Reed on a new term of postrelease control for two years.

{¶ 4} On November 1, 2016, Reed pled guilty in case number CR-16-608551-A, (“*Reed 2*”) to telecommunications harassment, a fifth-degree felony (Count 1), and aggravated menacing, a first-degree misdemeanor (Count 2). Both counts involved Reed’s ex-girlfriend. On November 30, 2016, at sentencing, the trial court asked Reed whether he could offer any assurances that he would not commit another offense, given that he had now committed offenses of a similar nature. Reed stated that, if given more opportunity for rehabilitative measures through probation, he would be able to turn his life around. The court then sentenced Reed to a suspended sentence of 12 months on the telecommunications harassment count, and a suspended sentence of 6 months for the aggravated menacing count. Each count was to run concurrent with the other and with Reed’s six-month suspended sentence from *Reed 1*.

{¶ 5} The court placed Reed on two years of probation, this time with the domestic violence unit. The court stated that “if you pick up a new case, you’re going to prison.” Reed acknowledged that was “fair.”

Reed’s third case

{¶ 6} On January 13, 2017, Reed learned that his 70-year old mother had \$2,500.00 in her bank account, and Reed demanded that his mother give him the money. When she refused, Reed attacked her. He repeatedly struck her in the back, stomach, and legs. Reed grabbed her right arm, breaking it. When his mother fell to the floor, she also broke her knee. Reed then fled the home.

{¶ 7} Reed’s mother was able to text her daughter, “AMK,” and asked for help. AMK testified that Reed also texted her, writing that their mother had “fallen”; if she had not “fallen,” as Reed implied, then he “was going to get ten [years in prison].”

{¶ 8} On May 15, 2018, Reed pled guilty in case number CR-18-625081-A, (“*Reed 3*”), to robbery, a second-degree felony (Count 1), and felonious assault, a second-degree felony (Count 2). At the time of the plea, Reed was still on probation from both *Reed 1* and *Reed 2*.

{¶ 9} On June 12, 2018, the court held a sentencing hearing. The court noted that Reed had a lengthy criminal history, and had shown a tendency towards aggression. As a result, the court imposed a sentence of four years, and found that because Reed was on probation for *Reed 1* and *Reed 2* at the time of the crime, Reed automatically was in violation of the terms of his postrelease control.

{¶ 10} The court then ordered that the sentences be run consecutively for a total sentence of five years, less time served. Upon release, Reed is subject to three years of postrelease control.

Resentencing

{¶ 11} On October 5, 2018, we granted Reed leave to file a delayed appeal for *Reed 1, 2, and 3*. On February 14, 2019, we sua sponte remanded the appeal to the trial court to conduct a resentencing as to *Reed 3*. We stated that:

[t]he judgment of the trial court, journalized on June 12, 2018, provides that the appellant entered a plea of guilty to counts one (robbery) and two (felonious assault). The trial court, however, imposed a “blanket” prison sentence of four years without individually addressing each count. Blanket sentences do not present final, appealable orders; there must be a sentence for each count. *State v. Dumas*, 8th Dist. Cuyahoga No. 95760, 2011-Ohio-2926. Therefore, CR 18-625081 is remanded for a resentencing hearing to allow the trial court to separately impose sentences on both counts.

{¶ 12} On March 5, 2019, the trial resentenced Reed pursuant to our order.

The court resentenced Reed as follows:

With respect to Count 1, as amended, a felony of the second degree, the Court is going to impose a sentence of four years. With regard to Count 2, felonious assault, a felony of the second degree, four years to run concurrent with each other. And then this case, 625081, is to be consecutive to 608551 and 604155 for an aggregate total of five years.

{¶ 13} The trial court then finished the resentencing by stating:

Because you were under supervision to me and being adequately punished for this offense and adequately to protect the public, the Court is going to impose the sentence consecutive from 625081 to --- 608551,604155.

{¶ 14} The court further explained its reasoning for imposing consecutive sentences in the journal entry as follows:

Per mandate from the 8th District Court of Appeals, defendant is re-sentenced as follows: * * * On a former day of court the defendant pled guilty to robbery 2911.02 A(2) F2 as amended in count(s) 1 of the indictment. On a former day of court the defendant pled guilty to felonious assault 2903.11 A(1) F2 as charged in count(s) 2 of the indictment. Count(s) 3 was/were nolle. Defendant addresses the court. The court considered all required factors of the law. The court finds that prison is consistent with the purpose of R.C. 2929.11. The court imposes a prison sentence at the Lorain Correctional Institution of 4 year(s). Defendant sentenced to a term of 4 years on count 1 and a term of 4 years on count 2 to run concurrently to each other for a total confinement in this case of 4 years. Sentence in this case to run consecutively to sentences imposed in case number 608551 and case number 604155. The court imposes prison terms consecutively finding that consecutive service is necessary to protect the public from future crime and to punish defendant; that the consecutive sentences are not disproportionate to the seriousness of defendants 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 postrelease control for a prior offense. Postrelease control is part of this prison sentence for 3 years mandatory.

{¶ 15} Reed now appeals the imposition of consecutive sentences and provides a single assignment of error for our review.

Assignment of Error

The trial court erred to the prejudice of appellant when it imposed consecutive sentences without complying with R.C. 2929.14(C).

{¶ 16} Reed argues that the imposition of consecutive sentences was not proper because the trial court did not make the requisite statutory findings. We disagree.

{¶ 17} We review consecutive sentences using a “clear and convincing standard.” *State v. Allison*, 8th Dist. Cuyahoga No. 105212, 2017-Ohio-7720. R.C. 2953.08(G)(2) provides that when reviewing felony sentences, a reviewing court may overturn the imposition of consecutive sentences where the court “clearly and convincingly” finds that (1) “the record does not support the sentencing court’s findings under R.C. 2929.14(C)(4),” or (2) “the sentence is otherwise contrary to law.”

{¶ 18} R.C. 2929.14(C)(4) provides that in order to impose consecutive sentences, the trial court must find that consecutive sentences are: (1) necessary to protect the public from future crime or to punish the offender; (2) that such sentences would not be disproportionate to the seriousness of the conduct and to the danger the offender poses to the public; and, (3) 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.

{¶ 19} Compliance with R.C. 2929.14(C)(4) requires the trial court to make these statutory findings at the sentencing hearing, where “the [trial] court must note that it engaged in the analysis and that it ‘has considered the statutory criteria and specifie[d] which of the given bases warrants its decision.’” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 26, quoting *State v. Edmonson*, 86 Ohio St.3d 324, 326, 715 N.E.2d 131 (1999). Further, the reviewing court must be able to discern that the record contains evidence to support the findings. *State v. Davis*, 8th Dist. Cuyahoga No. 102639, 2015-Ohio-4501, ¶ 21, citing *Bonnell* at ¶ 29. A trial court is not, however, required to state its reasoning to support its findings, nor is it required to give a rote recitation of the statutory language “provided that the necessary findings can be found in the record and are incorporated in the sentencing entry.” *Allison* at ¶ 10, quoting *Bonnell* at ¶ 37.

{¶ 20} The trial court supplied the necessary findings here.

The sentencing hearing record

{¶ 21} While the record here does not indicate a linear discussion of the required statutory findings, there is ample discussion concerning the reasons for the imposition of consecutive sentences. The court made clear it was concerned about the seriousness of Reed’s conduct and the danger posed to the public, stating:

You’ve got intimidation of a witness back in 2012. That was in conjunction with the rape case. But there’s always been this aggressive behavior. For some reason, in your mind you think you can control it by being aggressive -- control the situation by being aggressive towards other people, and that’s not the case. In this particular case you broke your mother’s arm and you broke her knee.

{¶ 22} The court also stated that Reed was “being adequately punished for this offense” and that in order to “adequately protect the public, the Court is going to impose the sentence consecutive from 625081 to 608551, 604155.”

{¶ 23} The record shows that the court clearly considered whether consecutive sentences were necessary to protect the public and that consecutive sentences would not be disproportionate to the harm caused by Reed in this instance.

{¶ 24} The court also considered R.C. 2929.14(C)(4)(a), one of the requisite findings that must be made before consecutive sentences are imposed. The court observed that Reed was on postrelease control when he assaulted his mother stating that:

Because this case happened while you were under supervision, you are automatically found to be in violation of case numbers 608551 and 604155. Those sentences will also be ordered into execution. In light of the fact that this happened while you were under supervision, the Court is going to run the sentences consecutively for a grand total of five years.

{¶ 25} We find that the record supports the imposition of consecutive sentences and that the trial court engaged in the correct analysis required under R.C. 2929.14(C)(4). *See State v. Forston*, 8th Dist. Cuyahoga No. 108332, 2020-Ohio-569.

{¶ 26} For all the foregoing reasons, we affirm.

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.

MARY EILEEN KILBANE, JUDGE

MARY J. BOYLE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR