

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 108583
 v. :
 :
 MICHAEL A. RAPIER, :
 :
 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 No. CR-18-630782-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, Andrew J. Santoli, Jr. and Carl J. Mazzone,
Assistant Prosecuting Attorneys, *for appellee*.

Kelly Zacharias, *for appellant*.

SEAN C. GALLAGHER, P.J.:

{¶ 1} Michael Rapier appeals the 18-year, aggregate term of imprisonment stemming from his pleading guilty¹ to extortion under R.C. 2905.11(A)(4), domestic violence under R.C. 2919.25, intimidation of a witness

¹ The change of plea occurred in the midst of the victim's trial testimony.

under R.C. 2921.04(B)(1), violating a protection order under R.C. 2919.27(A)(2), and three counts of rape under R.C. 2907.02(A)(2) (forcible rape). For the following reasons, we affirm.

{¶ 2} Rapier physically and sexually assaulted his significant other. The couple shared a relationship for the three years prior to the assault. In April 2018, Rapier visited the victim's house and began an argument about whether the victim had been seeing another person. Rapier became angry and ultimately raped the victim before leaving. The next evening, Rapier returned, but this time he appeared to be under the influence of alcohol or drugs. He again raped the victim, but this time he remained in the victim's house until the following morning, at which time he raped the victim a third time. The victim did not immediately report the sexual assaults but maintained limited contact with Rapier.

{¶ 3} The day following the third rape, Rapier called the victim threatening to destroy her house. The victim reported the incident, filed a police report, and sought a protection order. The victim also went to the hospital for evaluation based on the rape allegations.

{¶ 4} In the first assignment of error, Rapier seeks a de novo resentencing because of four discrepancies between the final entry of conviction and his sentencing hearing: (1) the trial court stated it considered the principles of felony sentencing and the sentencing factors under R.C. 2929.11 and 2929.12 at the sentencing hearing but reduced that statement to "the court considered all required factors of the law" and the "court finds that prison is consistent with the

purpose of R.C. 2929.11” in the sentencing entry; (2) the trial court imposed “the sentences” consecutively at the hearing but imposed only the “felony sentences” to be served consecutively in the final entry of conviction; (3) the trial court did not indicate with which felony counts the misdemeanor sentences were to be served concurrently; and finally (4) the trial court incorrectly identified the intimidation of a witness count as a misdemeanor and not the felony of the third degree the offense carries — the final entry conviction provides that “both misdemeanors (counts 9 and 14) to run concurrent” when in actuality Counts 9 and 15 were the misdemeanor counts.

{¶ 5} We summarily overrule the arguments presented in the first assignment of error. The general gist of Rapier’s argument is that the sentencing entry contains three superfluous discrepancies and one nonexistent requirement under Ohio law. There is no error because (1) there is no practical difference between the trial court’s specific identification of the statutory sections that set forth the principles of felony sentencing and the sentencing factors to consider as opposed to “considering all that is required by law,” *see, e.g., State v. McCall*, 8th Dist. Cuyahoga Nos. 108304, 108306, and 108307, 2020-Ohio-270, ¶ 12 (sentence is not contrary to law for the failure to consider R.C. 2929.11 and 2929.12 because the trial court expressly considered “all that is required by law”); (2) the trial court notified Rapier at the sentencing hearing that he would be serving his sentences consecutive to each other under R.C. 2929.14(C)(4), and that section only applies to felony sentencing; (3) there is no requirement under Ohio law that a trial court

must specify with which other sentences the concurrent sentences are to be served under, R.C. 2929.41 (all sentences are served concurrently to any other sentence unless imposed consecutively), and finally (4) the typographical error in the parenthetical explanation regarding the misdemeanor sentencing can be corrected through a nunc pro tunc entry. *See, e.g., State v. Roberts*, 2017-Ohio-9014, 101 N.E.3d 1067, ¶ 1 (8th Dist.). In short, there is no basis to remand for a de novo resentencing to correct any of the inconsequential discrepancies and minor typographical errors. The first assignment of error is overruled.

{¶ 6} In the second and final assignment of error, Rapier claims that the consecutive sentence findings required under R.C. 2929.14(C)(4) are incomplete and, in the alternative, are not supported by the record.

{¶ 7} Felony sentences are reviewed under the standard provided in R.C. 2953.08(G)(2). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 16. A reviewing court may overturn the imposition of consecutive sentences only if it clearly and convincingly finds that either (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.” R.C. 2953.08. Before a trial court may impose consecutive sentences, the court must make specific findings mandated by R.C. 2929.14(C)(4) and then incorporate those findings in the sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37. The trial court is not required to give a rote recitation of the statutory language. *Id.* “[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} R.C. 2929.14(C)(4) authorizes the court to order consecutive service of multiple sentences if consecutive service (1) is necessary to protect the public from future crime or to punish the offender; (2) is not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public; and additionally (3) that (a) the offender committed the offense while awaiting trial or sentencing, under community control monitoring, or under postrelease control for a prior offense; (b) at least two of the offenses caused harm so great and unusual that no single term for any offense adequately reflects the seriousness of the offender’s conduct; or (c) the offender’s history of criminal conduct demonstrates the necessity of consecutive sentences to protect the public from future crime. *State v. Smeznik*, 8th Dist. Cuyahoga Nos. 103196 and 103197, 2016-Ohio-709, ¶ 6.

{¶ 9} In this case, the trial court expressly found

that consecutive service is necessary to protect the public from future crime and to punish the offender [(first finding)] and that consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public [(second finding)]. And the Court finds that at least two of the multiple offenses were committed as part of one or more course 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 [(third

finding under R.C. 2929.14(C)(4)(b)].

Thus, all three findings were made orally and in the final entry of conviction. *Bonnell*.

{¶ 10} Rapier’s complaint is that the trial court did not make an additional finding under R.C. 2929.14(C)(4)(c) that the offender’s history of conduct demonstrates that consecutive sentences are necessary to protect the public from future crime, as was at issue in *State v. Wells*, 8th Dist. Cuyahoga No. 98428, 2013-Ohio-1179, ¶ 15. This misplaced argument is unfortunately becoming all too common but is nonetheless overruled. *State v. Black*, 8th Dist. Cuyahoga No. 108335, 2020-Ohio-188, ¶ 11; *State v. Nave*, 8th Dist. Cuyahoga No. 107032, 2019-Ohio-348, ¶ 6. The legislature authorized the imposition of consecutive sentences if three findings are made, the last of which contains three, independent alternative findings under R.C. 2929.14(C)(4)(a)-(c). *Black* at ¶ 11 (consecutive sentences may be imposed if the court “also finds *any* of the following” findings under R.C. 2929.14(C)(4)(a)-(c)). Rapier’s reliance on *Wells* is misplaced. In *Wells*, the trial court made the finding under R.C. 2929.14(C)(4)(c). In this case, the trial court made a different finding, under R.C. 2929.14(C)(4)(b), which is well within the dictates of R.C. 2929.14(C)(4).

{¶ 11} And finally, inasmuch as Rapier claims that the record does not support the findings, his argument is limited to the claim that an 11-year maximum term that could have been imposed on one of the first-degree felony offenses would

have sufficed to adequately punish him for his misconduct. The trial court imposed five-year, individual terms for the rape convictions.

{¶ 12} Appellate review of consecutive sentences is narrow. In order to reverse the imposition of consecutive sentences, the defendant must clearly and convincingly demonstrate that the record does not support the sentencing court's findings under R.C. 2929.14(C)(4). Rapier is asking this court to review the imposition of consecutive sentences de novo, without deference to the findings made by the trial court or the record that supports those findings. This form of review is beyond the scope provided under R.C. 2953.08(G)(2). Appellate courts can "only" reverse consecutive sentences upon clearly and convincingly finding that the record does not support the findings. R.C. 2953.08(G)(2); *Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231. The sole argument presented for our review does not give rise to the possibility of a reversal under the appropriate standard and is, therefore, overruled.

{¶ 13} The convictions are affirmed.

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 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.

SEAN C. GALLAGHER, PRESIDING JUDGE

LARRY A. JONES, SR., J., and
MICHELLE J. SHEEHAN, J., CONCUR