

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 110029
 v. :
 :
 MICHAEL A. STOKER, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: June 3, 2021

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case Nos. CR-19-643227-A, CR-19-643809-A, and CR-20-648811-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Justin Washburne, Assistant Prosecuting
Attorney, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and
Francis A. Cavallo, Assistant Public Defender, *for
appellant*.

MARY J. BOYLE, A.J.:

{¶ 1} Defendant-appellant, Michael A. Stoker, appeals his sentences in
three cases. He raises one assignment of error for our review:

The trial court erred when it ordered consecutive sentences without support in the record for the requisite statutory findings under R.C. 2953.08(G)(2) and R.C. 2929.14(C)(4).

{¶ 2} Finding no merit to his assignment of error, we affirm.

I. Procedural History and Factual Background

{¶ 3} In August 2019, 70-year-old Stoker was arrested for committing offenses against his wife, D.S., and the trial court issued a domestic violence temporary protection order. In September 2019, Stoker was indicted in Cuyahoga C.P. No. CR-19-643227 for four offenses occurring in January and August 2019. Later in September 2019, Stoker was also indicted in Cuyahoga C.P. No. CR-19-643809 for another three offenses against D.S. occurring in September 2019.

{¶ 4} In January 2020, Stoker agreed to plead guilty to an amended indictment in both cases. In CR-19-643227, Stoker agreed to plead guilty to three counts: domestic violence in violation of R.C. 2919.25(A), with a furthermore clause for a prior domestic violence conviction, a fourth-degree felony; attempted domestic violence in violation of R.C. 2919.25(A), with a furthermore clause for a prior domestic violence conviction, a fifth-degree felony; and domestic violence in violation of R.C. 2919.25(A), a first-degree misdemeanor. Stoker agreed to have no contact with D.S. as part of this plea.

{¶ 5} In CR-19-643809, Stoker agreed to plead guilty to three counts: burglary in violation of R.C. 2911.12(A)(3), a third-degree felony; domestic violence in violation of R.C. 2919.25(A), with a furthermore clause for a prior domestic violence conviction, a fourth-degree felony; and violating a protection order in

violation of R.C. 2919.27(A)(1), with a furthermore clause for violating the order while committing a felony, a third-degree felony. The trial court referred Stoker for a presentence-investigation report.

{¶ 6} The trial court held a sentencing hearing in February 2020 for both CR-19-643227 and CR-19-643809. D.S. spoke and asked the trial court to impose community control sanctions instead of prison time. She assured the trial court that she felt safe with Stoker and requested that the protection order be lifted. Stoker also addressed the trial court, acknowledged that he had problems with alcohol, and explained that he suffered from posttraumatic stress disorder (“PTSD”) from his army service in the Vietnam War. He emphasized that he would seek help from Veterans Affairs.

{¶ 7} The trial court sentenced Stoker to two years of community control sanctions on each count for both cases, to all be served concurrently to each other. For both cases, the trial court ordered Stoker to be supervised by the domestic violence unit. As conditions of community control for both cases, Stoker would need to test negative for drugs and alcohol at each report date, successfully complete an outpatient treatment program, attend three “AA/NA/CA meetings” per week, obtain a sponsor, complete an anger management program, maintain weekly psychological counseling sessions with Veterans Affairs, and comply with all medications. The trial court referred Stoker to TASC for a substance abuse assessment. The trial court also lifted the protection order at D.S.’s request. In CR-19-643809, the trial court imposed a \$500 supervision fee, a \$250 fine, and court costs. It imposed no

financial obligations in CR-19-643227. The trial court warned Stoker, “If you test positive for drugs, alcohol, pick up a new case, fail to report, or violate any conditions I’ve read to you today, then you would be subject to nine and a half years in prison.”

{¶ 8} The following month, in March 2020, Stoker was indicted in Cuyahoga C.P. No. CR-20-648811 for additional offenses against D.S. dating from five days after the February 5 sentencing hearing in CR-19-643227 and CR-19-643809. In September 2020, Stoker agreed to plead guilty to an amended indictment: two counts of domestic violence in violation of R.C. 2919.25(A), each with a furthermore clause for prior domestic violence convictions, third-degree felonies. The date range for one count was February 10 through 15, 2020, and the date for the second count was February 16, 2020. Stoker agreed to have no contact with D.S. as part of the plea. The trial court also advised Stoker that a guilty plea in CR-20-648811 constitutes a guilty plea probation violation in CR-19-643227 and CR-19-643809.

{¶ 9} Also in September 2020, the trial court held a hearing to impose a sentence in CR-20-64881 and to address the probation violations in CR-19-643227 and CR-19-643809. For CR-20-648811, the state requested a sentence of three years for each count, to be served concurrently. D.S. begged the trial court to not sentence Stoker to prison. She explained that she and Stoker had been married for 24 years, and she knew when she married him that he suffered from PTSD. She said she loved Stoker and that she wanted him to get counseling for his PTSD and treatment for his alcohol problem.

{¶ 10} The trial court questioned D.S. regarding the events underlying the offense, and D.S. explained that she and Stoker were drinking whiskey together “trying to relax” when he began to drink very quickly. She said that he then started talking about Vietnam and she realized he “was not in his right mind” and did not know who she was. She explained that Stoker became angry and hit her with a walking cane. She said he “blacked out” and did not remember hitting her when he woke up the next morning. D.S. did not call the police, but she texted a friend about what happened, and the friend called the police the next day. D.S. also told the court that Stoker’s son had “tried to stop his dad” and that Stoker had never hit his son. The prosecutor added that when police officers arrived, D.S. had “a big black eye and bruises on the upper half of her body.”

{¶ 11} Defense counsel reminded the trial court that Stoker was now 71 years old and had already been incarcerated for roughly seven months as the case was pending. He explained that during the Vietnam War, Stoker served as a door gunner in a helicopter and that “it was his responsibility to fire upon the enemy and also in some instances receive return fire.” He said that Stoker was shot and injured, and he suffered from PTSD as a result. Defense counsel pointed out that Stoker also had a severe alcohol use disorder that had “festered for far too long without treatment.” Defense counsel requested that the trial court order Stoker to be transported to an inpatient residential drug treatment facility so that D.S. would be protected from Stoker and so that Stoker would receive the treatment he needs.

{¶ 12} Stoker also addressed the trial court and said that he suffered from PTSD from when he was wounded in Vietnam. The trial court asked Stoker why he was violent toward D.S. but not his son, and Stoker explained that he “flash[es] back” to Vietnam, and he guessed he was violent toward D.S. because he did not “treat the Vietnamese with baby gloves.” The trial court told Stoker that there are thousands of Vietnam War veterans suffering from PTSD that are not repeatedly “beating” their wives, and Stoker responded that “some men went to Vietnam and didn’t do anything,” but he “was in a helicopter every day behind a machine gun.” The trial court told Stoker that he was insulting the military, that he was using PTSD as an excuse to “beat” his wife, and that he showed no remorse for his actions. The trial court said, “Mr. Stoker, you are a violent man. Whatever reason you want to give for it, you are violent. And you are a risk to the community, and you’re clearly a risk to your wife.”

{¶ 13} The trial court first addressed Stoker’s probation violations. For CR-19-643227, the trial court terminated Stoker’s community control sanctions and sentenced him to an aggregate term of 18 months in prison: 18 months for the fourth-degree felony of domestic violence, 12 months for the fifth-degree felony of attempted domestic violence, and 180 days for the first-degree misdemeanor of domestic violence, to all run concurrently to each other. The trial court also imposed three years of mandatory postrelease control and waived court costs.

{¶ 14} For CR-19-643809, the trial court terminated Stoker’s community control sanctions and sentenced him to an aggregate term of 18 months in prison:

18 months for the third-degree felony of burglary, 18 months for the fourth-degree felony of domestic violence, and 18 months for the third-degree felony of violating a protection order, to all run concurrently to each other. The trial court also imposed three years of mandatory postrelease control and waived court costs.

{¶ 15} The trial court then sentenced Stoker in CR-20-648811 to an aggregate of 36 months in prison: 36 months each for the two counts of domestic violence, to run concurrently to each other. The trial court also imposed three years of mandatory postrelease control and waived costs and fines.

{¶ 16} The trial court ordered the 18-month sentences for CR-19-643227 and CR-19-643809 to run concurrently to each other but consecutively to the 36-month sentence for CR-20-648811, for an aggregate prison term for all three cases of four and one-half years.

{¶ 17} Stoker appeals the September 2020 sentencing judgments in all three cases.

II. Consecutive Sentences

{¶ 18} In his sole assignment of error, Stoker argues that the record does not support the trial court's imposition of consecutive sentences. Specifically, he contends that D.S.'s statements at the sentencing hearing show that consecutive sentences are disproportionate to the seriousness of his conduct and the danger he poses to the public. He maintains that D.S.'s injuries "were not extensive," D.S. did not seek medical treatment or call the police, Stoker was not violent toward his son or anyone else, and Stoker "poses no significant risk to the public as a whole."

{¶ 19} R.C. 2953.08(G)(2) states that when reviewing felony sentences, an “appellate court’s standard for review is not whether the sentencing court abused its discretion.” Rather, the statute states that if we “clearly and convincingly” find that (1) “the record does not support the sentencing court’s findings under [R.C. 2929.14(C)(4)],” or that (2) “the sentence is otherwise contrary to law,” then we “may increase, reduce, or otherwise modify a sentence * * * or [we] may vacate the sentence and remand the matter to the sentencing court for resentencing.”

{¶ 20} As the Ohio Supreme Court has explained, when reviewing consecutive sentences, “R.C. 2953.08(G)(2)(a) directs the appellate court ‘to review the record, including the findings underlying the sentence’ and to modify or vacate the sentence ‘if it clearly and convincingly finds * * * [t]hat the record does not support the sentencing court’s findings under’” R.C. 2929.14(C)(4). *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 28, quoting R.C. 2953.08(G)(2)(a).

{¶ 21} A defendant can challenge consecutive sentences on appeal in two ways. First, the defendant can argue that consecutive sentences are contrary to law because the court failed to make the necessary findings required by R.C. 2929.14(C)(4). *See* R.C. 2953.08(G)(2)(b); *State v. Nia*, 2014-Ohio-2527, 15 N.E.3d 892, ¶ 16 (8th Dist.). Second, the defendant can argue that the record does not support the court’s findings made pursuant to R.C. 2929.14(C)(4). *See* R.C. 2953.08(G)(2)(a); *Nia* at ¶ 16. Stoker raises the second argument on appeal.

{¶ 22} “In Ohio, sentences are presumed to run concurrent to one another unless the trial court makes the required findings under R.C. 2929.14(C)(4).” *State v. Gohagan*, 8th Dist. Cuyahoga No. 107948, 2019-Ohio-4070, ¶ 28. Trial courts must therefore engage in the three-tier analysis of R.C. 2929.14(C)(4) before imposing consecutive sentences. *Id.* First, the trial court must find that “consecutive service is necessary to protect the public from future crime or to punish the offender.” Second, the trial court must find that “consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public.” *Id.* Third, the trial court must find that 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.

Id.

{¶ 23} The failure to make the above findings renders the imposition of consecutive sentences contrary to law. *Gohagan* at ¶ 29. R.C. 2929.14(C)(4) directs that for each step of this analysis, the trial court must “find” the relevant sentencing

factors before imposing consecutive sentences. R.C. 2929.14(C)(4). Trial courts, however, do not need to recite the statutory language word for word. *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, at ¶ 29. “[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.*

{¶ 24} In this case, the trial court made the following findings at Stoker’s sentencing hearing:

The court finds that this sentence is necessary to protect the public from future crime and to punish the offender and are [sic] not disproportionate to the seriousness of your conduct and the danger you pose to the public.

Additionally, the court finds the offender committed one or more of the offenses while awaiting trial or sentencing or was under a sanction. Also that the offender’s history of criminal conduct demonstrates consecutive sentences are necessary to protect the public from future crime by the offender.

{¶ 25} We find that the record supports the trial court’s finding that consecutive sentences were not disproportionate to the seriousness of Stoker’s conduct and the danger he poses to the public. His presentence-investigation report shows that in addition to the three cases that are the subject of this appeal, Stoker pleaded guilty to a charge of domestic violence in 2010. The record reflects that between January and September 2019, Stoker committed domestic violence and other offenses against D.S. on three separate occasions, resulting in convictions of five felonies and a misdemeanor. Just five days after Stoker was sentenced to community control for these crimes, he hit D.S. with a cane, causing her to suffer a

black eye and bruising. The record shows that the lesser sentences Stoker received in CR-19-643227 and CR-19-643809 had not been effective in modifying his conduct.

{¶ 26} We are not persuaded by Stoker’s arguments that the record does not support consecutive sentences because he was violent only toward D.S. and that she did not want him to go to prison. In *State v. Hicks*, 8th Dist. Cuyahoga No. 107055, 2019-Ohio-870, ¶ 17, we found that the record supported the trial court’s findings under R.C. 2929.14(C)(4) where the defendant committed an offense of attempted domestic violence while serving community control sanctions for another conviction of attempted domestic violence against the same victim. The trial court found that consecutive sentences were necessary to protect the public “irrespective of how the victim in this matter feels.” *Id.* at ¶ 6. This court affirmed based on the defendant’s lengthy criminal history, multiple convictions for domestic violence, and the fact that he committed one of the offenses while serving community control sanctions for a similar crime against the same victim. *Id.* at ¶ 17. Likewise, here, regardless of D.S.’s statements that she did not want Stoker to serve time in prison and that she was his only victim, Stoker’s multiple domestic violence convictions, especially those committed days after being sentenced to community control sanctions for similar crimes against D.S., show that consecutive sentences are not disproportionate to the seriousness of his conduct and the danger he poses to the public.

{¶ 27} Based upon our meaningful review of the record and the trial court's sentencing judgments, we clearly and convincingly find that the record supports the trial court's findings under R.C. 2929.14(C)(4).

{¶ 28} Accordingly, Stoker's assignment of error is overruled.

{¶ 29} Judgments affirmed.

It is ordered that appellee recover from appellant 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.

MARY J. BOYLE, ADMINISTRATIVE JUDGE

ANITA LASTER MAYS, J., and
MICHELLE J. SHEEHAN, J., CONCUR