[Cite as *State v. Tindell,* 2017-Ohio-5645.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2016-P-0059**
- vs -	:	
FRANK L. TINDELL,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2015 CR 00784.

Judgment: Affirmed.

Victor V. Vigluicci, Portage County Prosecutor, and *Kristina Reilly,* Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Kimberly Anne Valenti, P.O. Box 1149, Hudson, OH 44236 (For Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellant, Frank L. Tindell, appeals from the August 24, 2016 judgment of the Portage County Court of Common Pleas sentencing him to 11 years in prison for two counts of aggravated vehicular homicide, one count of failure to comply with order or signal of police officer, and one count of driving under suspension following a guilty plea. On appeal, appellant asserts that his consecutive sentence is contrary to law, that the trial court failed to consider R.C. 2929.11 and 2929.12, and that the trial court erred in suspending his right to drive in the state of Ohio for life. Finding no error, we affirm.

{¶2} On July 21, 2015, officers responded to Aurora Premium Outlet Stores for a report of an attempted shoplifting. An officer spoke with a clerk who observed a male, later identified as appellant, put unpaid items in a shopping bag. Appellant wandered around the store on his cell phone and spoke with a female, later identified as Nadia Campbell. Appellant ended up dumping the bag, concealing clothing on the counter, and ran out the door. Their direction of travel was unknown.

{¶3} Other officers were dispatched and one later observed the suspect vehicle. Dispatch was advised that appellant had multiple warrants and was cautioned that he was armed and dangerous. The officer spun his cruiser around and blocked three-fourths of the roadway. The officer repeatedly yelled at appellant (the driver), "don't do it." Appellant backed up his vehicle and began accelerating in the officer's direction as the officer was standing behind his cruiser. The officer drew his weapon and pointed it at appellant. Appellant turned his vehicle and drove in the opposite direction at a high rate of speed.

{¶4} A chase ensued on Route 43. Appellant drove left of center and side-swiped a UPS truck. Appellant then rear-ended a car driven by David George. Appellant ended up crossing left of center again and struck an AIM Leasing vehicle head on.

{¶5} At the crash scene, officers and pedestrians tried to get fire extinguishers and firefighters extracted appellant from the vehicle. Officers were also observed doing CPR on a female and hooking up an AED. Numerous items of clothing with tags, booster bags lined with duct tape, store sensors, and various bags from different stores were inside the vehicle along with a folder containing court records from other

jurisdictions. Officers removed and inventoried all the stolen property from the vehicle, which involved eight different stores.

{¶6} The driver of the AIM Leasing vehicle received a cut on his left hand, an abrasion and bruised left knee, and a sprained left ankle. Mr. George's injuries consisted of a sore head, neck, and back. The driver of the UPS truck did not report any injuries.

{¶7} Appellant also sustained injuries. His passenger, Nadia, was pregnant at the time. Nadia died as a result of the crash and the pregnancy was terminated.

{¶8} On November 12, 2015, the Portage County Grand Jury indicted appellant on nine counts: counts one and three, aggravated vehicular homicide, felonies of the first degree, in violation of R.C. 2903.06(A)(1) and (B); counts two and four, aggravated vehicular homicide, felonies of the second degree, in violation of R.C. 2903.06(A)(2) and (B); count five, operating a vehicle under the influence of alcohol and/or drugs, a misdemeanor of the first degree, in violation of R.C. 4511.19(A)(1)(a) and (G); count six, failure to comply with order or signal of police officer, a felony of the fourth degree, in violation of R.C. 2921.331(B) and (C)(2); count seven, receiving stolen property, a felony of the fifth degree, in violation of R.C. 2913.51; count eight, possessing criminal tools, a felony of the fifth degree, in violation of R.C. 2923.24(A) and (C); and count nine, driving under suspension, a misdemeanor of the first degree, in violation of R.C. 4510.11(A). Appellant was represented by counsel, entered a not guilty plea at his arraignment, and waived his right to a speedy trial.

{¶1} On June 22, 2016, appellant withdrew his former not guilty plea and entered an oral and written guilty plea to counts two and four, aggravated vehicular

homicide, felonies of the second degree; count six, failure to comply with order or signal of police officer, a felony of the fourth degree; and count nine, driving under suspension, a misdemeanor of the first degree. The trial court accepted appellant's guilty plea, dismissed the remaining charges, and referred the matter to the Adult Probation Department for a presentence investigation report.[1]

{¶9} On August 24, 2016, the trial court sentenced appellant to a total of 11 years in prison. Specifically, appellant was sentenced to seven years in prison on count two, three years on count four, and one year on count six, to be served consecutively. The court also sentenced appellant to six months for the misdemeanor offense in count nine, to be served concurrently to the felony sentences. Appellant received credit for 241 days for time already served. The court also suspended appellant's right to drive in the state of Ohio for life. The court further notified appellant that post-release control is mandatory for five years. Appellant filed a timely appeal and asserts the following assignment of error:

{¶10} "The trial court erred as a matter of law when imposing sentence upon Mr. Tindell."

{¶11} Under his sole assignment of error, appellant raises three issues:

{¶12} "1. Did the Trial Court err as a matter of law when imposing sentence upon Mr. Tindell.

{¶13} "2. Did the Trial Court err as a matter of law when imposing sentence upon Mr. Tindell by not considering the factors set forth in R.C. 2929.11 and 2929.12 and other sections of the Ohio Revised Code?

1. Appellant later filed a pro se handwritten request recanting his plea. The court held a hearing and appellant withdrew that request. The PSI reveals that appellant's criminal background began when he was a juvenile. His prior record is extensive. In fact, it is 18 pages long.

{¶14} "3. Did the trial court error (sic) as a matter of law when imposing sentence upon the Defendant, by suspending his privilege to operate a motor vehicle for a maximum period or any period allowed by law when there are multiple provisions of the Ohio Revised Code requiring mandatory suspensions and a suspension is not designated to a charge, and, further, there are multiple charges."

{¶15} Appellant's first two issues are interrelated. For ease of discussion, we will address them together.

{¶16} "'(T)his court utilizes R.C. 2953.08(G) as the standard of review in all felony sentencing appeals.' *State v. Hettmansperger,* 11th Dist. Ashtabula No. 2014–A–0006, 2014–Ohio–4306, ¶14. R.C. 2953.08(G) provides, in pertinent part:

{¶17} "'(2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

{¶18} "'The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

{¶19} "'(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

{¶20} "'(b) That the sentence is otherwise contrary to law.'

{¶21} "R.C. 2929.14(C)(4) governs the imposition of consecutive felony sentences. It provides:

{¶22} "'(4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender 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, and if the court also finds any of the following:

{¶23} "'(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.

{¶24} "'(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.

{¶25} "'(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.'

{¶26} "In *State v. Bonnell,* 140 Ohio St.3d 209, 2014–Ohio–3177, ¶37, the court held:

{¶27} "'In order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings. Nor is it required to give a talismanic incantation of the words of the statute, provided that the necessary findings can be found in the record and are incorporated into the sentencing entry.'

{¶28} "Failure to make the R.C. 2929.14(C)(4) findings at the sentencing hearing and incorporate them in the judgment entry of sentence renders the sentence contrary to law. *See, e.g., id.*" *State v. Purtilo*, 11th Dist. Lake No. 2015-L-003, 2015-Ohio-2985, ¶5-17.

{¶29} In this case, the trial court made the R.C. 2929.14(C)(4) findings at the sentencing hearing and incorporated them in the judgment entry of sentence.

{¶30} At the sentencing hearing, the trial court heard from Carolyn Campbell, Nadia's (the victim) mother. Nadia was 26 years old with three young children. Carolyn described her daughter as brilliant and beautiful, like a flower. Nadia was the bridge that kept the family together. Nadia's children miss their mother. Nadia was torn away from them and Carolyn hoped that justice would be done. Carolyn wants closure. She indicated her grandchildren are in counseling, she keeps them in church, and takes one day at a time.

{¶31} Appellant also spoke at the sentencing hearing, and stated the following:

{¶32} "DEFENDANT: I'm sorry to the Court. I lost a good friend, almost lost my life. I think about it every day. I can't stop thinking about it. It hurts me very bad. I

would like to say I'm sorry. I wish I would have stopped." (August 22, 2016 Sentencing T.p. 9-10).

{¶33} Thereafter, the trial court stated the following at the sentencing hearing:

{¶34} "THE COURT: I think the point that was made by both the State and your Attorney was that this was such a minor, minor infraction in the big scheme of things with one bad decision that caused this girl's death along with her child.

{¶35} "And I guess if it was a situation where this was the first decision that you'd made that had ended up at least bad for you, but Mr. Tindell, you have just such a history of bad decisions. And I appreciate what your Attorney has said. You were not given opportunities probably early on, but I think every step along the way as I look at your record, you did have opportunities to not make those bad decisions.

{¶36} "Ultimately this decision caused the death of two people.

{¶37} "I don't know if it's worse that she was your friend, I mean this is somebody that you knew, that you were with, that you were traveling with. I mean, for you, it's not like it was a stranger. It's somebody you knew, and your conduct caused this.

{¶38} "All right. I have reviewed the PSI and certainly considered the arguments of counsel.

{¶39} "Your record, you have been to prison, these are both felonies of the second degree; aggravated vehicle homicides and then there's a felony of the fourth degree, failure to comply, along with the count nine is the misdemeanor of the first degree, [driving under suspension].

{¶40} "Having considered all of that, and there is a mandatory prison sentence for the felonies of the second degree.

{¶41} "* * *

{¶42} "All right. Mr. Tindell, again, these are two felonies of the second degree, there is a mandatory prison sentence for these felonies and then the felony four has to run consecutively because by statute failure to comply has to run consecutively.

{¶43} "* * *

{¶44} "I am finding that the sentences will run consecutively with each other because of the gravity of these charges and because of the record that you have, having been to prison previous to this. And I'm going to order and I'm finding that the gravity of the harm does require and the protection of the community requires consecutive sentences." (August 22, 2016 Sentencing T.p. 10-13).

{¶45} In addition, in its August 24, 2016 sentencing entry, the trial court stated:

{¶46} "The Court finds that the consecutive sentence is necessary to protect the public from future crime or to punish the Defendant and consecutive sentences are not disproportionate to the seriousness of the Defendant's conduct and to the danger the defendant poses to the public. Further, 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 committed was so great or unusual that no single prison term for any of the offenses committed as a part of any of the courses of conduct adequately reflects the seriousness of the Defendant's conduct and Defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the Defendant."

{¶47} Appellant also takes issue with R.C. 2929.11(A) and (B) and 2929.12(C), (D) and (E). Although trial courts have full discretion to impose any term of imprisonment within the statutory range, they must consider the sentencing purposes in R.C. 2929.11 and the guidelines contained in R.C. 2929.12.

{¶48} R.C. 2929.11, "Overriding purposes of felony sentencing," states in part:

{¶49} "(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

{¶50} "(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders."

{¶51} The guidelines contained in R.C. 2929.12, "Factors to consider in felony sentencing," specifically at (C), (D), and (E), state:

{¶52} "(C) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as

indicating that the offender's conduct is less serious than conduct normally constituting the offense:

{¶53} "(1) The victim induced or facilitated the offense.

{¶54} "(2) In committing the offense, the offender acted under strong provocation.

{¶55} "(3) In committing the offense, the offender did not cause or expect to cause physical harm to any person or property.

{¶56} "(4) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

{¶57} "(D) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is likely to commit future crimes:

{¶58} "(1) At the time of committing the offense, the offender was under release from confinement before trial or sentencing; was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code; was under post-release control pursuant to section 2967.28 or any other provision of the Revised Code for an earlier offense or had been unfavorably terminated from post-release control for a prior offense pursuant to division (B) of section 2967.16 or section 2929.141 of the Revised Code; was under transitional control in connection with a prior offense; or had absconded from the offender's approved community placement resulting in the offender's removal from the transitional control program under section 2967.26 of the Revised Code.

{¶59} "(2) The offender previously was adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has a history of criminal convictions.

{¶60} "(3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has not responded favorably to sanctions previously imposed for criminal convictions.

{¶61} "(4) The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse.

{¶62} "(5) The offender shows no genuine remorse for the offense.

{¶63} "(E) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is not likely to commit future crimes:

{¶64} "(1) Prior to committing the offense, the offender had not been adjudicated a delinquent child.

{¶65} "(2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense.

{¶66} "(3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years.

{¶67} "(4) The offense was committed under circumstances not likely to recur.

{¶68} "(5) The offender shows genuine remorse for the offense."

{¶69} In its August 24, 2016 judgment, the trial court stated:

{¶70} "The Court considered the purpose of felony sentencing which is to protect the public from future crimes by the Defendant and to punish the Defendant using the minimum sanctions that the Court determines to accomplish those purposes without imposing an unnecessary burden on state or local government resources.

{¶71} "The Court also considered the need for incapacitating the Defendant, deterring the defendant and others from future crime, rehabilitating the Defendant, making restitution to the victim of the offense, the public or both.

{¶72} "The Court also considered the evidence presented by counsel, oral statements, any victim impact statements, the Pre-Sentence Report and the defendant's statement."

{¶73} As addressed, the record reflects the trial court gave due deliberation to the relevant statutory considerations. The court considered the purposes and principles of felony sentencing under R.C. 2929.11, and balanced the seriousness and recidivism factors under R.C. 2929.12, as evidenced from the record. Appellant was consecutively sentenced to seven years for the second degree felony aggravated vehicular homicide offense in count two; three years for the second degree aggravated vehicular homicide offense in count four; and one year for the fourth degree failure to comply with the order or signal of police officer offense in count six. Thus, the court sentenced appellant within the statutory ranges under R.C. 2929.14(A) ("(2) For a felony of the second degree, the prison term shall be two, three, four, five, six, seven, or eight years. * * * (4) For a felony of the fourth degree, the prison term shall be six, seven, eight, nine, ten,

eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.") Appellant was also sentenced to six months for the first degree misdemeanor driving under suspension offense in count nine, which the trial court ordered to run concurrent with the foregoing felony sentences pursuant to R.C. 2929.41. *See* R.C. 2929.24(A)(1) ("For a misdemeanor of the first degree, not more than one hundred eighty days[.]")

{¶74} Further, the record reveals the court properly advised appellant regarding post-release control. Therefore, the trial court complied with all applicable rules and statutes and, as a result, appellant's sentence is not clearly and convincingly contrary to law.

{¶75} Appellant's first and second issues have no merit.

{¶76} Regarding his third issue, appellant contends the trial court erred in suspending his driving privileges for life.

{¶77} In its August 24, 2016 judgment, the trial court stated: "IT IS FURTHER ORDERED the Defendant's right to drive in the State of Ohio is suspended for Life." We note that the court did not specify which felony count carries a lifetime suspension. Nevertheless, each of appellant's felony convictions, aggravated vehicular homicide in violation of R.C. 2903.06(A)(2), and failure to comply with order or signal of police officer in violation of R.C. 2921.331(B), carry a mandatory driver's license suspension with a lifetime maximum.

{¶78} R.C. 2903.06(B)(3), "Aggravated vehicular homicide," states in part: "In addition to any other sanctions imposed pursuant to this division for a violation of division (A)(2) of this section, the court shall impose upon the offender a class two

suspension of the offender's driver's license * * * from the range specified in division (A)(2) of section 4510.02 of the Revised Code[.]"

{¶79} R.C. 2921.331(E), "Failure to comply with order or signal of police officer," states in part: "In addition to any other sanction imposed for a felony violation of division (B) of this section, the court shall impose a class two suspension from the range specified in division (A)(2) of section 4510.02 of the Revised Code."

{¶80} R.C. 4510.02(A)(2), "Classification of suspensions," states in part: "When a court elects or is required to suspend the driver's license * * * of any offender from a specified suspension class * * * the court shall impose a definite period of suspension from the range specified for the suspension class * * * [f]or a class two suspension, a definite period of three years to life[.]"

{¶81} Accordingly, the lifetime suspension imposed by the trial court was within the prescribed statutory range and was not contrary to law. *See State v. Frazier*, 2d Dist. Montgomery No. 26229, 2015-Ohio-344, ¶11, 13.

{¶82} Appellant's third issue has no merit.

{¶83} For the foregoing reasons, appellant's sole assignment of error is not well-taken. The judgment of the Portage County Court of Common Pleas is affirmed.

THOMAS R. WRIGHT, J., concurs,

TIMOTHY P. CANNON, J., concurs in judgment only.