

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
PORTAGE COUNTY, OHIO**

STATE OF OHIO,	:	<b>O P I N I O N</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2019-P-0091</b>
MATTHEW J. CLaar,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2017 CR 00423.

Judgment: Reversed and remanded.

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

*Alexander Keane*, P.O. Box 92, Canfield, OH 44406 (For Defendant-Appellant).

MATT LYNCH, J.

{¶1} Defendant-appellant, Matthew J. Claar, appeals the sentences imposed for violating community control sanctions by the Portage County Court of Common Pleas. For the following reasons, we reverse the judgment of the court below and remand for further proceedings consistent with this Opinion.

{¶2} On November 20, 2017, Claar pled guilty to Attempted Felonious Assault, a felony of the third degree in violation of R.C. 2923.02 and 2903.11, and Tampering with Evidence, a felony of the third degree in violation of R.C. 2921.12.

{¶3} On January 26, 2018, Claar was sentenced to, inter alia, community control sanctions: “Defendant is placed on the general control of the Portage County Adult Probation Department in the Intensive Supervision Program for a period of 12 months and 36 additional months under the General Division of Adult Probation.”

{¶4} On December 17, 2018, the Adult Probation Department filed a Motion to Modify/Revoke Claar’s “probation,” i.e., community control sanctions.

{¶5} On July 19, 2019, the trial court granted the Motion to Modify/Revoke and sentenced Claar to serve consecutive thirty-six-month prison terms for each felony.

{¶6} On August 19, 2019, Claar filed a Notice of Appeal. On appeal, he raises the following assignments of error:

{¶7} “[1.] The trial court erred by sentencing defendant-appellant to consecutive sentences without making the statutorily required findings on the record.”

{¶8} “[2.] The trial court erred by not making findings regarding recidivism and the seriousness of the offense at the sentencing hearing as required by R.C. 2929.12.”

{¶9} “The court hearing an appeal [of a felony sentence] shall review the record, including the findings underlying the sentence or modification given by the sentencing court.” R.C. 2953.08(G)(2). “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 \* \* \* if it clearly and convincingly finds \* \* \* [t]hat the record does not support the sentencing court’s findings under division \* \* \* (C)(4) of section 2929.14, or \* \* \* [t]hat the sentence is otherwise contrary to law.” R.C. 2953.08(G)(2)(a) and (b).

{¶10} When imposing a sentence for a felony, the trial court “has discretion to

determine the most effective way to comply with the purposes and principles of [felony] sentencing” and “shall consider the factors \* \* \* relating to the seriousness of the conduct” and “the factors \* \* \* relating to the likelihood of the offender’s recidivism.” R.C. 2929.12(A).

{¶11} Under R.C. 2929.14(C)(4), a sentencing court is required to make three distinct findings in order to require an offender to serve consecutive prison terms: (1) that consecutive sentences are “necessary to protect the public from future crime or to punish the offender”; (2) that consecutive sentences are “not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public”; (3) “and \* \* \* also” that one of the circumstances described in subdivision (a) to (c) is present. *State v. Beasley*, 153 Ohio St.3d 497, 2018-Ohio-493, 108 N.E.3d 1028, ¶ 252. Moreover, “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.” *State v. Bonnell*, 140 Ohio St.3d 209, 2104-Ohio-3177, 16 N.E.3d 659, ¶ 37.

{¶12} Under the first assignment of error, Claar argues, and the State concedes, that the trial court failed to make the finding that consecutive sentences are “not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public” at the sentencing hearing. Accordingly, Claar’s sentence must be reversed and the case remanded for resentencing. *Beasley* at ¶ 260 (“[c]ourts, including this one, have consistently remanded for resentencing when the trial judge has failed to make a proportionality finding when imposing consecutive sentences”); *State v. Woofter*, 11th Dist. Portage Nos. 2018-P-0050, 2018-P-0051, and 2018-P-0052, 2019-

Ohio-1166, ¶ 19.

{¶13} The first assignment of error is with merit.

{¶14} In the second assignment of error, Claar argues that, at the sentencing hearing, the trial court made “no mention \* \* \* of the recidivism and seriousness factors of R.C. 2929.12.” Appellant’s brief at 9.

{¶15} Contrary to Claar’s position, the trial court is under no obligation to make mention of the seriousness and recidivism factors of R.C. 2929.12. The Ohio Supreme Court has described R.C. 2929.12 as “a general judicial guide for every sentencing.” *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶ 36. “It is important to note that there is no mandate for judicial fact-finding in the general guidance statutes. The court is merely to ‘consider’ the statutory factors.” *Id.* at ¶ 42. “The Code does not specify that the sentencing judge must use specific language or make specific findings on the record in order to evince the requisite consideration of the applicable seriousness and recidivism factors.” *State v. Arnett*, 88 Ohio St.3d 208, 215, 724 N.E.2d 793 (2000). “A silent record raises the presumption that a trial court considered the factors contained in R.C. 2929.12.” *State v. Adams*, 37 Ohio St.3d 295, 525 N.E.2d 1361 (1988), paragraph three of the syllabus; *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 18, fn 4.

{¶16} In the present case, the trial court stated at the sentencing hearing that it was “weighing all the factors” in imposing a prison term. Such a statement is more than adequate to demonstrate compliance with the requirement to consider the R.C. 2929.12 factors. *State v. Pishner*, 11th Dist. Portage No. 2017-P-0004, 2017-Ohio-8689, ¶ 25.

{¶17} The second assignment of error is without merit.

{¶18} For the foregoing reasons, the imposition of consecutive sentences for violating community control sanctions is reversed and this matter is remanded for further proceedings consistent with this Opinion. Costs to be taxed against the appellee.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.