

[Cite as *State v. Hatfield*, 2015-Ohio-2846.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	Case No. CT2014-CA-00052
BRIAN T. HATFIELD	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal appeal from the Muskingum
County Court of Common Pleas, Case No.
CR2014-0182

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: July 10, 2015

APPEARANCES:

For Plaintiff-Appellee

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Gwin, P.J.

{¶1} Appellant Brian T. Hatfield [“Hatfield”] appeals from the November 25, 2014 Judgment Entry of Prison Sentence of the Muskingum County Court of Common Pleas. Appellee is the state of Ohio.

Facts and Procedural History

{¶2} A statement of the facts underlying Hatfield’s criminal conviction is not necessary to our resolution of this appeal.

{¶3} On June 12, 2014, Hatfield was indicted on a six-count indictment for Count 1-Engaging in a pattern of corrupt activity, a felony of the first degree in violation of R.C. 2923.32(A)(1); Count 2 - Money Laundering, a felony of the fifth degree in violation of R.C. 1315.55(A)(1); Count 3 -Theft, a felony of the fourth degree in violation of R.C. 2913.02(A)(1); Count 4 –Theft, a felony of the fourth degree in violation of R.C. 2913.02(A)(1); Count 5 –Theft, a felony of the fourth degree in violation of R.C. 2913.02(A)(1); and Count 6 – Theft, a felony of the third degree in violation of R.C. 2913.02(A)(1).

{¶4} On November 3, 2014, Hatfield entered a negotiated plea of guilty to Count 2 – Money Laundering; Count 4 –Theft; and Count 6 – Theft. The remaining counts were dismissed by the state in exchange for Hatfield’s pleas. Because Hatfield had left the County while on bond, he was held without bond while a pre-sentence investigation report was prepared.

{¶5} On November 17, 2014, Hatfield was sentenced to 30 months for his guilty plea to Count 2 - Money Laundering; 12 months for his guilty pleas to Count 4 – Theft

and 36 months for his guilty plea to Count 6 – Theft. The trial court ordered the sentences to be served consecutively.

Assignment of Error

{¶6} Hatfield raises one assignment of error,

{¶7} “I. THE DEFENDANT-APPELLANT WAS SENTENCED TO CONSECUTIVE PRISON TERMS CONTRARY TO R.C. 2929.14(C)(4).”

Analysis

{¶8} In his sole assignment of error, Hatfield challenges the imposition of the consecutive terms on the ground that the trial court failed to make the findings required by R.C. 2929.14(C)(4).

{¶9} In Ohio, there is a statutory presumption in favor of concurrent sentences for most felony offenses. R.C. 2929.41(A). The trial court may overcome this presumption by making the statutory, enumerated findings set forth in R.C. 2929.14(C)(4). *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶23. This statute requires the trial court to undertake a three-part analysis. *State v. Alexander*, 1st Dist. Hamilton Nos. C–110828 and C–110829, 2012-Ohio-3349, 2012 WL 3055158, ¶ 15.

{¶10} R.C. 2929.14(C)(4), provides:

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 **665 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:

(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.

{¶11} Thus, in order for a trial court to impose consecutive sentences the court must find that consecutive sentences are necessary to protect the public from future crime or to punish the offender. The court must also find that consecutive sentences are not disproportionate to the offender's conduct and to the danger the offender poses to the public. Finally, the court must make at least one of three additional findings, which include that (a) the offender committed one or more of the offenses while awaiting trial or sentencing, while under a sanction imposed under R.C. 2929.16, 2929.17, or 2929.18, or while 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 offenses 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 would adequately reflect the seriousness of the offender's conduct; or (c) the offender's criminal history demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. See, *State v. White*, 5th Dist. Perry No. 12-CA-00018, 2013-Ohio-2058, ¶36.

{¶12} Recently, in *State v. Bonnell*, 140 Ohio St.3d 209, 2014–Ohio–3177, 16 N.E.2d 659, syllabus, the Supreme Court of Ohio stated that:

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. (Emphasis added.)

{¶13} Furthermore, the sentencing court is not required to recite “a word-for-word recitation of the language of the statute.” *Bonnell*, ¶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.* A failure to make the findings required by R.C. 2929.14(C)(4) renders a consecutive sentence contrary to law. *Bonnell*, ¶34. The findings required by R.C. 2929.14(C)(4) must be made at the sentencing hearing and included in the sentencing entry. *Id.* at the syllabus. However, a trial court's inadvertent failure to incorporate the statutory findings in the sentencing entry after properly making those findings at the sentencing hearing does not render the sentence contrary to law; rather, such a clerical

mistake may be corrected by the court through a nunc pro tunc entry to reflect what actually occurred in open court. *Bonnell*, ¶30.

{¶14} In the case at bar, the trial court stated that “consecutive sentences are necessary to protect the public and to punish the offender. Consecutive sentences are not disproportionate to the seriousness of your conduct and the danger you pose to the public.” Sent. T., Nov. 17, 2014, at 23; Sent. Entry, filed Nov. 25, 2014 at 2. This duplicated the language set forth in R.C. 2929.14(C)(4). However, in this case, the record does not support a conclusion that the trial court made all of the findings required by R.C. 2929.14(C)(4) at the time it imposed consecutive sentences; neither did it incorporate all of the necessary findings into its judgment entry. We cannot glean from the record that the trial court found at least one of three additional findings, which include that (a) the offender committed one or more of the offenses while awaiting trial or sentencing, while under a sanction imposed under R.C. 2929.16, 2929.17, or 2929.18, or while 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 offenses 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 would adequately reflect the seriousness of the offender’s conduct; or (c) the offender’s criminal history demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶15} We recognize that the parties and the trial court did not have the benefit of the Ohio Supreme Court’s decision in *Bonnell* at the time of sentencing. However, we are cognizant of the express requirements set forth in *Bonnell* that the trial court makes

all the necessary findings required by R.C. 2929.14(C) at the time of sentencing and in its sentencing entry. That has not occurred in the case at bar.

{¶16} Because the record does not demonstrate that the trial court engaged in the required analysis and selected the appropriate statutory criteria before ordering sentences to be served consecutively, the sentence imposing consecutive terms of imprisonment is clearly and convincingly contrary to law and must be vacated. *Bonnell* at ¶ 37.

{¶17} Accordingly, we sustain Hatfield's sole assignment of error.

{¶18} The judgment of the Muskingum County Court of Common Pleas is reversed and this matter is remanded for proceedings in accordance with our opinion and the law.

By Gwin, P.J.,

Farmer, J., and

Baldwin, J., concur