

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
DANIEL L. BARNES, III	:	Case No. CT2016-0024
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. CR2013-0199

JUDGMENT: Affirmed

DATE OF JUDGMENT: December 12, 2016

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Farmer, P.J.

{¶ 1} On September 4, 2013, the Muskingum County Grand Jury indicted appellant, Daniel Barnes, III, on one count of aggravated robbery with a firearm specification in violation of R.C. 2911.01 and 2941.145, one count of felonious assault with a firearm specification in violation of R.C. 2903.11 and 2941.145, one count of having a weapon while under disability in violation of R.C. 2929.13, and two counts of kidnaping in violation of R.C. 2905.01.

{¶ 2} A jury trial commenced on January 13, 2015. The jury found appellant guilty of all charges save for the kidnaping counts. By judgment entry filed February 17, 2015, the trial court sentenced appellant to an aggregate term of twenty-eight years in prison.

{¶ 3} Appellant appealed and this court remanded the case to the trial court to make requisite findings for consecutive sentences. *State v. Barnes*, 5th Dist. Muskingum No. CT2015-0013, 2016-Ohio-1168.

{¶ 4} By judgment entry filed April 27, 2016, the trial court resentenced appellant to the same sentence.

{¶ 5} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶ 6} "THE TRIAL COURT PLAINLY ERRED IN IMPOSING MAXIMUM CONSECUTIVE SENTENCES FOR APPELLANT'S SEPARATE CONVICTIONS RENDERING THE SENTENCES CONTRARY TO LAW AND THE STATE AND FEDERAL CONSTITUTIONS."

I

{¶ 7} Appellant claims the trial court erred in imposing maximum consecutive sentences because the sentences are contrary to the purposes expressed by the Ohio General Assembly. Specifically, appellant claims a maximum consecutive sentence fails to reduce the state's prison population, fails to save on costs associated with incarceration by diverting certain offenders from prison, and fails to shorten the terms of other offenders sentenced to prison. We disagree.

{¶ 8} In general, this is the same philosophical argument advanced in appellant's first appeal, *State v. Barnes*, 5th Dist. Muskingum No. CT2015-0013, 2016-Ohio-1168, wherein appellant argued the following in Assignment of Error V: "THE TRIAL COURT PLAINLY ERRED IN IMPOSING MAXIMUM CONSECUTIVE SENTENCES FOR APPELLANT'S SEPARATE CONVICTIONS RENDERING THE SENTENCES CONTRARY TO LAW." This court stated the following at ¶ 71:

In the fifth assigned error, Appellant maintains the trial court erred in imposing maximum, consecutive sentences for Appellant's separate convictions; thereby, rendering the sentences contrary to law. Specifically, Appellant asserts the trial court did not consider the purposes and principles of sentencing required by R.C. 2929.11 and R.C. 2929.12 and did not make the required findings necessary to support consecutive sentences under R.C. 2929.14.

{¶ 9} This court remanded the issue to the trial court, stating the following at ¶

75-76:

Here, the trial court's February 20, 2015 Judgment Entry of sentence reads,

The Court made judicial findings that the Defendant has previous felony convictions, including a prior felony of the first degree; and a felony of the second degree. Therefore, pursuant to O.R.C. §2929.13(F)(6), the Court finds that sentences in regard to Counts One and Four in the within case are mandatory sentences. Further pursuant to O.R.C. §2929.14, the Court finds that the imposition of consecutive sentences herein are necessary to protect the public from future crimes.

Upon review of the record, we do not find the trial court made all the requisite findings necessary to support the imposition of consecutive sentences either during sentencing or in its sentencing entry. [Fn. 2: Notably missing is any finding consecutive sentences are not

disproportionate to the seriousness of the offender's conduct and the danger the offender poses to the public.]¹

{¶ 10} In the appeal sub judice, appellant did not make any specific arguments, but made a very general philosophical argument suggesting no trial court should have the discretion to order maximum consecutive sentences. The logical conclusion advanced by appellant is that every maximum consecutive sentence violates the purposes and principles of R.C. 2929.11, 2929.12, and 2929.14(C). We disagree with this argument and further disagree that Ohio's sentencing scheme rejects maximum consecutive sentences.

{¶ 11} Per this court's remand, the trial court reimposed maximum consecutive sentences and entered the following specific findings on the record after reviewing and remembering appellant's trial, the presentence investigation report, "and everything else involved" (April 25, 2016 T. at 11-12):

The Court finds that consecutive sentences are necessary to protect the public, and to punish the offender. Consecutive sentences are not disproportionate to the seriousness of the conduct, and the danger you pose to the public, based upon your prior criminal history, and the nature of the facts and circumstances of the case at hand. I shudder to think

¹This writer respectfully dissented on this assignment of error, finding the trial court engaged in a proper analysis regarding sentencing. See ¶ 79-85.

what would happen if the victim had got up and escaped from the trunk that you put him into at gunpoint.

The Court also finds that your history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime. You committed one or more of these offenses in the course of conduct and the harm caused by two or more multiple offenses was so great and unusual that no single term for any of these offenses committed as part of these courses of conduct adequately reflects the seriousness of your conduct.

{¶ 12} Upon review, we conclude the sentence reimposed on appellant is not contrary to law and conforms to the requirements of R.C. 2929.11, 2929.12, and 2929.14(C).

{¶ 13} The sole assignment of error is denied.

{¶ 14} The judgment of the Court of Common Pleas of Muskingum County, Ohio
is hereby affirmed.

By Farmer, P.J.

Hoffman, J. and

Delaney, J. concur.

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