

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

STATE OF OHIO,	:	Case No. 16CA5
Plaintiff-Appellee,	:	
v.	:	<u>DECISION AND</u>
KEITH ALLEN DOLES,	:	<u>JUDGMENT ENTRY</u>
Defendant-Appellant.	:	RELEASED 01/31/2017

APPEARANCES:

Keith Allen Doles, Chillicothe, Ohio, pro se appellant.

Keller J. Blackburn, Athens County Prosecuting Attorney, and Merry M. Saunders, Assistant Prosecuting Attorney, Athens, Ohio, for appellee.

Hoover, J.

{¶1} Keith Allen Doles (“Doles”), appeals his sentence from the Athens County Common Pleas Court following his guilty plea to one count of Illegal Conveyance of Drugs of Abuse onto Grounds of a Specified Governmental Facility, in violation of Ohio Revised Code section 2921.36(A)(2), a felony of the third degree.

{¶2} Doles contends that the trial court erred in sentencing him and that the sentence is contrary to law. Doles divides this broad argument into three specific contentions. First, Doles claims that the sentence was “excessive and not the product of a negotiated plea agreement.” Second, Doles claims that the trial court failed to make all the statutorily required findings prior to imposing a consecutive sentence and failed to mention the statute. Third, Doles asserts that the trial court failed to advise him of his right to appeal.

{¶3} On the other hand, the State of Ohio (“State”) contends that the trial court specifically stated its reasons for ordering consecutive sentences and specifically spoke to the appropriateness of the sentence. The State also argues that the trial court did indeed inform Doles of his right to appeal.

{¶4} With respect to Doles’s argument that his sentence was excessive, the sentence was within the range as provided by the Ohio legislature. It is not excessive. As for the consecutive sentences argument Doles makes, the transcript of the sentencing hearing and the express terms of the sentencing entry demonstrate that the trial court considered the appropriate factors and made the requisite findings before imposing the sentence consecutive to the sentences that Doles was already serving. A trial court is not required to state reasons to support its consecutive sentence findings; and because our review of the record reveals that the trial court made all of the required statutory findings, it did not err in imposing consecutive sentences. Lastly, the transcript and the judgment entry both reveal that the trial court did advise Doles of his right to appeal.

{¶5} Therefore, we affirm the judgment of the trial court.

I. Facts and Procedural Posture

{¶6} The facts of this case stem from the illegal conveyance of drugs into the Southeastern Ohio Regional Jail where Doles was an inmate in February 2015. Doles was incarcerated in the Southeastern Ohio Regional Jail as a result of a case in Vinton County, Ohio. In Vinton County, Doles had sexual relations with a fifteen year old girl while she was in foster care. The girl became pregnant. Consequently, Doles was indicted for unlawful sexual conduct with a minor, a felony of the third degree. After a trial, Doles was sentenced to community control. Subsequently, Doles violated the terms of

community control. He was awaiting disposition of the community control violation when he was granted an eight hour furlough. He was eventually sentenced to a four year prison sentence on the community control violation.

{¶7} At the end of the furlough, on or about February 21, 2015, when Doles returned to the Southeastern Ohio Regional Jail, he possessed two strips of buprenorphine. Later, on August 24, 2015, Doles was indicted on one count of Illegal Conveyance of Drugs of Abuse onto Grounds of a Specified Governmental Facility.

{¶8} Doles entered into a guilty plea to the indictment on December 17, 2015. The parties did not enter into an agreement with respect to sentencing. Prior to accepting Doles's guilty plea, the trial court specifically asked Doles, "Okay finally Mr. Doles, do you understand that there is no agreement here, even if there was an agreement, it's not binding on the Court and I can sentence you any way I see fit?" Doles answered, "Yes sir." The trial court subsequently found Doles guilty of the offense to which he entered his plea.

{¶9} The trial court held a sentencing hearing on February 11, 2016. Prior to sentencing Doles, the trial court heard arguments from both the State and Doles's attorney. Both the State and Doles had also filed Sentencing Memorandums prior to the sentencing hearing that outlined each party's respective positions. At the sentencing hearing, the State explained the circumstances to the Court of the Vinton County case under which Doles was originally incarcerated during the commission of the illegal conveyance of drugs. The State argued that prison would be appropriate given the fact that Doles had the prior felony offense for which he was incarcerated when he committed the illegal conveyance of drugs crime. The State claimed that the fact that Doles

conveyed the drugs into a secure jail facility made the crime more serious. The State mentioned Doles's remark from his sentencing memorandum that [the conveyance of drugs crime] was the worst mistake he has made, not recognizing that the unlawful sexual conduct with the minor should be considered a more serious mistake.¹

{¶10} Because of these factors, the State argued that Doles should receive a thirty month prison sentence and that it should run consecutive to his current incarceration. The State contended that in order to punish Doles and to protect society from further crime from him, a consecutive sentence would be appropriate. In addition, the State claimed that the requested sentence would not be disproportionate to the seriousness of the offense; and Doles's criminal history demonstrates that consecutive sentences are necessary, both to punish him and protect society.

{¶11} Doles's trial attorney then asked the trial court to place Doles on community control. The attorney also called attention to the fact that Doles was serving the four year prison sentence partly because his community control in the unlawful sexual conduct case was violated when he conveyed the drugs into the Southeastern Ohio Regional Jail. Doles's attorney further argued that this was not the worst form of the offense in that Doles only had two doses or strips of the controlled substance² on him. The attorney then explained to the trial court that Doles had a drug and alcohol problem and that placing Doles on community control would allow him to deal with his addiction. Summing up his argument, Doles's trial attorney stated that a consecutive prison term would be disproportionate to the seriousness of the offense and that a thirty month prison

¹ Doles explained to the trial court that he believed that the illegal conveyance of drugs was the biggest mistake rather than the illegal sexual conduct with the minor because he had a son as a result of the illegal sexual conduct; and he believed that was a good thing that came out of the situation.

² Doles's trial attorney stated that the controlled substance was Suboxone. Suboxone is the commercial name for buprenorphine combined with naloxone.

term would be inappropriate. Instead, Doles's trial attorney requested that the trial court place him on community control.

{¶12} After hearing arguments from the State and Doles's trial attorney, the trial court sentenced Doles to a prison term of eighteen months to run consecutively to any other sentence that he is currently serving plus court costs.

{¶13} On March 21, 2016, Doles filed a timely notice of appeal.

II. Assignment of Error

{¶14} Doles sets forth one assignment of error for our review:

Assignment of Error:

The Trial Court erred and abused its discretion in sentencing Defendant without complying with the Felony Sentencing Statutes nor providing constitutional mandates of due process. More specifically, the sentence herein and the Judgment Entry in particular; filed on February 24, 2016; are contrary to law. Firstly, given the plea, 18 months, on a Third Degree drug Felony, was excessive and not the product of a negotiated Plea Agreement. Second, the Judgment Entry fails to cite sufficient factual Findings to support the imposition of consecutive sentencing; and also fails to even mention the Statute, O.R.C. Section 2929.14(C)(4). Here, even if the product of an improper jointly-recommended sentence; the Trial Court was required to follow the mandates of O.R.C. Section 2929.14(C)(4) to impose consecutive terms; as it called for open sentencing. See *State v. Sargent*, 143 Ohio St.3d 1476; No. 2015-1093 (April 27, 2016). Lastly, from a constitutional due process standpoint, the Trial Court failed to advise the Defendant of his absolute right to appeal; even just the Sentence, if he believed it to be contrary to law. See O.R.C. Section 2953.08(B)(2); 5th and 14th Amendments.

III. Law and Analysis

A. Standard of Review

{¶15} Doles's assignment of error challenges the imposed sentence. Normally when reviewing felony sentences, we apply the standard of review set forth in R.C.

2953.08(G)(2). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 22. R.C. 2953.08(G)(2) specifies that an appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either:

- (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; [or]
- (b) That the sentence is otherwise contrary to law.

B. The Sentence was Not Contrary to Law, nor was it Excessive

{¶16} Doles argues in his single assignment of error that the trial court abused its discretion when it sentenced him and that the sentence was contrary to law. He makes three distinct arguments in his sole assignment of error. The first argument is that the sentence was “excessive and not the product of a negotiated Plea Agreement.” “[A] sentence is generally not contrary to law if the trial court considered the R.C. 2929.11 purposes and principles of sentencing as well as the R.C. 2929.12 seriousness and recidivism factors, properly applied post[-]release control, and imposed a sentence within the statutory range.” *State v. Brewer*, 2014-Ohio-1903, 11 N.E.3d 317, ¶ 38 (4th Dist.).

{¶17} Furthermore, this Court has explained:

[A] “ ‘trial court has full discretion to impose any sentence within the authorized statutory range, and the court is not required to make any findings or give its reasons for imposing maximum or more than minimum

sentences.” *State v. Johnson*, 2d Dist. Clark No.2013–CA–85, 2014–Ohio–2308, ¶ 8, citing *State v. King*, 2013–Ohio–2021, 992 N.E.2d 491, ¶ 45 (2nd Dist.); accord *State v. Robinson*, 4th Dist. Lawrence No. 13CA18, 2015–Ohio–2635, ¶ 38 (stating that trial courts are “not required to make findings or give reasons for imposing more than the minimum sentence”). Thus, courts have “refused to find that a sentence is contrary to law when the sentence is in the permissible range and the court’s journal entry states that it ‘considered all required factors of the law’ and ‘finds that prison is consistent with the purposes of R.C. 2929.11.’ ” *Williams* at ¶ 17, quoting *May* at ¶ 16.

State v. Neal, 4th Dist. Lawrence Nos. 14CA31 & 14CA32, 2015-Ohio-5452, ¶ 61.

{¶18} In the case sub judice, the trial court expressly stated in the sentencing hearing and in its sentencing entry that it considered the principles and purposes of sentencing under R.C. 2929.11. The trial court also stated that it balanced the seriousness and recidivism factors under R.C. 2929.12 and considered the factors under R.C. 2929.13 as well.

{¶19} Moreover, we commend the trial court for actually addressing each factor of R.C. 2929.12, even though it had no obligation to do so. *See State v. Robinson*, 4th Dist. Lawrence No. 13CA18, 2015-Ohio-2635, ¶ 38 (“[T]he trial court was not required to make findings or give reasons for imposing more than the minimum sentence.”). Even though not required to do so, the trial court expressly stated:

Um the Court has uh considered more specifically that um, factors to consider uh including whether the uh circumstances is more serious than

not. Uh does not find that the injury was exasperated [sic] by his physical or mental condition or age. That he, there was no victim here that suffered serious physical, psychological or economic harm. That uh Mr. Doles did not hold a public office or position of trust, um or a similar occupation. Um, that his reputation or occupation did not lend itself to the uh, instant offense. That there was no relationship with any victim here. Um, that the activity was not part of an act for organized criminal activity. That it was not based on race, ethnicity, gender, sexual orientation or religion. And it's not a domestic violence or assault case. Um in considering whether it is less serious, the Court does not find that there was a victim here, so a victim could not have induced the circumstances. He did not act under strong provocation. He did not, but he did not cause any serious harm. I don't find any grounds to mitigate his conduct however. Regarding recidivism, this happened while he was on community control, he does have a history of uh at least the one felony conviction out of Vinton County. Um, based on this he has been in violation of his sanction or violation of his community control supervision. And this demonstrates to the Court, well at least in this case that there was an indication of drug use. Uh the Court doesn't note any genuine remorse. Whether recidivism is less likely, he does uh, there is no prior juvenile delinquency adjudication brought to the Court's attention. He does have the Vinton County conviction. Um, he does not, Mr. Doles doesn't appear to show any genuine remorse. Whether it was committed under circumstances unlikely

to occur is a matter of semantics. It all is dependent upon whether he gets rearrested or is incarcerated, whether it would lend itself to occurring again.

{¶20} Furthermore, Doles’s eighteen month sentence falls within the permissible range for a third-degree felony. R.C. 2929.14(A)(3)(b) (“For a felony of the third degree that is not an offense for which division (A)(3)(a) of this section applies, the prison term shall be nine, twelve, eighteen, twenty-four, thirty, or thirty-six months.”).

{¶21} Thus, since the trial court considered the appropriate statutory factors before imposing the sentence and the sentencing entry reflected this, Doles’s sentence is not contrary to law. We do not agree with Doles’s first argument in his sole assignment of error.

C. Imposition of Consecutive Sentence was Proper

{¶22} Doles’s second argument in his sole assignment of error is that the trial court erred when it sentenced him to consecutive sentences because it did not make the necessary findings under R.C. 2929.14(C)(4). Additionally, he argues that the trial court’s “failure to conduct proper and complete judicial fact-finding or proportionality analysis is clearly and convincingly contrary to Ohio’s sentencing statutes * * *.”

{¶23} R.C. 2929.14(C)(4) sets forth a tripartite procedure requiring the trial court to make the following findings prior to imposing consecutive sentences: (1) “the consecutive service is necessary to protect the public from future crime or to punish the offender”; (2) “consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public”; and (3) one 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.

R.C. 2929.14(C)(4); *see also State v. Bever*, 4th Dist. Washington No. 13CA21, 2014–Ohio–600, ¶¶ 15-16; *State v. Black*, 4th Dist. Ross No. 12CA3327, 2013–Ohio–2105, ¶¶ 56–57. The trial court “is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and [to] incorporate its findings into the sentencing entry, but it has no obligation to state reasons to support its findings.” *State v. Bonnell*, 140 Ohio St.3d 209, 2014–Ohio–3177, 16 N.E.3d 659, syllabus. Furthermore, the trial court is not required to recite “a word-for-word recitation of the language of the statute”, but it must be clear from the record that the trial court “engaged in the correct analysis and * * * that the record contains evidence to support the findings * * *.” *Id.* at ¶ 29.

{¶24} In the case sub judice, the trial court expressly stated at the sentencing hearing that:

The Court finds that consecutive sentences is necessary to protect the public from future crime and to punish him. Finds that consecutive sentences are not disproportionate to the seriousness to his conduct and danger he imposes to the public. And that his history of criminal conduct demonstrates consecutive sentences are necessary to protect the public from future crime by him.

Furthermore, these findings were also incorporated into the trial court's sentencing entry. Thus, the record shows that the trial court considered all three factors set forth in R.C. 2929.14(C)(4) in imposing consecutive sentences; and Doles's argument that the trial court failed to make all the statutorily required findings prior to imposing a consecutive sentence and failed to mention the statute is without merit.

{¶25} We further note that while the trial court must make the findings required by R.C. 2929.14(C)(4), the court has no obligation to state the reasons to support its findings. *Bonnell* at ¶ 27; *State v. Howze*, 10th Dist. Franklin Nos. 13AP-386 & 13AP-387, 2013-Ohio-4800, ¶ 18; *State v. Stamper*, 12th Dist. Butler No. CA2012-08-166, 2013-Ohio-5669, ¶ 23. "Having made sufficient findings for the imposition of consecutive sentences, the trial court fulfilled the R.C. 2929.14(C)(4) requirements. Thus, the trial court's failure to identify the factors—or 'the reasons'—that were considered in its proportionality analysis does not render the consecutive sentences contrary to law." *State v. Crawley*, 8th Dist. Cuyahoga No. 102781, 2015-Ohio-5150, ¶ 13.

{¶26} Because the trial court did not err in imposing consecutive sentences, we also disagree with Doles's second argument contained in his sole assignment of error.

D. The Trial Court Informed Doles of his Right to Appeal

{¶27} Lastly, Doles argues that the trial court failed to inform him of his right to appeal. At the time that Doles changed his plea from not guilty to guilty, he signed a document which included the following:

I understand my right to appeal a maximum sentence, my other limited appellate rights and that any appeal must be filed within thirty (30) days of my sentence.

Furthermore, a review of the sentencing transcript demonstrates that the trial court did inform Doles of his right to appeal. The trial court stated, “You do have the right to appeal this sentencing under criminal rule 32.” In addition, the Sentencing Judgment Entry states, “Defendant was advised of the right to appeal under Criminal Rule 32.” Therefore, Doles’s argument that the trial court did not advise him of his right to appeal is also without merit.

IV. Conclusion

{¶28} Having found no merit in the individual arguments set forth in Doles’s sole assignment of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs.

The Court finds that reasonable grounds existed for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. and Abele, J.: Concur in Judgment and Opinion.

For the Court

By: _____
Marie Hoover, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.