

[Cite as *State v. Hudson*, 2010-Ohio-1622.]

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**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

:

:

Appellate
Case
No.
233
28

Plaintiff-Appellee

:

:

Trial Court Case Nos. 07-CR-3953

v.

:

08-CR-822

:

08-CR-2261

RAYSHAUN HUDSON

:

:

(Criminal Appeal from

Defendant-Appellant

:

Common Pleas Court)

:

.....

OPINION

Rendered on the 9th day of April, 2010.

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BROGAN, J.

{¶ 1} Rayshaun Hudson has appealed his 85-year prison sentence. He argues that the sentence is too long by 37 years. For the reasons that follow, we find that Hudson has failed to convince us his argument has merit.

{¶ 2} Three cases are on appeal here. In the first case,¹ Hudson drove off without paying for gas and threatened the station attendant, saying he would come back and shoot the attendant if he called the police. Hudson pleaded no contest to one count of robbery, and the court sentenced him to 8 years in prison. In the second case,² Hudson refused to stop when a police officer attempted to make a traffic stop after it was reported that Hudson fired a gun into a house. Hudson pleaded no contest to one count of failure to comply with an order or signal of a police officer, and the court sentenced him to a 1 year in prison.

{¶ 3} The third case is the focus of this appeal.³ The charges in this case stemmed from a June 2008 crime spree that Hudson ventured on one day. It began early in the morning when Hudson, driving past three police officers engaged in a traffic stop, fired a gun at them, and it ended mid-afternoon when Hudson deliberately smashed the stolen vehicle he was driving head-on into a police cruiser, ricocheted off,

¹Montgomery County Case Number 07-CR-3953.

²Montgomery County Case Number 08-CR-822.

³Montgomery County Case Number 08-CR-2261.

and collided with the front-porch of a near-by home. In between, Hudson led police on a lengthy chase in which he caused a police cruiser to flip onto its roof, seriously injuring the officer driving; stole a car from a driveway, injuring the owner trying to stop him; and narrowly missed hitting a high school principal directing traffic outside a school. Two indictments ensued ("A" and "B"), containing between them sixteen counts:

- Count 1 ("A"), discharging a firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3) and (C)(2), plus a firearm specification under R.C. 2941.145;

- Count 2 ("A"), having a weapon under a disability in violation of R.C. 2923.13(A)(2);

- Counts 1, 2, 5, 6 ("B"), felonious assault against a peace officer in violation of R.C. 2903.11(A)(2), plus three firearm specifications, one under R.C. 2941.145, the second under R.C. 2941.146, the third under R.C. 2941.1412;

- Count 3 ("B"), discharging a firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3) and (C)(2), plus three firearm specifications, one under R.C. 2941.145, the second under R.C. 2941.146, the third under R.C. 2941.1412;

- Counts 4, 7, 9, 10, 11, 13 ("B"), failing to comply with an order or signal of a police officer in violation of R.C. 2921.331(B) and (C)(5);

- Count 8 ("B"), tampering with evidence in violation of R.C. 2921.12(A)(1);

- Count 12 ("B"), robbery in violation of R.C. 2911.02(A)(3); and

- Count 14 ("B"), vandalism in violation of R.C. 2909.05(B)(2).

Hudson pleaded no contest to each count. The trial court imposed these prison terms for the offenses:

- 5 years for Count 1 (“A,” unlawful discharge);
- 1 year for Count 2 (“A,” unlawful possession);
- 40 years (mandatory) for Counts 1, 2, 5, 6 (“B,” felonious assault);
- 1 year for Count 3 (“B,” unlawful discharge);
- 1 year for Count 8 (“B,” tampering with evidence);
- 5 years for Count 12 (“B,” robbery);
- 1 year for Count 14 (“B,” vandalism);
- 1 year for Count 4 (“B,” failure to comply);
- 1 year for Count 7 (“B,” failure to comply);
- 5 years for Counts 9 and 10 (“B,” failure to comply) (merged); and
- 5 years for Counts 11 and 13 (“B,” failure to comply) (merged).

For the firearm specifications, the court imposed these mandatory prison terms:

- 3 years for Count 1 (“A”), R.C. 2941.145;
- 3 years for Counts 1, 2, 3 (“B”), R.C. 2941.145 (merged);
- 5 years for Counts 1, 2, 3 (“B”), R.C. 2941.146 (merged);
- 3 years for Counts 5, 6 (“B”), R.C. 2941.145 (merged); and
- 5 years for Counts 5, 6 (“B”), R.C. 2941.146 (merged).

(The court did not say why it did not impose 7-year prison terms under R.C.

2929.14(D)(1)(f) for any of the five R.C. 2941.1412 firearm specifications.) The court ordered Hudson to serve all the terms consecutively. The prison term in the third case, then, is 85 years, 59 years of which, the court said, are mandatory (40 years for the four felonious assault charges plus 19 years for the firearm specifications).

{¶ 4} The court also ordered Hudson to serve the 85-year term in the third case consecutively to the prison terms in the first two cases—8 years and 1 year—for an aggregate prison term of 94 years.

{¶ 5} Lastly, the court ordered Hudson to serve these 94 years consecutively to a sentence imposed by a Clark County common pleas court in yet another case. At the time Hudson ventured on his crime spree, said the sentencing court, he was awaiting trial in Clark County.⁴ The sentencing court said that in September 2007, after robbing the gas station in the first case discussed above, Hudson drove to Clark County, where he committed numerous crimes. A Clark County jury found Hudson guilty on two counts of felonious assault, each with a firearm specification; three counts of tampering with evidence, each with a firearm specification; one count of possessing criminal tools; and one count of failing to comply with an order or signal of a police officer. The Clark County Common Pleas Court sentenced Hudson to an aggregate prison term of 42 years.

{¶ 6} As it stands, then, Hudson will spend 136 years in prison.

{¶ 7} In his two assignments of error, Hudson contests only the 85-year sentence, arguing three reasons why it should be shorter. In the first assignment of

⁴Clark County Case Number 07-CR-926.

error,⁵ he contends that the sentence is excessive in light of the facts and circumstances of the case. Hudson concedes that 59 of the 85 years are mandatory but he argues that the non-mandatory prison time is excessive given that he has never before been imprisoned for a felony and no one died as a result of his crime-spree.⁶ In the first assignment of error, therefore, by arguing against all the non-mandatory prison time, Hudson seeks a 26-year reduction in his prison term.

{¶ 8} In the second assignment of error,⁷ Hudson argues that part of the 85-year sentence is unlawful. He says that the failure-to-comply charges and the firearm specifications all arose out of conduct that occurred on a single day, were motivated by the single purpose of evading police and avoiding arrest, followed a continuous chain of events, and bore logical relationships to each other. Accordingly, he first contends that the six failure-to-comply charges merge, and he should receive one prison term for one of them. For purposes of calculating the total sentence-reduction Hudson seeks, this single non-mandatory term is included in the just-discussed 26-year non-mandatory reduction under the first assignment of error. Hudson secondly contends that all the firearm specifications merge. Hudson received

⁵“THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN SENTENCING MR. HUDSON TO AN EXCESSIVE SENTENCE.”

⁶As the trial court imposed the mandatory portion of his sentence for the felonious assault of four police officers and for the firearm specifications, Hudson implies in his argument, perhaps unwittingly, that he should not be punished, or at least not receive prison time, for twice unlawfully discharging a firearm, for unlawfully having a firearm, for six times failing to comply with a police order, for tampering with evidence, for robbery, or for vandalism.

⁷“THE TRIAL COURT ERRED IN FAILING TO MERGE THE SIX FAILURE TO COMPLY CHARGES AND ALL GUN SPECIFICATIONS.”

19 years for the specifications—three 3-year terms and two 5-year terms, so a merger would leave one 3-year term and one 5-year term.⁸ In the second assignment of error, therefore, Hudson seeks an 11-year reduction in his prison term.

{¶ 9} The trial court found that Hudson committed all six counts of the Failure to Comply offense with the same animus, to repel the police and to escape apprehension. The court found that Hudson failed to establish that the Failure to Comply offense in Count 4 was not committed separately from all other counts. The court also found that Hudson failed to establish that the Failure to Comply offense in Count 7 was not committed separately from Counts 9, 10, 11 and 13. The court found that Hudson established that Counts 9 and 10 were not committed separately with respect to each other and had to be merged for sentencing purposes. The court found that merged Counts 9 and 10 were committed separately from Count 4 and given the fact Counts 11 and 13 occurred one-half hour after the acts in Counts 9 and 10, they were separate offenses for sentencing purposes. Lastly, the court found Counts 11 and 13 were not committed separately and had to be merged from sentencing, but Counts 11 and 13 were committed separately from Counts 4, 7, 9 and 10.

{¶ 10} Finally, the trial court merged some of the firearm specifications after analyzing whether the separate specifications emanated from separate transactions over time and distance. See *State v. Wills* (1994), 69 Ohio St.3d 690. Hudson argues that the court should have imposed a prison-term of only 48 years, not 85

⁸When firearm specifications under both R.C. 2941.145 and 2941.146 accompany the same offense and are both found true, a court must impose a 3-year term under R.C. 2929.14(D)(1)(a)(ii) and a 5-year term under R.C. 2929.14(D)(1)(c). See *State v. Gresham*, Cuyahoga App. No. 81250, 2003-Ohio-744, at ¶14.

years. From the 85 years, he argues for a non-mandatory-term reduction of 26 years and for a mandatory-term reduction of 11 years. Hudson thus seeks to reduce his 85-year sentence by 37 years.

{¶ 11} After careful review, we find the trial court properly merged some of the offenses for which Hudson was convicted and properly merged the firearm specifications which came from the same transaction.

{¶ 12} The first and second assignments of error are overruled.

Judgment Affirmed.

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FAIN and FROELICH, JJ., concur.

Copies mailed to:

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