

[Cite as *State v. Williamson*, 2017-Ohio-9368.]

STATE OF OHIO, BELMONT COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO)	CASE NO. 16 BE 0018
)	
PLAINTIFF-APPELLEE)	
)	
VS.)	OPINION
)	
BRIAN LEWIS WILLIAMSON, II)	
)	
DEFENDANT-APPELLANT)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from the Court of Common Pleas of Belmont County, Ohio Case No. 16 CR 43

JUDGMENT: Affirmed in part. Sentence Vacated in part. Remanded in part.

APPEARANCES:

For Plaintiff-Appellee: Atty. Daniel P. Fry
Belmont County Prosecutor
Atty. Kevin Flanagan
Assistant Prosecuting Attorney
147-A West Main Street
St. Clairsville, Ohio 43950
No Brief Filed

For Defendant-Appellant: Atty. John M. Jurco
P.O. Box 783
St. Clairsville, Ohio 43950

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: December 22, 2017

[Cite as *State v. Williamson*, 2017-Ohio-9368.]
WAITE, J.

{¶1} Appellant Brian L. Williamson appeals an April 25, 2016 Belmont County Common Pleas Court judgment entry. Appellant argues that the trial court improperly sentenced him to maximum and consecutive sentences. For the reasons provided, Appellant's arguments regarding the trial court's imposition of maximum sentences is without merit. However, the court failed to make the requisite R.C. 2929.14(C)(4) findings before imposing consecutive sentences. Accordingly, Appellant's convictions are affirmed. Appellant's sentence is affirmed in part and vacated in part. The matter is remanded for the limited purpose of addressing consecutive sentences.

Factual and Procedural History

{¶2} Appellant was arrested after he sold prescription drugs to a confidential informant. On January 5, 2016, Appellant was indicted on two counts of trafficking drugs, a felony of the fifth degree in violation of R.C. 2925.03(A), (C)(2)(a). Appellant and the state entered into a Crim.R. 11 plea agreement and Appellant agreed to plead guilty to both counts as charged. On April 11, 2016, the trial court conducted a plea hearing and accepted his plea.

{¶3} On April 25, 2016, the trial court sentenced Appellant to twelve months of incarceration per count to run consecutively, for an aggregate total of twenty-four months. The court also suspended his driver's license for one year and ordered him to pay \$105 in restitution. The trial court credited Appellant with 69 days of jail time served. Appellant solely appeals his sentence.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN SENTENCING THE APPELLANT TO
MAXIMUM CONSECUTIVE SENTENCES.

{¶4} Appellant challenges the maximum and consecutive nature of his sentence. He argues that the trial court improperly sentenced him to maximum sentences when the court acknowledged that none of the R.C. 2929.12(B) factors applied. Additionally, he argues that he was “solicited and enticed” to sell drugs by the informant and possibly has an entrapment defense. The state did not file a response brief.

{¶5} An appellate court is permitted to review a felony sentence to determine if it is contrary to law. *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 23. Further, “an appellate court may vacate or modify any sentence that is not clearly and convincingly contrary to law only if the appellate court finds by clear and convincing evidence that the record does not support the sentence.” *Id.*

{¶6} When determining a sentence, a trial court must consider the purposes and principles of sentencing in accordance with R.C. 2929.11, the seriousness and recidivism factors within R.C. 2929.12, and the proper statutory ranges set forth within R.C. 2929.14.

{¶7} The maximum penalty for a felony of the fifth degree is six to twelve months of incarceration. R.C. 2929.14(A)(2). The trial court sentenced Appellant to twelve months of incarceration per count, which is within the permissible statutory range. While the sentence represents the maximum penalty possible, in order to

sustain Appellant's argument, we would be required to clearly and convincingly find that the record does not support the sentence.

{¶8} The record in this matter establishes that Appellant has a lengthy juvenile and adult criminal record. In addition to his previous convictions, Appellant pleaded guilty in this case to multiple felonies. The trial court expressly relied on Appellant's record in determining his sentence. Further, the trial court stated that it considered the relevant sentencing statutes. The court acknowledged that none of the R.C. 2929.12 factors were present, but explained that the seriousness of Appellant's conduct and his lengthy criminal record were significant. As such, the trial court completed the proper analysis under R.C. 2929.12. The court also expressly stated that it considered the principles and purposes of sentencing.

{¶9} Appellant also mentions here that the trial court improperly ordered his sentences to run consecutively. Although Appellant does not specifically address this argument within his assignment of error, the record demonstrates that the trial court failed to make the requisite findings at both the sentencing hearing and within the sentencing entry.

{¶10} Pursuant to R.C. 2929.14(C)(4), before a trial court can impose consecutive sentences on a defendant, the court must find:

[T]hat the consecutive service is necessary to protect the public from future crime or to punish 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} A trial court judge must make the R.C. 2929.14(C)(4) findings at the sentencing hearing and must additionally incorporate its findings into the sentencing entry. *State v. Williams*, 2015-Ohio-4100, 43 N.E.3d 797, ¶ 33-34, (7th Dist.), citing *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37. A court need not state reasons to support its finding, nor is it required to use any “magic” or “talismanic” words, so long as it is apparent from the record that the court conducted

the proper analysis. *Id.*, citing *State v. Jones*, 7th Dist. No. 13 MA 101, 2014-Ohio-2248, ¶ 6; *State v. Verity*, 7th Dist. No. 12 MA 139, 2013-Ohio-1158, ¶ 28-29.

{¶12} At the sentencing hearing, the trial court stated: “Also, they will run consecutively, because the harm is so great or unusual that a single term does not adequately reflect the seriousness of the conduct and that the offender’s criminal history shows that consecutive terms are needed to protect the public.” (4/25/16 Sentencing Hrg. Tr., pp. 3-4.)

{¶13} The court’s sentencing entry states: “In view of the above-stated findings, the Court further finds that community control sanctions or a combination of community control sanctions will not adequately punish this offender and protect the public from future crimes and the imposition of said community control sanctions would demean the seriousness of this offense.” (4/25/16 J.E., p. 2.)

{¶14} At the sentencing hearing, the trial court failed to make a finding that consecutive sentences are necessary to protect the public from future crime or to punish the offender and are not disproportionate to the seriousness of the conduct. As to the sentencing entry, the court failed to make a finding that consecutive sentences are not disproportionate to the seriousness of the conduct. The court also failed to make a finding under subsections (C)(4), (a)-(c), which is the third prong.

{¶15} As the trial court failed to make the requisite findings at both the sentencing hearing and within the sentencing entry, the matter is remanded with instructions to complete the appropriate sentencing analysis in accordance with R.C. 2929.14(C)(4). Accordingly, while Appellant’s argument regarding the trial court’s

imposition of maximum sentences is without merit, his argument regarding consecutive sentences has merit and is sustained.

Conclusion

{¶16} Appellant argues that the trial court improperly sentenced him to maximum and consecutive sentences. This record supports the trial court's imposition of maximum sentences. However, the court failed to make the requisite consecutive sentence findings. As such, Appellant's convictions are affirmed. Appellant's sentence is affirmed as to the maximum sentence and vacated as to the imposition of consecutive sentences. The matter is hereby remanded for the limited purpose of addressing consecutive sentences.

Donofrio, J., concurs.

DeGenaro, J., concurs.