

[Cite as *State v. White*, 2017-Ohio-7797.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,)	CASE NO. 16 MA 0143
)	
PLAINTIFF-APPELLEE,)	
)	
VS.)	OPINION
)	
JAYME WHITE,)	
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from the Court of
Common Pleas of Mahoning County,
Ohio.
Case No. 16 CR 427

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee:

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Mahoning County Prosecutor
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For Defendant-Appellant:

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JUDGES:

Hon. Carol Ann Robb
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: September 20, 2017

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ROBB, P.J.

{¶1} Defendant-Appellant Jayme White appeals the sentence entered by Mahoning County Common Pleas Court for her three convictions of illegal conveyance of drugs of abuse onto the grounds of a detention facility. The issue in this appeal is whether the trial court made the required consecutive sentence findings at the sentencing hearing. For the reasons expressed below, the sentence is affirmed.

Statement of the Case

{¶2} Appellant was indicted on three counts of illegal conveyance of drugs of abuse onto the grounds of a detention facility in violation of R.C. 2921.36(A)(2)(G)(2), a third-degree felony. 4/28/16 Indictment. These crimes were committed with two other people.

{¶3} Appellant and the state reached a plea agreement. Appellant pled guilty to the indicted offenses and agreed to fully cooperate in the prosecution of her co-defendants. 6/3/16 Plea Agreement. In exchange, the state agreed to recommend community control. 6/3/16 Plea Agreement. Following a plea colloquy, the trial court accepted Appellant's guilty plea. 6/3/16 J.E.

{¶4} At sentencing, the state complied with the plea agreement and recommended community control. 8/9/16 Tr. 3. The trial court, however, did not accept the recommendation. It ordered a nine month sentence for each charge to be consecutively served for an aggregate sentence of 27 months. 8/15/16 J.E.; 8/9/16 Tr. 9-11.

{¶5} Appellant timely appealed the decision raising one assignment of error.

Assignment of Error

“The trial court committed a reversible error when it sentenced the Appellant to consecutive sentences without making the requisite findings under the applicable sentence and statutes, namely Ohio Revised Codes Section 2929.14, and thus the sentence of the trial court was in contravention of the statute.”

{¶16} Appellant argues the trial court did not make the required R.C. 2929.14(C) findings at the sentencing hearing, and as such, the sentence is clearly and convincingly contrary to law.

{¶17} Appellate courts review felony sentences under the standard 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, ¶ 1. Under R.C. 2953.08(G)(2) an “appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court's findings under relevant statutes or that the sentence is otherwise contrary to law.” *Id.*

{¶18} When a trial court imposes consecutive sentences it must make the required R.C. 2929.14(C)(4) findings at the sentencing hearing, and it must incorporate those findings into the sentencing entry.¹ *State v. Bonnell*, 140 Ohio St.3d 209, 2014–Ohio–3177, 16 N.E.3d 654, ¶ 29. We have previously explained R.C. 2929.14(C)(4) requires a sentencing court to find: “(1) consecutive sentences are necessary to protect the public from future crime or to punish the offender, (2) that consecutive sentences are not disproportionate to the seriousness of the defendant's conduct and to the danger he poses to the public, and (3) one of the findings described in subsections (a), (b) or (c).” *State v. Jackson*, 7th Dist. No. 15 MA 93, 2016-Ohio-1063, ¶ 13. Subsections (a), (b), and (c) provide:

(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

¹Appellant admits the sentencing findings were incorporated in the judgment entry.

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)(a)-(c).

{¶9} In ordering consecutive sentences, the trial court made the following statements:

Okay. The Court orders the defendant taken from here to the Mahoning County Justice Center and from there to the Department of Rehabilitation & Correction, there to serve a term of nine months on each of the three counts to be served consecutively to one another and to pay the cost of the prosecution.

The Court considers the principles and purposes of sentencing and the seriousness and recidivism factors and the guidance by degree of felony in so rendering.

The Court also considers the PSI and the statement of counsel and the defendant's presentation. The Court finds she really doesn't get it. Her record indicates she doesn't get it. She thinks this is just something she makes her cameo appearance, says I'm sorry, I'm responsible, I made a mistake. So the Court finds that consecutive terms are necessary because this type of a crime committed repeatedly renders the harm so great and so unusual that a single term does not adequately reflect the seriousness of the conduct.

The Court further finds that her criminal history shows that consecutive terms are needed to protect the public. I'm going to throw in there to

impress her with the seriousness of her conduct and the necessity to make decisions that are not a lapse or a mistake in judgment.

8/9/16 Tr. 9-11.

{¶10} Appellant contends this statement does not encompass all the required findings. Out of the three findings set forth above, Appellant admits the trial court made the first and third findings. The trial court found a consecutive sentence was necessary to protect the public, and it found the crimes were a course of conduct and the harm caused was so unusual that a single term would not reflect the seriousness of the conduct. Appellant asserts the trial court failed to find consecutive sentences were not disproportionate to the seriousness of her conduct and to the danger she posed to the public.

{¶11} This court finds no merit with this argument. “A word-for-word recitation of the language of the statute is not required, and as 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.” *State v. Bonnell*, 140 Ohio St.3d 209, 2014–Ohio–3177, 16 N.E.3d 659, ¶ 29. ‘Magic’ or ‘talismanic’ words are not need to impose consecutive sentences. *State v. Jackson*, 7th Dist. No. 14 MA 99, 2015-Ohio-1365, ¶ 10, citing *State v. Bellard*, 7th Dist. No. 12 MA 97, 2013–Ohio–2956, ¶ 17.

{¶12} We have previously explained the consecutive sentence factors overlap each other and are redundant:

In some sense, the findings required by R.C. 2929.14(E)(4) overlap with each other and are redundant. See *State v. Kimbrough* (Mar. 2, 2000), 8th Dist. Nos. 75642, 75643, and 75644, 2000 WL 235760. For example, if the court finds that “consecutive sentences are necessary to protect the public from future crime by the offender,” then it has also found that consecutive sentences are “necessary to protect the public from future crime or to punish the offender.” The statute lists these as two separate findings, when one finding clearly encompasses the other.

There is also a high degree of overlap between the finding that “consecutive sentences are not disproportionate to the seriousness of the offender's conduct” and the finding that “no single prison term * * * adequately reflects the seriousness of the offender's conduct.” Due to this overlap in the language of the statute, it is theoretically possible for a trial court to make the appropriate findings, even without tracking the precise language of the statute.

State v. Moore, 161 Ohio App.3d 778, 2005-Ohio-3311, 832 N.E.2d 85, ¶ 80 (7th Dist.). See also *State v. Bunch*, 7th Dist. No. 02 CA 196, 2005-Ohio-3309, ¶ 185, rev'd in part, sub nom. *In re Ohio Criminal Sentencing Statutes Cases*, 109 Ohio St.3d 313, 2006-Ohio-2109, 847 N.E.2d 1174, ¶ 185.

{¶13} Although our ruling was decided under a prior version of R.C. 2929.14, the sentencing statute, the statutory language analyzed is identical to the statutory language in the current version of R.C. 2929.14(C)(4)(a)-(c). *State v. Fields*, 10th Dist. No. 16AP-417, 2017-Ohio-661, ¶ 19 (Also stating the analysis is consistent with the view expressed in *Bonnell*). Thus, our prior analysis is instructive.

{¶14} Here, the trial court made the first and third findings; it found consecutive sentences were necessary to protect the public and the harm was so great and unusual that a single term does not reflect the seriousness of the conduct. In making these findings the court noted her criminal history and stated it needed to impress upon Appellant the seriousness of her conduct. Our sister district has held similar statement constitutes a “not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public” finding (proportionality/danger to the public finding). *Fields*, 2017-Ohio-661, ¶ 20. The trial court in that case stated, “I do not think that a single prison sentence could adequately reflect the seriousness of the conduct, and [appellant's] history of criminal conduct demonstrates that consecutive sentences are necessary.” *Fields*, 2017-Ohio-661, ¶ 20. The appellate court held even though the trial court employed the language of R.C. 2929.14(C)(4)(b), rather than the specific language of R.C. 2929.14(C)(4), the statement equated to a proportionality/danger to the public finding.

Id. The trial court was not required to use the word “disproportionate,” “danger,” or “risk,” it was sufficient the language employed by the trial court demonstrated it conducted the required analysis. *Id.* Given the overlap between the findings, we agree with that analysis. Accordingly, the statements made by the trial court constituted the proportionality/danger to the public finding.

{¶15} Therefore, the record demonstrates compliance with R.C. 2929.14(C)(4); it is discernable from a review of the sentence hearing transcript that the trial court engaged in the correct analysis and made the required findings at the sentencing hearing. *Bonnell*, 2014–Ohio–3177 at ¶ 29. We find no merit with Appellant’s assignment of error and affirm the sentence.

Donofrio, J., concurs.

DeGenaro, J., concurs.