[Cite as *State v. Lucicosky*, 2019-Ohio-5093.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

MARK LUCICOSKY,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 19 MA 0013

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2015 CR 462

BEFORE:
Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Atty. Paul J. Gains, Mahoning County Prosecutor and *Atty. Ralph M. Rivera*, Assistant Prosecuting Attorney, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee

Atty. Wesley A. Johnston, P.O. Box 6041, Youngstown Ohio 44501, for Defendant-Appellant.

Dated: December 5, 2019

WAITE, P.J.

{¶1} Appellant Mark Lucicosky appeals a January 14, 2019 Mahoning County Common Pleas Court resentencing entry. Appellant argues that the trial court improperly found his actions were part of a course of conduct. For the reasons provided within *State v. Lucicosky,* 2017-Ohio-2960, 91 N.E.3d 152 (7th Dist.) ("*Lucicosky I*"), Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} On May 14, 2015, Appellant was indicted on two counts of pandering obscenity involving a minor, a felony of the second degree in violation of R.C. 2907.321(A)(2), (C), and fifteen counts of pandering obscenity involving a minor, a felony of the fourth degree in violation of R.C. 2907.321(A)(5), (C).

{¶3} On March 18, 2016, Appellant pleaded guilty to the following charges, as amended pursuant to a plea agreement: one count of pandering involving obscenity involving a minor, a felony of the third degree in violation of R.C. 2907.321(A)(2), (C), and fourteen counts of pandering involving a minor, a felony of the fourth degree in violation of R.C. 2907.321(A)(5), (C). One count of pandering in violation of R.C. 2907.321(A)(2), (C) was dismissed.

{¶4} On July 26, 2016, the trial court sentenced Appellant to an aggregate total of eight years of incarceration. On appeal, we affirmed Appellant's convictions, however, we reversed his sentence in part because the trial court failed to properly impose consecutive sentences pursuant to R.C. 2929.14(C)(4). *Lucicosky I* at ¶ 20. We specifically determined that although the trial court correctly found Appellant's actions

were committed as part of a course of conduct, it failed to make the remaining findings. On December 11, 2017, the trial court resentenced Appellant to the same eight-year sentence. Appellant appealed, again arguing that the trial court failed to properly make the R.C. 2929.14(C)(4) findings.

{¶5} In this second appeal, we reversed Appellant's sentence and remanded the matter. Our remand was for the limited purpose of determining whether consecutive sentences were warranted. *State v. Lucicosky,* 7th Dist. Mahoning No. 17 MA 0141, 2018-Ohio-4563 ("*Lucicosky II*"). We concluded that the trial court's findings that Appellant was on bond at the time he committed the offense and that he had a history of criminal conduct were not supported by the record. On January 14, 2019, the trial court again resentenced Appellant to an eight-year incarceration term. It is from this entry that Appellant timely appeals.

ASSIGNMENT OF ERROR

THE COURT COMMITTED AN ERROR WHEN SENTENCING APPELLANT TO CONSECUTIVE SENTENCES, TOTALING 8 YEARS.

{¶6} Appellant now argues that the trial court's finding that he committed the offense as a part of a course of conduct is not supported by the record. Appellant argues that the record is not clear whether all of the images that are the subject of his charges were downloaded as a result of a single click of a computer key or whether they were downloaded one at a time. In the event that Appellant downloaded all the files with a single click, he argues that all of his actions were committed with a single animus and do not support a finding that he committed the actions as part of a course of conduct.

{¶7} The state argues that the trial court properly made findings in accordance with R.C. 2929.14(C)(4) and pursuant to the limited remand from this Court.

{¶8} R.C. 2929.14(C)(4) provides that, 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.

{¶9} A trial court must make the consecutive sentence findings at the sentencing hearing and must additionally incorporate these findings into the sentencing entry. *State v. Williams*, 2015-Ohio-4100, 43 N.E.3d 797, 806, ¶ 33-34 (7th Dist.), citing *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37. The court is not required to state reasons in support nor is it required to use any "magic" or "talismanic" words, so long as it is apparent that the court conducted the appropriate analysis. *Williams* at ¶ 34, citing *State v. Jones*, 7th Dist. Mahoning No. 13 MA 101, 2014-Ohio-2248, ¶ 6; *State v. Verity*, 7th Dist. Mahoning No. 12 MA 139, 2013-Ohio-1158, ¶ 28-29.

{¶10} At the sentencing hearing, the trial court stated:

> The court further finds that consecutive sentences are necessary to protect the public from future crime and to punish the defendant, 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. The court finds that at least two of the multiple offenses were committed as part of a course of conduct, and that the harm caused by two or more of the multiple offenses was so great or so unusual that no single prison term for any of the offenses committed adequately reflects the seriousness of the offender's conduct.

(1/11/19 Resentencing Hrg. Tr., p. 13.)

{¶11} In the court's sentencing entry, it stated:

> Consecutive service is necessary to protect the public from future crime or to punish the offender and that the consecutive sentences are not

> disproportionate to the seriousness of the offenders [sic] conduct and to the danger the offender poses to the public, and the court finds that at least two 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 offenders [sic] conduct.

(1/14/19 J.E., p. 4.)

{¶12} We had remanded this matter for the limited purpose of allowing the trial court to determine whether consecutive sentences were warranted. The trial court made the requisite findings at both the sentencing hearing and within its sentencing entry. Appellant focuses his argument on the court's finding that his actions constituted a course of conduct. But this issue, whether the court erred in determining Appellant's actions constituted a course of conduct, was already resolved in *Lucicosky I.* In that case, we specifically held that "the trial court's finding of a course of conduct is not contrary to law." *Id.* at ¶ 15. While we remanded *Lucicosky I* on a limited basis, because we affirmed the trial court on this issue remand did not include a "course of conduct" review. As we have already affirmed the trial court on this issue, and Appellant raises no other, his argument is meritless. The trial court's imposition of consecutive sentences in this matter is not contrary to law. Appellant's sole assignment of error is without merit and is overruled.

Conclusion

{¶13} Appellant's contention that the trial court erred in finding that his actions constituted a course of conduct is not supported by the record pursuant to *Lucicosky I*.

As he raises no arguments regarding the scope of his resentencing, his arguments are without merit and the judgment of the trial court is affirmed.

Robb, J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.