[Cite as *State v. Claussen*, 2002-Ohio-2358.]

IN THE COURT OF APPEALS OF OTTAWA COUNTY

State of Ohio	Court of Appeals No. OT-01-026
Appellee	Trial Court No. 01-CR-059
v.	
Christy M. Claussen	**DECISION AND JUDGMENT ENTRY**
Appellant	Decided: May 17, 2002

* * * * *

Mark Mulligan, Ottawa County Prosecuting Attorney, and David Boldt, Assistant Prosecuting Attorney, for appellee.

Jeffrey M. Gamso, for appellant.

* * * * *

KNEPPER, J.

{¶1} This is an appeal from a judgment of the Ottawa County Court of Common Pleas that found appellant guilty of two counts of drug possession and imposed the maximum sentence of five years on the first count and a sentence of 17 months on the second count. For the reasons that follow, the trial court's judgment is affirmed in part and reversed in part.

{¶2} Appellant sets forth the following assignment of error:

{¶3} "THE TRIAL COURT ERRED IN IMPOSING A MAXIMUM SENTENCE AND A SENTENCE CONSECUTIVE TO THE SENTENCE IN THE SANDUSKY COUNTY CASE AS THE SENTENCE IS UNREASONABLE, IS BASED ON IMPERMISSIBLE CONSIDERATIONS, IS NOT SUPPORTED BY THE PROPER FINDINGS, AND IS THEREFORE CONTRARY TO LAW."

{¶4} The undisputed facts that are relevant to the issues raised on appeal are as follows. On May 1, 2001, appellant entered pleas of guilty to two counts of drug possession in violation of R.C. 2925.11(A). Count 1 alleged possession of more than 25 but less than 100 grams of cocaine and Count 2 alleged possession of more than one but less than five grams of crack cocaine. The trial court imposed concurrent sentences of five years on Count 1 and 17 months on Count 2. The trial court further ordered the sentences to run consecutively to the 13-year sentence imposed on appellant by the Sandusky County Court of Common Pleas following a conviction for complicity to commit attempted aggravated murder. The conviction in the Sandusky County Court of Common Pleas arose from a charge that, while out on bond for the instant offenses, appellant hired someone to kill an individual who was scheduled to testify against her at the trial in this case. Appellant now appeals the imposition of the five-year maximum sentence by the Ottawa County Court of Common Pleas.

{¶5} We will first consider appellant's argument that the sentence is not supported by the proper findings.

{¶6} As noted above, appellant entered pleas of guilty to two counts of drug possession. The first count was a third degree felony for which the court is required to impose a prison term of one, two, three, four or five years. R.C. 2925.11(C)(4)(c); R.C. 2929.14(A)(3). The second count was a fourth degree felony which carries the presumption of a prison term ranging from 6 to 18 months. R.C. 2925.11(C)(4)(b); R.C. 2929.14(A)(4). Appellant does

not challenge the sentence imposed on the second count.

{¶7} R.C. 2929.14(B) and (C) govern the imposition of minimum and maximum sentences for felonies. R.C. 2929.14(B) states that if the court is required to impose a prison term on the offender and if the offender previously has not served a prison term, as is the case with appellant herein, "*** the court shall impose the shortest prison term authorized unless the court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others."

{¶8} This court has stated that the imposition of more than the minimum sentence to one first imprisoned, or the imposition of the maximum authorized sentence, requires that the sentencing court make clear on the record that it has considered all of the factors required by statute. See *State v. Weidinger* (June 30, 1999), Huron App. No. H-98-035.

{¶9} The Supreme Court of Ohio has held that R.C. 2929.14(B) does not require that the trial court give its reasons for finding that either of the two factors exist before it can lawfully impose more than the minimum authorized sentence, but concluded that "the verb 'finds' as used in this statute means that the court must note that it engaged in the analysis and that it varied from the minimum for at least one of the two sanctioned reasons." *State v. Edmonson* (1999), 86 Ohio St.3d 324, 326.

{¶10} This court has carefully reviewed the transcript of the sentencing hearing and the trial court's judgment entry of sentence

and we find that the trial court did consider the factors set forth in R.C. 2929.14(B) which justify deviating from the minimum sentence. In support of the sentence, the trial court stated that a lesser sentence would demean the seriousness of the offense and would not be adequate to protect the public. Accordingly, we find that the trial court complied with the requirements of R.C. 2929.14(B) and this argument is without merit.

{¶11} Appellant also argues that the trial court erred by considering "impermissible" factors when imposing the maximum sentence. As noted above, when imposing a maximum sentence, the trial court must make clear on the record that it has considered the factors required by statute. See *State v. Edmonson*, supra. (1999), 86 Ohio St.3d 324. Pursuant to R.C. 2929.14(C), the maximum sentence may be imposed only upon offenders who committed the worst forms of the offense, who pose the greatest likelihood of committing future crimes, and upon certain drug offenders or repeat violent offenders. The first two conditions are the only ones which could apply in this case.

{¶12} The trial court stated that it had considered the record, any oral statements, and the presentence report, as well as the principles and purposes of sentencing under R.C. 2929.11 and R.C. 2929.12. The trial court found that, while appellant had been law-abiding most of her life, she was "more than less likely to recidivate" because she shows signs of drug and alcohol abuse which she has yet to acknowledge or seek treatment for, and because she showed no genuine remorse. In making its determination that "the

more serious factors outweigh the less serious factors," the trial court indicated that it had considered the items confiscated in appellant's residence during execution of the search warrant, which included: 171 grams of powder cocaine and 17 grams of crack cocaine; $47,400 in cash; scales and devices used to render crack cocaine; surveillance cameras and security devices that indicated an active, sophisticated drug trafficking operation; and kilo wrappers that were traced to a drug cartel in South America. The trial court also noted evidence that appellant had made frequent trips to Florida (at times booking more than one flight on the same day), had not held a job since 1997, and had hired someone to murder a key witness scheduled to testify against her in this case. Based on the foregoing, the trial court concluded that appellant "poses the greatest likelihood of committing future offenses upon release from prison."

{¶13} The information relied upon by the trial court, which was set forth in detail at the sentencing hearing and in the judgment entry, was virtually undisputed. Appellant argues that the trial court should not have considered the amount of drugs confiscated because she ultimately pled guilty to offenses charging much smaller amounts. Information as to the exact amount of drugs seized, however, as well as details as to the other items, is a part of the record and was properly considered by the trial court. Further, R.C. 2929.12(A) states that the trial court shall consider the factors set forth in that section relating to the seriousness of the offender's conduct and the likelihood of

recidivism, and that the court may consider "any other factors that are relevant to achieving those purposes and principles of sentencing." Based on the foregoing, this court finds that the trial court complied with the statutory requirements for imposing the maximum sentence and that the sentence is supported by clear and convincing evidence. *State v. Cruz* (Feb. 27, 1998), Fulton App. No. F-97-023.

{¶14} Appellant also asserts that the trial court should not have ordered her sentence to be served consecutively to the sentence imposed by the Sandusky County Court of Common Pleas. Appellant argues that the trial court did not make the findings required by R.C. 2929.14(E)(4).

{¶15} R.C. 2929.14(E)(4) provides:

{¶16} "(4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that 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:

{¶17} "(a) The offender committed 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.

{¶18} "(b) The harm caused by the multiple offenses while the offender was awaiting trial or sentencing was so great or unusual that no single prison term for any of the offenses committed as part of a single course of conduct adequately reflects the seriousness of the offender's conduct.

{¶19} "(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender." [Emphasis added.]

{¶20} The trial court in this case found on the record that the consecutive sentence is necessary to protect the public from future crime and to punish the offender. It also appears that the trial court considered that the Sandusky County offense was committed while appellant was awaiting trial in this case. The trial court did not, however, make a finding on the record that consecutive sentences "are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public." For the foregoing reasons, this court must find that the trial court failed to comply with the requirements of R.C. 2929.14(E)(4) for imposition of consecutive sentences.

{¶21} Because we find that the trial court failed to comply with the requirements of R.C. 2929.14(E)(4) for imposition of consecutive sentences, appellant's sole assignment of error is well-taken.

{¶22} Based upon the foregoing, the judgment of the trial court is reversed only as to the trial court's order that the sentences in this case be served consecutively to the sentence imposed by the

Sandusky County Court of Common Pleas and this case is remanded to the trial court for resentencing consistent with this decision. Costs of this appeal are assessed to appellee.

JUDGMENT AFFIRMED IN PART
AND REVERSED IN PART.

Melvin L. Resnick, J. _____
JUDGE

Richard W. Knepper, J. _____
JUDGE

Mark L. Pietrykowski, P.J. _____
JUDGE
CONCUR.