

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio

Appellee

Court of Appeals No. E-03-012
E-03-013

Trial Court No. 2001-CR-135
2001-CR-045

v.

Jeremy Jones

DECISION AND JUDGMENT ENTRY

Appellant

Decided: March 19, 2004

* * * * *

Kevin J. Baxter, Erie County Prosecuitng Attorney, and Mary Ann Barylski,
Assistant Prosecuting Attorney, for appellee.

Denise Demmitt, for appellant.

* * * * *

SINGER, J.

{¶1} This is an appeal from a judgment of conviction and sentencing for numerous drug offenses rendered on a plea agreement in the Erie County Court of Common Pleas. Because we find that consecutive sentences are appropriate, we affirm.

{¶2} Between 1999 and 2001, appellant, Jeremy Jones, was indicted on a total on nine counts of various drug-related crimes. On October 30, 2001, as part of a plea agreement, appellant entered guilty pleas to trafficking in cocaine, a third degree felony; possession of crack cocaine, a second degree felony; attempted aggravated possession of

drugs, a third degree felony; and, possession of crack cocaine, a fourth degree felony. The remaining counts were declared nolle prosequi.

{¶3} Appellant's sentencing hearing was scheduled for December 31, 2001; however, appellant did not appear. He was apprehended nearly a year later.

{¶4} Appellant's sentencing hearing was held on January 10, 2003. The trial court sentenced Appellant to a four year term of incarceration for trafficking, four years for cocaine possession, four years for attempted aggravated possession and 16 months for crack possession. The court ordered that the sentences for attempted aggravated drug possession and crack possession be served concurrently, but consecutively to the other terms: a total of 12 years. From this judgment, appellant now brings this appeal setting forth the following single assignment of error:

{¶5} "The trial court erred when it imposed consecutive sentences upon defendant without engaging, on the record, in the analysis required under O.R.C. 2929.19(B)(2)(c) and 2929.14(E)(4) and are hence contrary to law and defendant's sentences are disproportionate to defendant's conduct and are contrary to law."

{¶6} When multiple prison terms are imposed on an offender for multiple offense convictions, the trial court has the option of imposing consecutive prison terms. R.C. 2929.14(E)(4). In order for the trial court to impose consecutive sentences, the court must make three findings. The court must find that: 1) consecutive sentences are necessary to protect the public from future crime or to punish the offender, R.C. 2929.14(E)(4); 2) the imposition of consecutive sentences is not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public,

Id.; and 3) the court must also find that one of the additional factors listed below in R.C. 2929.14(E)(4)(a) through (c) applies:

{¶7} “(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction *** or was under post-release control for a prior offense.

{¶8} “(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.

{¶9} “(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.”

{¶10} When imposing consecutive sentences, the trial court must make the statutory findings and give reasons supporting those findings at the sentencing hearing. *State v. Comer* (2003), 99 Ohio St.3d 463, paragraph one of the syllabus. However, “R.C. 2929.14(E)(4) does not require the trial court to recite the exact words of the statute in a talismanic ritual to impose consecutive sentences upon an offender.” *State v. Kelly* (2001), 145 Ohio App.3d 277, 282. This court has held: “Although the court need not always use the ‘magic words’ of the statute, substantial compliance is required. *** Substantial compliance may be found where there are sufficient findings on the record to

support the trial court's sentence." *State v. Cole* (Dec. 17, 1999), Wood App. No. WD-99-007, citing *State v. Estrada*, (Sept. 18, 1998), Sandusky App. No. S-98-006.

{¶11} At the sentencing hearing in this matter, the state urged consecutive sentences, arguing that concurrent sentences would be insufficient to punish appellant's behavior or protect the public from him because appellant fled from sentencing two times prior and committed new crimes; had numerous prior convictions that included similar drug offenses with and without incarceration; and had no remorse for his crimes based on his previous flights before sentencing. Following this, the court stated:

{¶12} "COURT: The Court will adopt each and every reason as to why the following sentence, but the Court has to substantiate it on the record. And the reason *** is because consecutive sentences would not be disproportionate to the seriousness of your conduct, *** the danger that you pose to the public, and [because] no single prison term for any of these offenses would adequately reflect the seriousness of your conduct."

{¶13} Appellant contends that it is insufficient for a sentencing court to adopt the state's reasons for imposing consecutive sentences without itself, on the record, reiterating those reasons. However, the trial court did make specific findings on the record with specific reasons for consecutive sentences. Combined with those proffered by the state, these findings are in "substantial compliance" with R.C. 2929.14(E)(4). The court's findings and the state's reasons were presented at the same time, i.e. at the same sentencing hearing. Appellant has presented no contrary authority that prohibits sentencing court from adopting the state's justification for appropriate sentencing under 2929.14(E).

{¶14} With respect to appellant's proportionality argument, the reasons and analysis advanced in support of consecutive terms pursuant to R.C. 2929.14 (E) (4) are also cognizable as other relevant factors considered in both the required analysis under R.C. 2929.12 and the sentencing purposes provisions of R.C. 2929.11. We see no purpose served in requiring a sentencing court to reiterate these considerations in each category to which they apply. Moreover, the findings underlying these considerations are well supported by the record. Accordingly, appellant's sole assignment of error is found not well-taken.

{¶15} On consideration whereof, the judgment of Erie County Court of Common Pleas is affirmed. Costs assessed to appellant.

JUDGMENT AFFIRMED.

Peter M. Handwork, P.J.

JUDGE

Richard W. Knepper, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE