

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

State of Ohio

Court of Appeals No. L-14-1065

Appellee

Trial Court No. CR0201201487

v.

Jordan Byrd

DECISION AND JUDGMENT

Appellant

Decided: March 13, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Lawrence A. Gold, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Jordan Byrd, appeals from a judgment of the Lucas County Court of Common Pleas wherein the court sentenced him to consecutive four-year prison terms for two counts of rape, in violation of R.C. 2907.02(A)(2) and (B). For the reasons that follow, we affirm his sentence but reverse and remand to the extent that all R.C. 2929.14(C)(4)(b) findings were not incorporated into the judgment entry.

{¶ 2} On June 21, 2014, appellant entered *Alford* pleas to the rape charges. The court sentenced him to four years for each count. The sentences were ordered to be served consecutively for an aggregate sentence of eight years. R.C. 2929.14(C)(4). Appellant now appeals setting forth one assignment of error.

The trial court erred to the prejudice of Appellant by not making the required judicial findings before imposing consecutive sentences.

{¶ 3} In this assignment of error appellant asserts that the trial court erred in not making proper judicial findings as required by R.C. 2929.14(C)(4), prior to imposing consecutive prison sentences.

{¶ 4} When reviewing appeals of criminal sentences, the appellate court shall review the record, including the findings underlying the sentence or modification given by the sentencing court. R.C. 2953.08(G)(2). Following the review, the appellate court may modify a sentence that is appealed or may vacate the sentence and remand the matter to the trial court for resentencing. *Id.* The standard for review is not whether the sentencing court abused its discretion, but rather the court may take action if it clearly and convincingly finds that (a) the record does not support the sentencing court's findings under division (B)(2)(e) or (C)(4) of section 2929.14 of the Revised Code; or, (b) that the sentence is otherwise contrary to law. *Id.*

{¶ 5} Moreover, when a statute directs a court to make findings before imposing a particular sentence, a failure to make those findings is contrary to law. *State v. Venes*, 2013-Ohio-1891, 992 N.E.2d 453, ¶ 12 (8th Dist.). The trial court, however, does not

have to express its findings word-for-word as set forth in R.C. 2929.14(C). *Id.* at ¶ 13. Hence, the court need not slavishly adhere to the specific wording of the statute in order to meet its obligation of presenting its findings. *Id.* at ¶ 14.

{¶ 6} Pursuant to R.C. 2929.14(C)(4), the trial court is required to make three findings before imposing consecutive sentences: 1) that consecutive sentences are necessary to protect the public from the future crime or to punish the offender; 2) 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 3) that one of the subsections (a), (b), or (c) apply. Although the court is not required to give reasons explaining these findings, it should incorporate these findings into its judgment entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29.

{¶ 7} In relevance to this case, the third finding must meet the requirement of subsection (b), which provides: "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." R.C. 2929.14(C)(4)(b).

{¶ 8} Here, appellant argues that his sentences were contrary to law because the lower court allegedly failed to make the necessary findings before sentencing him. The record reflects differently.

{¶ 9} First, the lower court expressed that appellant’s offenses were some of the most egregious that can be committed in the community. The court also stated that the offenses deserved magnification because of the familial relationship between appellant and the victim, his minor niece. Second, the lower court expressed that the substantial harm caused to the victim was great or unusual. The court stated that “the harm [appellant] caused will never be eliminated with the victim. And as young as she is, it’s often said [victims] have a life sentence, and [victims] do, to deal with the demons [victims are] now confronting as a consequence of [appellant’s] horrendous acts.” Lastly, the lower court noted that there were multiple offenses committed by appellant that caused the great or unusual harm to the community and victim. Accordingly, the record reflects the lower court complied with R.C. 2929.14(C)(4)(b), and therefore the sentences were not contrary to law.

{¶ 10} Appellant further contends that the lower court failed to explicitly incorporate its findings in its judgment entry. This court agrees. The entry stated, “Being necessary to fulfill the purposes of R.C.2929.11, and not disproportionate to the seriousness of the offender’s conduct or the danger the offender poses, the court further finds the harm caused was great or unusual, therefore the sentences are ordered to be served consecutively.” This is an insufficient entry, as it fails to incorporate the findings expressed above. *See State v. Bragg*, 6th Dist. Lucas No. L-14-1054, 2015-Ohio-78, ¶ 13, citing to *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29.

{¶ 11} As a result of not incorporating its findings in its sentencing entry, the lower court must correct its entry to reflect its findings. However, this error only constitutes a clerical error that may be corrected through a nunc pro tunc entry. *Bragg* at ¶ 13. Thus, appellant’s assignment of error is found not well-taken.

{¶ 12} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is affirmed as to appellant’s sentences, but reversed and remanded for the limited purpose of correcting the March 5, 2014 judgment entry.

{¶ 13} On consideration whereof, appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed in part
and reversed in part.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio’s Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court’s web site at:
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