

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 17AP-227
	:	(C.P.C. No. 15CR 3433)
Melita M. Briggs,	:	
	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 31, 2017

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee. **Argued:** *Seth L. Gilbert*.

On brief: *James H. Banks*, for appellant. **Argued:** *Nina M. Najjar*.

APPEAL from the Franklin County Court of Common Pleas

TYACK, P.J.

{¶ 1} Melita M. Briggs is appealing from the sentence she received following her plea of guilty to four charges arising out of her involvement in a serious automobile accident in which two of her passengers were killed and in which Briggs and a third passenger were seriously wounded. Blood tests indicated that Briggs had a blood alcohol content of over three times the legal limit in Ohio and that Briggs had cocaine in her system.

{¶ 2} The assigned errors are:

[I.] THE TRIAL COURT ERRED IN SENTENCING THE DEFENDANT TO CONSECUTIVE PRISON TERMS.

[II.] THE TRIAL COURT ERRED REFUSING TO ALLOW THE DEFENDANT TO PRESENT WITNESSES AT HER SENTENCING HEARING.

[III.] THE TRIAL COURT ERRED IN IMPOSING A FINE ON DEFENDANT'S OVI CONVICTION IN EXCESS OF THE STATUTORY LIMIT.

{¶ 3} In the first assignment of error, counsel asserts that consecutive sentences were not appropriate. The trial court judge made the two sentences for aggravated vehicular homicide to be consecutive sentences. Two separate people were killed. Consecutive sentences were completely appropriate for these charges. One of the victims apparently died as a result of the vehicle catching fire. A more horrendous death is hard to imagine.

{¶ 4} The passenger who survived the collision suffered serious physical harm, including multiple bone fractures and a rupture of her anterior cruciate ligament ("ACL"). A separate sentence for vehicular assault was appropriate.

{¶ 5} A separate misdemeanor charge of OVI constituted the fourth of the four charges to which Briggs pled guilty. Because the charge was a misdemeanor, the associated sentence of incarceration had to be served concurrently with the felony charges. The OVI sentence is not literally part of this assignment of error.

{¶ 6} The trial court made the findings required by R.C. 2929.14(C) to impose consecutive sentences and the record reflects a significant factual basis for those findings.

{¶ 7} The Supreme Court of Ohio has mandated that when a trial court is sentencing a convicted felon to consecutive sentences, the trial court judge must journalize in his or her sentencing entry the findings required to justify consecutive sentences as required by R.C. 2929.14(C). *See State v. Bonnell*, 14o Ohio St.3d 209, 2014-Ohio-3177. The sentencing entry here indicates that the findings were made in open court and that the sentencing entry merely incorporates the findings made in open court. This is not what literally happened in this case. The sentencing entry incorporates findings as to R.C. 2929.11 and 2929.12, but not as to R.C. 2929.14 as required by the *Bonnell* case.

{¶ 8} As a result, the trial court needs to conduct a new sentencing hearing and journalize a new sentencing entry.

{¶ 9} We do not find that the trial court is barred from giving consecutive sentences in this case, but the trial court must fully comply with *Bonnell* before ordering consecutive sentences in this case.

{¶ 10} The first assignment of error is sustained in part.

{¶ 11} A trial court has broad discretion in controlling the sentencing proceedings, especially when a detailed pre-sentence investigation has been conducted. Victim impact information is required by law. An accused has a right of allocation. A defendant's counsel has a right to be involved. The trial court judge has the discretion to hear or not hear speeches from others who appear at the sentencing hearing.

{¶ 12} The trial court judge cannot be found to have committed prejudicial error by refusing to hear other persons who show up at a sentencing hearing, be they lay people or clergy.

{¶ 13} The trial judge here made statements at the time of accepting the guilty plea which indicated that the judge would consider input from persons concerned about Melita Briggs and wishing to provide helpful information. Normally such information would be provided to the persons assembling the pre-sentence investigation for them to include in the pre-sentence investigation. Nothing said by the judge committed the judge to hearing live testimony or entertaining statements from persons in open court over and above those required by statute.

{¶ 14} The second assignment of error is overruled.

{¶ 15} As to the third assignment of error, the State of Ohio has confessed error. The maximum fine allowed on an OVI charge is normally \$1,075. The trial court's assessing a fine of \$2,000 is not consistent with the sentencing statute for OVI, unless Briggs has prior convictions for violating OVI. The record before us does not contain sufficient information about Briggs' history of conviction for traffic offenses to justify the fine assessed. Based on the record before us, the fine given seems to be in error.

{¶ 16} The third assignment of error is sustained.

{¶ 17} In review, the first assignment of error is overruled in part and sustained in part. The second assignment of error is overruled. The third assignment of error is

sustained. The judgment of the Franklin County Court of Common Pleas is affirmed in part and reversed in part and remanded for a new sentence.

Judgment affirmed in part and reversed in part; case remanded for new sentence.

KLATT and DORRIAN, JJ., concur.
