

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
RANDALL L. BONNELL, JR.	:	Case No. 14 CAA 10 0063
	:	
Defendant - Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Delaware County Court of Common Pleas, Case No. 11-CR-I-10-0542B

JUDGMENT: Affirmed

DATE OF JUDGMENT: June 11, 2015

APPEARANCES:

For Plaintiff-Appellee

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Delaware County Prosecutor

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For Defendant-Appellant

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Baldwin, J.

{¶1} Appellant Randall L. Bonnell, Jr. appeals a judgment of the Delaware County Common Pleas Court resentencing him to eight years and five months incarceration for tampering with evidence (R.C. 2911.32(A)) and three counts of burglary (R.C. 2911.12(A)(3)).

STATEMENT OF FACTS AND CASE

{¶2} On August 26, 2010, appellant and Raymond Bush attempted to break into a vending machine at the Red Roof Inn in Grove City. In the process, they ruptured a water line, causing the room to flood. They fled without stealing any money.

{¶3} On November 22, 2010, March 23, 2011, and October 3, 2011, they broke into vending machines at a Best Western Hotel in Delaware County, stealing approximately \$117 in change and damaging machines owned by the Scioto Vending Company. Police arrested them as they drove away from the hotel on October 3, 2011.

{¶4} A Delaware County grand jury indicted appellant for engaging in a pattern of corrupt activity, possessing criminal tools, obstructing official business, three counts of burglary, and four counts each of theft and tampering with coin machines. He subsequently pled guilty to three third-degree-felony counts of burglary and one fifth-degree-felony count of tampering with coin machines, and the remaining counts were dismissed.

{¶5} At the sentencing hearing, the trial court heard arguments from the parties, but no one addressed whether the sentences should be served concurrently or consecutively. The state asserted only that appellant was not amenable to community control. The following colloquy occurred:

{¶6} "The court: Going through all of the sentencing factors, I can not overlook the fact your record is atrocious. The courts have given you opportunities.

{¶7} "The defendant: Yes.

{¶8} "The court: On the PSI pages 4 through 16, it's pretty clear that at this point in time you've shown very little respect for society and the rules of society. The court feels that a sentence is appropriate."

{¶9} The court then sentenced appellant to 30 months in prison for each burglary and 11 months in prison for tampering with coin machines, imposing consecutive sentences to aggregate a term of eight years and five months in prison.

{¶10} In its journal entry imposing this sentence, the court wrote:

{¶11} "Having considered the factual background of this case, the negotiations conducted in this case, the Pre-Sentence Investigation report prepared by Adult Court Services, the Defendant's counsel's statement, the Assistant Prosecuting Attorney's statement, the Defendant's statement, and, having considered the two overriding purposes of felony sentencing set forth in Section 2929.11 of the Ohio Revised Code, and having considered the seriousness and recidivism factors set forth in Section 2929.12 of the Ohio Revised Code, which the Court considers to be advisory only, the Court makes the following FINDINGS:

{¶12} "1. The Defendant's lengthy prison record.

{¶13} "2. A prison sentence is appropriate."

{¶14} Appellant appealed to this Court, asserting that the imposition of consecutive sentences was contrary to law because the trial court failed to make the findings required by R.C. 2929.14(C)(4). 2012-Ohio-5150, 2012 WL 5398071, ¶ 5. We

determined that the trial court's statements at the sentencing hearing "when coupled with the trial court's acknowledgement that it has read and considered the PSI are sufficient to satisfy the factual findings requirement under R.C. 2929.1[4](C)(4)." *Id.* at ¶ 11. We concluded:

{¶15} "The entire record adequately reflects consecutive sentences were necessary to protect the public and to punish Bonnell, and that they were not disproportionate to the seriousness of his conduct and the danger he posed to the public. In addition, Bonnell's history of criminal conduct demonstrated that consecutive sentences were necessary to protect the public from future crime." *Id.* at ¶ 13.

{¶16} The Ohio Supreme Court granted appellant's discretionary appeal. The Supreme Court held that in order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and to incorporate its findings into its sentencing entry, but the court is not obligated to state reasons to support its findings. *State v. Bonnell*, 140 Ohio St. 3d 209, 16 N.E.3d 659, 2014-Ohio-3177, syllabus. The Supreme Court concluded that the trial court failed to make the required finding that consecutive sentences were not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and remanded the case to the trial court. *Id.* at ¶36.

{¶17} The trial court imposed the same sentence on remand. At the sentencing hearing, the court stated:

{¶18} "The court finds that the consecutive sentences are necessary to protect the public from future crime and to punish you and that consecutive sentences are not

disproportionate to the seriousness of your conduct and the danger that you pose to society." Resentencing Tr. 13.

{¶19} Further, the court stated in its sentencing entry:

{¶20} "The Court further finds that a stated prison term is consistent with the purposes and principles of Sentencing and that the Defendant is not amenable to Community Control Sanctions and that a consecutive sentence should be imposed because of the findings set forth above and consecutive sentences are necessary to protect the public from future crime and 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. Further, the Court finds the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender." Judgment Entry On Sentence, September 9, 2014.

{¶21} Appellant assigns a single error to the resentencing entry:

{¶22} "THE TRIAL COURT ERRED WHEN IT MADE A FINDING OF PROPORTIONALITY THAT WAS UNSUPPORTED BY THE RECORD."

{¶23} In appellant's first appeal, we concluded, "The entire record adequately reflects consecutive sentences were necessary to protect the public and to punish Bonnell, and that they were not disproportionate to the seriousness of his conduct and the danger he posed to the public. In addition, Bonnell's history of criminal conduct demonstrated that consecutive sentences were necessary to protect the public from future crime."

{¶24} As we discussed in appellant's prior appeal, the PSI revealed numerous theft related charges, many similar in nature to the conduct of which appellant was convicted in the instant case. The prosecutor noted in the first sentencing hearing that since reaching adulthood, appellant had been arrested or convicted 44 times. Further, he had been incarcerated on five separate occasions dating back to 1994, and had violated postrelease control and judicial release in the past. At the resentencing hearing, the court noted that while 101 months may appear to some to be disproportionate to what appellant did, the court knew of no other way to protect the public than to take appellant off the street, because as soon as he is out of prison, he commits crimes. Resentencing Tr. 15. The court further reviewed the PSI before the resentencing hearing and again discussed appellant's lengthy criminal history on the record, noting that every time appellant was released, it was "just a matter of days" before he committed another crime. Resentencing Tr. 12. The record supports the trial court's finding that consecutive sentencing was not disproportionate to the seriousness of appellant's conduct and to the danger he posed to the public.

{¶25} The assignment of error is overruled. The judgment of the Delaware County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Gwin, P.J. and

Hoffman, J. concur.