

[Cite as *State v. Hendricks*, 2015-Ohio-2268.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101864

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHARLES HENDRICKS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-14-584602-A and CR-14-585277-A

BEFORE: E.T. Gallagher, J., Jones, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: June 11, 2015

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EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, Charles Hendricks (“Hendricks”), appeals his sentence and assigns the following errors for review:

1. The trial court erred by ordering appellant to serve a consecutive sentence without making the appropriate findings required by R.C. 2929.14 and H.B. 86.
2. The trial court erred by ordering convictions and a consecutive sentence for separate counts because the trial court failed to make a proper determination as to whether these offenses are allied offenses pursuant to R.C. 2941.25 and they are part of the same transaction under R.C. 2929.14.

{¶2} After careful review of the record and relevant case law, we affirm Hendricks’s sentence, but remand to the trial court to issue a nunc pro tunc entry to incorporate the findings made at the sentencing hearing into the journal entry.

I. Factual and Procedural History

{¶3} On April 23, 2014, Hendricks was named in a three-count indictment in Cuyahoga C.P. No. CR-14-584602-A charging him with drug trafficking in violation of R.C. 2925.03(A)(2), with schoolyard and forfeiture specifications; drug possession in violation of R.C. 2925.11(A), with forfeiture specifications; and possession of criminal tools in violation of R.C. 2923.24(A), with forfeiture specifications.

{¶4} At his arraignment in CR-14-584602-A, Hendricks was instructed by Deputy Zachary Tucker to remove his shoestrings from his shoes. When Hendricks refused to comply with the deputy’s directive, Deputy Tucker “attempted to physically place [Hendricks] in the back room away from the other inmates.” However, Hendricks became combative and knocked Deputy Tucker into a wall. Deputy Tucker sustained

injuries to his back and was later taken to MetroHealth Hospital for treatment. Ultimately, Hendricks was tased and required several Cuyahoga County deputies to get him down on the ground. During the attempt to restrain Hendricks, a second victim, Deputy Mullins, was assaulted.

{¶5} Based on his conduct at the arraignment proceeding, Hendricks was indicted in Cuyahoga C.P. No. CR-14-585277-A with two counts of assault in violation of R.C. 2903.13(A); felonious assault in violation of R.C. 2903.11(A)(1), with notice of prior conviction and repeat violent offender specifications; obstructing official business in violation of R.C. 2921.31(A); and escape in violation of R.C. 2921.34(A)(1).

{¶6} On July 10, 2014, Hendricks pleaded guilty in Case No. CR-14-584602-A to one count of drug trafficking, with a schoolyard specification. The remaining counts in that case were nolle. Hendricks further pleaded guilty in Case No. CR-14-585277-A to two counts of assault and one count of obstructing official business. The remaining counts in that case were nolle.

{¶7} On August 18, 2014, Hendricks appeared for sentencing. In CR-14-584602-A, he was sentenced to two years of community control sanctions. As part of his sentence, Hendricks was required to attend drug treatment and anger management classes. Additionally, in CR-14-585277-A, Hendricks was ordered to serve 12 months in prison for each count of assault, to run consecutive to one another, but concurrent to a six-month sentence imposed for obstructing official business. The trial court ordered the community control sanctions imposed in CR-14-584602-A to run

consecutive to, and commencing after, the completion of the prison term imposed in CR-14-585277-A. Hendricks now appeals his sentence.

II. Law and Analysis

A. Consecutive Sentences

{¶8} In his first assignment of error, Hendricks argues the trial court erred by ordering him to serve a consecutive sentence without making the appropriate findings required by R.C. 2929.14.

{¶9} Under R.C. 2953.08, an appellate court may overturn the imposition of consecutive sentences where (1) the appellate court, upon its review, clearly and convincingly finds that “the record does not support the sentencing court’s findings” under R.C. 2929.14(C)(4), or (C)(2), the sentence is “otherwise contrary to law.” R.C. 2953.08(G)(2)(a) through 2953.08(G)(2)(b).

{¶10} R.C. 2929.14(C)(4) requires a sentencing judge to make three statutory findings before imposing consecutive sentences and incorporate those findings in the journal entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio- 3177, 16 N.E.3d 659, ¶ 29. First, the trial court must find that the “consecutive service is necessary to protect the public from future crime or to punish the offender.” R.C. 2929.14(C)(4). Second, the trial court must find that “consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public.” *Id.*

{¶11} Finally, the trial court must find that at least one of the following applies:

(a) The offender committed one or more of 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 postrelease control for a prior offense.

(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.

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

{¶12} In order to impose consecutive terms of imprisonment, a trial court must both make the statutory findings mandated for consecutive sentences under R.C. 2929.14(C)(4) at the sentencing hearing and incorporate those findings into its sentencing entry. *Bonnell* at the syllabus. “[A] word-for-word recitation of the language of the statute is not required, and as long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld.” *Id.* at ¶ 29. The failure to make the findings, however, is “contrary to law.” *Id.* at ¶ 37.

{¶13} In this case, the trial court supported its decision to impose consecutive sentences by making the following findings in open court and on the record:

[T]he aspects of consecutive sentences are met in this case. It's necessary to punish the offender and protect the public from future crimes and it is not disproportionate to the conduct or the danger posed. These offenses took place while you were on probation for another case, which you were on parole for — not probation. Not probation but [postrelease control]. And the criminal history is such that consecutive sentences are warranted.

{¶14} We find that the trial court’s statements satisfied the requirements of R.C. 2929.14(C)(4). First, the trial court found that consecutive sentences are necessary to protect the public and to punish the offender, whereas the court need only find one or the other. Next, the trial court stated that it found consecutive sentences are not disproportionate to Hendricks’s conduct or the danger he posed to the public. Finally, the trial court found that Hendricks committed the offenses while under postrelease control and that his criminal history demonstrated the need for consecutive sentences.

{¶15} Hendricks argues the trial court’s “disproportionate” finding was inadequate because the court failed to recite the statement in full; “consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public.” However, pursuant to *Bonnell*, the trial court was not required to make a word-for-word recitation of the language of the statute. We can discern from the transcript that the trial court engaged in the correct analysis and that the record supports the findings. *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, at ¶ 29; *see also State v. Lunder*, 8th Dist. Cuyahoga No. 101223, 2014-Ohio-5341, ¶ 17.

{¶16} Hendricks’s first assignment of error is overruled. However, the trial court’s sentencing entry in this case does not include the consecutive sentence findings. Therefore, in accordance with *Bonnell*, we remand to the trial court for the limited purpose of incorporating the consecutive sentence findings made at sentencing into the court’s entry.

B. Allied Offenses

{¶17} In his second assignment of error, Hendricks argues the trial court erred by failing to merge his assault and obstructing official business counts.

{¶18} At sentencing, the trial court determined that merger was improper, stating:

I am not going to merge the obstructing official business, because I think you can have each of these assaults and obstructing is not necessarily connected and there's different animuses involved.

{¶19} The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution states that no person “shall * * * be subject for the same offense to be twice put in jeopardy of life or limb.” The clause, among other things, “protects against multiple punishments for the same offense.” *Brown v. Ohio*, 432 U.S. 161, 165, 97 S.Ct. 2221, 53 L.Ed.2d 187 (1977), quoting *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969); *Ohio v. Johnson*, 467 U.S. 493, 498, 104 S.Ct. 2536, 81 L.Ed.2d 425 (1984). Like the United States Constitution, the Ohio Constitution also provides the same double jeopardy protections. Article I, Section 10; *State v. Moss*, 69 Ohio St.2d 515, 518, 433 N.E.2d 181 (1982). Ohio has codified those protections in R.C. 2941.25, which prohibits multiple punishments for allied offenses of similar import. *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 23. The general understanding is that the defendant is not placed in jeopardy twice for the same offense so long as courts properly apply R.C. 2941.25. *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, ¶ 26. An appellate court applies a de novo standard of review in reviewing a trial court's R.C. 2941.25 merger

determination. *State v. Cummings*, 8th Dist. Cuyahoga No. 100657, 2014-Ohio-3717, ¶ 27.

{¶20} R.C. 2941.25 provides:

(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

{¶21} In *State v. Ruff*, Slip Opinion No. 2015-Ohio-995, the Ohio Supreme Court recently clarified the test a trial court and a reviewing court must employ in determining whether offenses are allied offenses that merge into a single conviction, stating:

When the defendant's conduct constitutes a single offense, the defendant may be convicted and punished only for that offense. When the conduct supports more than one offense, however, a court must conduct an analysis of allied offenses of similar import to determine whether the offenses merge or whether the defendant may be convicted of separate offenses. R.C. 2941.25(B).

A trial court and the reviewing court on appeal when considering whether there are allied offenses that merge into a single conviction under R.C. 2941.25(A) must first take into account the conduct of the defendant. In other words, how were the offenses committed? If any of the following is true, the offenses cannot merge and the defendant may be convicted and sentenced for multiple offenses (1) the offenses are dissimilar in import or significance — in other words, each offense caused separate, identifiable harm; (2) the offenses were committed separately, and (3) the offenses were committed with separate animus or motivation.

At its heart, the allied-offense analysis is dependent upon the facts of a case because R.C. 2941.25 focuses on the defendant's conduct. The evidence at trial or during a plea or sentencing hearing will reveal whether the offenses have similar import. When a defendant's conduct victimizes more than one person, the harm for each person is separate and distinct, and therefore, the defendant can be convicted of multiple counts. Also, a defendant's conduct that constitutes two or more offenses against a single victim

can support multiple convictions if the harm that results from each offense is separate and identifiable from the harm of the other offense. We therefore hold that two or more offenses of dissimilar import exist within the meaning of R.C. 2941.25(B) when the defendant's conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable.

Id. at ¶ 24-26.

{¶22} Applying the test set forth in *Ruff*, we find that Hendricks separately committed the obstruction of official business and assault offenses. A person commits assault when he “knowingly, cause[s] or attempt[s] to cause physical harm to another or another’s unborn.” R.C. 2903.13(A). The offense of obstruction of official business is committed when a person “without privilege to do so, and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official’s official capacity, shall do any act that hampers or impedes a public official in the performance of the public official’s lawful duties.” R.C. 2921.31(A).

{¶23} In this case, Hendricks’s assault convictions stemmed from his physical confrontation with Deputies Tucker and Mullins, i.e., separate victims. The record reflects that Hendricks pushed Deputy Tucker into a wall, causing him injuries, and subsequently assaulted Deputy Mullins while he attempted to restrain Hendricks on the ground. In contrast, the prosecution stated at the sentencing hearing that Hendricks’s conviction for obstructing official business was based on his initial interruption of court proceedings when he failed to comply with Deputy Tucker’s order to remove his shoelaces. Because the offenses were committed against separate victims and with separate conduct, the trial court did not err by failing to merge Hendricks’s convictions.

{¶24} Accordingly, Hendricks’s second assignment of error is overruled.

III. Conclusion

{¶25} The trial court made the requisite findings necessary for imposing consecutive sentences under R.C. 2929.14(C)(4). Further, the trial court did not err by failing to merge Hendricks's assault and obstructing official business convictions because they arose from separate conduct and were committed against separate victims.

{¶26} Judgment affirmed. However, this case is remanded to the trial court to incorporate its findings for consecutive sentences into the journal entry.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, JUDGE

LARRY A. JONES, SR., P.J., and
MELODY J. STEWART, J., CONCUR