

[Cite as *State v. Corbitt*, 2009-Ohio-6011.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A.CASE NOS.23111, 23112
vs.	:	T.C. CASE NOS. 08CR2726 08CR2649
JANAY M. CORBITT	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 13<sup>th</sup> day of November, 2009.

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GRADY, J.:

{¶ 1} Defendant, Janay M. Corbitt, was convicted on her pleas of guilty of two offenses. In Common Pleas Court Case No. 2008CR2726, Corbitt was convicted of a violation of R.C. 2913.49(B)(1), identity fraud, for holding herself out to be another person through the unauthorized use of that person's

personal identifying information. Because the victim was an elderly person and the value of the property or services involved was between five hundred and five thousand dollars, the offense is a third degree felony, R.C. 2913.49(I)(3), for which the available term of imprisonment is one, two, three, four, five, six, seven, or eight years. R.C. 2929.14(A)(3). Corbitt was sentenced to a prison term of two years.

{¶ 2} In Case No. 2008CR2649, Corbitt was convicted of a separate charge of identity fraud, R.C. 2913.49(B)(2), for the unauthorized use of another person's personal identifying information, representing it to be her own. Because the value of the property or services involved was between five hundred and five thousand dollars, the offense is a fourth degree felony, R.C. 2913.49(I)(2), for which the available term of imprisonment is six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months. R.C. 2929.14(A)(4). Corbitt was sentenced to a prison term of six months.

{¶ 3} In both Case No. 2008CR2726 and Case No. 2008CR2649, the court ordered the term imposed to be served consecutive to the sentence imposed in the other case. Corbitt's aggregate sentence is therefore a term of thirty months, or two and one-half years. Corbitt filed a notice of appeal from the sentences the

court imposed.

FIRST ASSIGNMENT OF ERROR

{¶ 4} "THE TRIAL COURT ERRED IN IMPOSING THE SENTENCES UPON HER BECAUSE THE COURT DID NOT PROPERLY APPLY THE PURPOSES AND PRINCIPLES OF SENTENCING OR THE SERIOUSNESS AND RECIDIVISM FACTORS IN R.C. 2929.11 AND R.C. 2929.12, RESPECTIVELY."

{¶ 5} Corbitt asks us to reverse the sentences the court imposed and to modify the sentences in the following respects: in Case No. 2008CR2649, to impose a six month prison term; in Case No. 2008CR2726, to impose a one-year prison term instead of the two year prison term the court imposed; and, to permit those sentences to be served concurrently instead of consecutively, for an aggregate term of twelve months, instead of the thirty-month aggregate sentence the court imposed.

{¶ 6} The minimum term of imprisonment available for the fourth degree felony in Case No. 2008CR2649 is six months, and the court imposed that term. Corbitt asks us to modify it to a term of six months. To that result, there is nothing to modify.

{¶ 7} When it imposed Corbitt's two sentences, the court stated that it considered the purposes and principles of sentencing in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. (T. 4). Therefore, because the two-year sentence the court imposed in Case No. 2008CR2726 is within the range authorized

by R.C. 2929.14(A)(3), we may reverse that sentence only on a finding that the trial court abused its discretion when it imposed that term. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912.

"The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 8} The victim of Corbitt's identify fraud offense in Case No. 2008CR2726 is a seventy-seven year old woman, who wrote a letter to the court describing the difficulties she has experienced in reconciling the problems Corbitt's conduct created, reporting that it caused her not only economic losses but also "emotional stress unlike any experience in my lifetime." (T. 4).

{¶ 9} The court expressly referred to the victim's resulting problems when it imposed Corbitt's two-year sentence, which is at the low end of the range authorized by R.C. 2929.14(A)(3). Notwithstanding Corbitt's lack of a record of prior offenses, the victim's statement demonstrates that the sentence the court imposed is "commensurate with and not demeaning to the seriousness of the offender's conduct and its impact on the victim." R.C. 2929.11(B).

We find no abuse of discretion in the court's decision to impose a two-year sentence.

{¶ 10} Finally, Corbitt asks us to modify her consecutive

sentences to concurrent sentences. Corbitt relies on our holding in *State v. McClain*, Montgomery App. Nos. 22551, 22552, 2009-Ohio-64. In *McClain*, the defendant was sentenced to two eleven-month prison terms arising out of a violation of his community control sanctions. His underlying offenses were two convictions for non-support. The community control violation arose from a single act, the defendant's failure to report to a job-seeking skills workshop. We modified the two sentences to concurrent eleven month sentences on findings that consecutive sentences were not necessary to protect the public from future crimes.

{¶ 11} In the present case, consecutive sentences were imposed for the actual criminal offenses Corbitt committed, not for subsequent violations of community control sanctions that were instead imposed. Also, Corbitt's sentences arose not from a single act, but from discrete criminal conduct in each case. The offense in Case No. 2008CR2726 arose, as we explained, from Corbitt's unauthorized use of the identity of an elderly woman. Corbitt's offense in Case No. 2008CR2649 arose from her use of identifying information of other persons to buy and use cell phones. In the latter offense, Corbitt obtained the identities of other persons by misusing confidential information concerning them to which she had access.

{¶ 12} The facts of the present case are sufficiently distinct from those of *McClain* that we are not persuaded that the court abused its discretion when it imposed consecutive sentences. Indeed, on this record, consecutive sentences are reasonably necessary to protect the public from future crime and to punish the offender, and it is reasonable to find that no single prison term would adequately reflect the seriousness of Corbitt's misconduct. R.C. 2929.14(E)(4)(c). No abuse of discretion in imposing consecutive sentences is demonstrated.

{¶ 13} The first assignment of error is overruled.

SECOND ASSIGNMENT OF ERROR

{¶ 14} "THE TRIAL COURT ERRED WHEN IT DID NOT NOTIFY APPELLANT OF HER APPELLATE RIGHTS IN ACCORDANCE WITH CRIM.R. 32(B)."

{¶ 15} After imposing sentence in a case involving a serious offense, the court must advise the defendant of his right to appeal, where applicable, and of the associated rights of assistance that apply when a defendant is indigent. Crim.R. 31(B)(2), (3).

{¶ 16} The trial court did not comply with Crim.R. 32(B). Defendant nevertheless exercised her right of appeal. Defendant does not allege that she was deprived of any assistance an indigent defendant is due. The error is therefore harmless. *In re Haas* (1975), 45 Ohio App.2d 187. Being harmless, the error did not affect Defendant's substantial rights and must be disregarded.

Crim.R. 52(A).

{¶ 17} The second assignment of error is overruled. The judgment of the trial court will be affirmed.

DONOVAN, P.J., And BROGAN, J. concur.

Copies mailed to:

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Hon. Barbara P. Gorman