

[Cite as *State v. Jones*, 2024-Ohio-4604.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO
Appellee
v.
DORIAN L. JONES
Appellant
: C.A. Nos. 30065; 30068
: Trial Court Case Nos. 2023CRB4227;
: 2023CRB4238
: (Criminal Appeal from Municipal Court)

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OPINION

Rendered on September 20, 2024
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TRAVIS L. KANE, Attorney for Appellant
STEPHANIE L. COOK, Attorney for Appellee
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EPLEY, P.J.

{¶ 1} In this consolidated appeal, Dorian L. Jones appeals from his misdemeanor convictions on five counts of assault in Dayton M.C. No. 2023-CRB-04238 and one count each of assault and criminal damaging in Dayton M.C. No. 2023-CRB-04227. He

claims that the trial court erred in imposing consecutive sentences. For the following reasons, the appeal from Case No. 2023-CRB-04227 (C.A. 30065) will be dismissed as moot. The judgment in Case No. 2023-CRB-4238 (C.A. 30068) will be affirmed.

I. Facts and Procedural History

{¶ 2} On November 23, 2023, Jones was brought by police to Miami Valley Hospital (MVH) and placed on a 72-hour involuntary psychiatric hold. While there, Jones threatened to shoot a patient care technician (PCT) and to break into her home. The PCT relayed these comments to a nurse. Upon learning of the threats, additional nurses were requested to be present when medication was administered to Jones. When Jones saw the needle, he jumped out of bed and began punching and kicking the nurses in the room. MVH police were summoned to the room. Jones's doctor ordered Jones to be restrained and medicated.

{¶ 3} Jones became increasingly agitated throughout the night. On November 24, 2023, he masturbated in front of a PCT and made violent threats toward her and a nurse. After the women left the room and called the nurse manager, Jones left his bed. He approached the nurse, punched her in the left ear, threw medical equipment, and ran down the hallway. The doors to other patients' rooms were closed to ensure their safety. MVH police again responded and confronted Jones. Jones was secured to his bed with restraints.

{¶ 4} On November 28, 2023, in Case No. 2023-CRB-04227, Jones was charged by complaint with assault, a first-degree misdemeanor, and criminal damaging, a second-degree misdemeanor, based on his conduct on November 24. The next day, in Case

No. 2023-CRB-04238, he was charged by complaint with five counts of assault, all first-degree misdemeanors, based on his conduct on November 23, 2023.

{¶ 5} On December 20, 2023, in a hearing addressing both cases, Jones pled guilty to the six counts of assault and one count of criminal damaging. The court ordered a presentence investigation (PSI).

{¶ 6} The trial court held a sentencing hearing for both cases on January 31, 2024. After hearing from the prosecutor, defense counsel, and Jones, the court first addressed Case No. 2023-CRB-04227. It imposed 180 days in jail for assault with 66 days of jail time credit. Jones was ordered to serve the remaining 114 days of the sentence, beginning that day. The court further imposed 66 days in jail for criminal damaging with jail time credit for all those days.

{¶ 7} As for Case No. 2023-CRB-04238, the trial court imposed 180 days in jail for each assault count with credit for 63 days and 117 days suspended. After making findings under R.C. 2929.14(C)(4), the court ordered the sentences to be served consecutively up to a maximum of 18 months. The court further ordered that Jones be placed on intensive supervision for three years with the additional conditions that he receive a mental health evaluation, that he comply with any recommended treatment, and that he not return to Miami Valley Hospital unless he was there for treatment.

{¶ 8} Jones appeals from both judgments. In his sole assignment of error, he claims that the trial court erred by imposing a consecutive sentence.

II. Case No. 2023-CRB-04227

{¶ 9} Before we turn to the argument Jones raises, we must consider whether his

appeal from Case No. 2023-CRB-04227 is moot.

{¶ 10} “The role of courts is to decide adversarial legal cases and to issue judgments that can be carried into effect.” *Cyran v. Cyran*, 2018-Ohio-24, ¶ 9, citing *Fortner v. Thomas*, 22 Ohio St.2d 13, 14 (1970); *State v. Smith*, 2019-Ohio-3592, ¶ 8 (2d Dist.). “Issues are moot when they lack practical significance and, instead, present academic or hypothetical questions.” *Dibert v. Carpenter*, 2018-Ohio-1054, ¶ 30 (2d Dist.), citing *State ex rel. Ford v. Ruehlman*, 2016-Ohio-3529, ¶ 55. Appellate courts lack jurisdiction to consider the merits of a moot appeal. See *State v. Berndt*, 29 Ohio St.3d 3, 4 (1987); *Smith* at ¶ 9.

{¶ 11} Appeals of misdemeanor convictions are considered moot if the defendant has voluntarily satisfied his or her sentence, unless the defendant has offered evidence from which an inference can be drawn that he or she will suffer some collateral legal disability or loss of civil rights stemming from that conviction. *State v. Wilson*, 41 Ohio St.2d 236, syllabus; *Urbana v. Boystel*, 2021-Ohio-2529, ¶ 9 (2d Dist.). A defendant can show that he or she did not serve a sentence voluntarily if the defendant sought a stay of the sentence to allow for the appeal. *Smith* at ¶ 10, citing *Cleveland Hts. v. Lewis*, 2011-Ohio-2673, ¶ 23. A sentence is also considered involuntarily served when it is entirely served prior to conviction. *Id.*, citing *State v. Benson*, 29 Ohio App.3d 109, 110 (10th Dist. 1986).

{¶ 12} “A collateral disability is an adverse legal consequence of a conviction or judgment that survives despite the court’s sentence having been satisfied or served.” *In re S.J.K.*, 2007-Ohio-2621, ¶ 10. “[A] purely hypothetical statement about what might

occur in the future is not sufficient to give viability to an otherwise moot appeal.” *State v. Moore*, 2005-Ohio-4518, ¶ 14 (2d Dist.), quoting *State v. Johnson*, 43 Ohio App.3d 1, 3 (1st Dist. 1988); *State v. Washington*, 2018-Ohio-1231, ¶ 10 (2d Dist.).

{¶ 13} “A court may consider extrinsic evidence from outside the record to determine mootness.” *Pruitt v. Pruitt*, 2022-Ohio-2058, ¶ 14 (2d Dist.), citing, e.g., *State ex rel. Cincinnati Enquirer v. Dupuis*, 2002-Ohio-7041, ¶ 8.

{¶ 14} In this case, Jones was sentenced to 180 days in jail with credit for 66 days. The court ordered Jones to begin serving the remaining 114 days on January 31, 2024. Jones did not seek a stay of his sentence, either from the trial court or this appellate court. Montgomery County Jail records, which are readily available online, substantiate that Jones completed the 114 days on May 23, 2023. The trial court did not impose any financial sanctions or courts costs. Accordingly, it appears that Jones has now completely served his sentence in Case No. 2023-CRB-04227. He has not demonstrated that his convictions for assault and criminal damaging will result in any collateral consequence. Consequently, his appeal from Case No. 2023-CRB-04227 (C.A. 30065) is moot.

{¶ 15} We also note that Jones did not raise any assignments of error related to Case No. 2023-CRB-04227. Thus, even if the appeal were not moot, we would have summarily affirmed his conviction on that basis.

III. Case No. 2023-CRB-04238

{¶ 16} In his assignment of error, Jones claims that the trial court erred by applying R.C. 2929.14(C)(4) and imposing a consecutive sentence. He asks that the case be

remanded for resentencing.

{¶ 17} We review misdemeanor sentences for an abuse of discretion. *State v. Johnson*, 2022-Ohio-1782, ¶ 14 (2d Dist.). “A trial court abuses its discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary.” (Citation omitted.) *State v. Darmond*, 2013-Ohio-966, ¶ 34.

{¶ 18} When sentencing for a misdemeanor offense, the trial court is guided by the “overriding purposes of misdemeanor sentencing,” which are “to protect the public from future crime by the offender and others and to punish the offender.” R.C. 2929.21(A); *State v. Bakhshi*, 2014-Ohio-1268, ¶ 47 (2d Dist.). “To achieve those purposes, the sentencing court [must] consider the impact of the offense upon the victim and the need for changing the offender’s behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public.” R.C. 2929.21(A). The trial court’s sentence must be “reasonably calculated to achieve the two overriding purposes of misdemeanor sentencing . . . , commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact upon the victim, and consistent with sentences imposed for similar offenses committed by similar offenders.” R.C. 2929.21(B); *State v. Collins*, 2012-Ohio-4969, ¶ 9 (2d Dist.). Unless a mandatory jail term is required, a trial court has discretion to determine the most effective way to achieve the purposes and principles of misdemeanor sentencing. R.C. 2929.22(A).

{¶ 19} R.C. 2929.22(B)(1) identifies seven factors for the trial court to consider in determining the appropriate sentence. The court may consider any other factors that are relevant to achieving the purposes and principles of misdemeanor sentencing. R.C.

2929.22(B)(2). In addition, the court must consider “any relevant oral or written statement made by the victim, the defendant, the defense attorney, or the prosecuting authority regarding sentencing for a misdemeanor.” R.C. 2929.22(D)(1).

{¶ 20} R.C. 2929.22(C) further requires the trial court to consider the appropriateness of community control before imposing a jail term. The court may impose the maximum jail term “only upon offenders who commit the worst forms of the offense or upon offenders whose conduct and response to prior sanctions for prior offenses demonstrate that the imposition of the longest jail term is necessary to deter the offender from committing a future criminal offense.” *Id.* The trial court is not required to state on the record its reasons for the sentence it imposes. *Collins* at ¶ 10.

{¶ 21} “A jail term or sentence of imprisonment for a misdemeanor shall be served consecutively to any other prison term, jail term, or sentence of imprisonment when the trial court specifies that it is to be served consecutively . . . , except that the aggregate term to be served shall not exceed eighteen months.” R.C. 2929.41(B)(1). Unlike in a felony case, where the trial court must make findings under R.C. 2929.14(C)(4), a trial court in a misdemeanor case is not required to make any specific findings before imposing consecutive sentences. *E.g., State v. Moreno*, 2024-Ohio-2055, ¶ 28-32 (5th Dist.); *State v. Johnson*, 2019-Ohio-4613, ¶ 32 (6th Dist.); *State v. Burley*, 2017-Ohio-378, ¶ 10 (7th Dist.); *State v. Alexander*, 2016-Ohio-204, ¶ 2 (8th Dist.); *Conneaut v. Fromknecht*, 2024-Ohio-1119, ¶ 10 (11th Dist.); *State v. Henson*, 2021-Ohio-38, ¶ 17 (12th Dist.). “The trial court need only ‘specify’ that the jail terms being imposed were to be served consecutively.” *Henson* at ¶ 17.

{¶ 22} In this case, the trial court orally stated at sentencing that it was required to make the necessary findings under R.C. 2929.14(C)(4) to consider consecutive sentencing. R.C. 2929.14(C)(4) permits a trial court to impose consecutive *prison terms* if it finds that (1) consecutive sentencing is necessary to protect the public from future crime or to punish the offender, (2) 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) any 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 post-release 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.

(Emphasis added.)

{¶ 23} After affording the prosecutor and defense counsel an opportunity to address whether consecutive sentences should be imposed, the trial court found that

consecutive sentences were necessary to protect the public from Jones's future crime "because this was a totally unprovoked incident while people are working and to me the hospital even though it is a private hospital it is still a public place it is for public use and a place where the public goes and that is concerning to me." It further concluded that consecutive sentences were necessary to punish Jones for his behavior, that consecutive sentences were not disproportionate, that at least two of the multiple offenses were committed as part of one or more courses of conduct, and that his history of criminal conduct warranted consecutive sentences. The court indicated that it had considered the criminal history contained in the PSI, as well as Jones's statement that he had been released from prison only 10 days before the events at the hospital. The trial court then imposed 180 days in jail (with credit for 63 days and 117 days suspended) for each of the five counts of assault, to be served consecutively to a maximum of 18 months.

{¶ 24} Because R.C. 2929.14(C)(4) applies only to felony sentencing, we agree with Jones that the trial court erred in applying it when imposing consecutive sentences for his misdemeanor assault charges. However, we conclude that this error was harmless.

{¶ 25} R.C. 2929.41(B)(1), the applicable statute, does not require any statutory findings, and the record amply supported the imposition of consecutive sentences. Jones, then 21 years old, punched and kicked five members of Miami Valley Hospital's medical staff after making threats to a PCT. Although Jones expressed remorse at sentencing, he told the PSI interviewer that the incident was "in the past and I'm over it." The victim in Case No. 2023-CRB-04227 spoke at sentencing and expressed that she

believed Jones was a danger to society.

{¶ 26} According to the PSI, Jones previously had been convicted of aggravated arson, a felony of the second degree, for which he served a prison sentence after his community control was revoked. While in prison, Jones was sanctioned bimonthly, at a minimum, for infractions. He also had 17 prior juvenile adjudications: four for domestic violence, eight for assault, two for criminal damaging, and one each for robbery, harassment by inmate, and disorderly conduct near school; ten of his 17 adjudications would have been felonies if committed by an adult.

{¶ 27} On this record, the trial court's imposition of consecutive sentences was not an abuse of discretion. The fact that the trial court made findings under R.C. 2929.14(C)(4) to support its decision to impose consecutive sentences went beyond what was required of it. Jones was not prejudiced by the trial court's improper application of R.C. 2929.14(C)(4).

{¶ 28} Jones's assignment of error is overruled.

IV. Conclusion

{¶ 29} The appeal from Case No. 2023-CRB-04227 (C.A. 30065) will be dismissed as moot. The judgment in Case No. 2023-CRB-4238 (C.A. 30068) will be affirmed.

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TUCKER, J. and HUFFMAN, J., concur.