[Cite as *State v. Littlejohn*, 2024-Ohio-4797.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff- Appellee,	:	No. 113644
v.	:	
PHILLIP C. LITTLEJOHN,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART, VACATED IN PART, AND REMANDED
RELEASED AND JOURNALIZED: October 3, 2024

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-23-678475-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Jeffrey Maver, Assistant Prosecuting Attorney, *for appellee*.

Michael Gordillo*, for appellant*.

MICHELLE J. SHEEHAN, J.:

{¶ 1} Defendant-appellant Phillip Littlejohn appeals from his conviction of multiple offenses following his guilty plea. On appeal, he claims that his right to a

speedy trial was violated and that the record does not support the consecutive sentences he received. After a review of the record and applicable law, we find no merit to these claims. Littlejohn also contends that the trial court erred in imposing a prison term on a merged count (Count 12), and the State concedes the error. Consequently, we affirm his conviction and the consecutive sentences, but vacate the sentence on Count 12.

Factual and Procedural Background

{¶ 2} This case stemmed from Littlejohn's criminal conduct against the mother of his child over several days in June 2022. Littlejohn and the victim were domestic partners off and on for ten years. The relationship was tumultuous, and Littlejohn had been previously convicted of burglary against the victim, in Cuyahoga C.P. No. CR-20-654071-A. He was on probation for that case and under an existing protection order when the instant incident occurred. For several days between June 12 and June 16, 2022, he held the victim against her will in his residence and assaulted her repeatedly in front of their son.

{¶ 3} Littlejohn was arrested on July 9, 2022, and indicted on July 15, 2022, in Cuyahoga C.P. No. CR-22-672241-A. The State reindicted Littlejohn on February 14, 2023, in Cuyahoga C.P. No. CR-23-678475-A and dismissed the first case.[1] After the reindictment, the trial court held multiple pretrial hearings in this

[1] In the first indictment, Littlejohn was charged with three counts of kidnapping, three counts of felonious assault, two counts of domestic violence, and one count each of rape,

case. Littlejohn expressed his desire to go to trial at these hearings, but eventually pleaded guilty on January 7, 2024. He pleaded to reduced charges of abduction (Count 1) and attempted felonious assault (Count 7), both third-degree felonies. He also pleaded guilty to violating a protection order (Count 11), a third-degree felony; domestic violence (Count 12), a third-degree felony; and endangering children (Count 13), a first-degree misdemeanor, as charged in the indictment. The State dismissed the remaining eight counts. The parties were in agreement that attempted felonious assault (Count 7) and domestic violence (Count 12) would merge for sentencing.

{¶ 4} At the sentencing hearing, the victim provided a lengthy victim-impact statement. She had a relationship with Littlejohn for ten years, and their son was born in 2019. In June 2022, Littlejohn held her captive in his residence for four days and beat her repeatedly in front of their son while she cowered on the floor. She estimated she was slapped, punched, and choked over a hundred times. He also used a beam to beat her. She was denied water and was not allowed to use the bathroom for hours.

{¶ 5} The victim was eventually able to call her mother, who then called the police. When the police officers arrived, Littlejohn denied the victim was in the

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endangering children, intimidation, tampering with evidence, disrupting public services, and violating a protection order. In the second indictment, he was charged with three counts of kidnapping, three counts of rape, two counts of felonious assault, and one count each of tampering with evidence, disrupting public service, violating a protection order, domestic violence, and endangering children.

house and refused to let the officers enter it. After 45 minutes, an officer was able to look inside the residence and saw the victim mouthing the words "help me." The scene was captured on the officer's bodycam.

{¶ 6} The victim's teeth were cracked from the beating, and she could not swallow food for over a month. She was unable to work afterwards because her hands were badly injured. Their child was severely traumatized by witnessing his mother being brutally assaulted by his father. His speech development was delayed as a result, and he would punch his teddy bear while laughing.

{¶ 7} The trial court sentenced Littlejohn to a consecutive 36-month term for abduction (Count 1), 36-month term for attempted felonious assault (Count 7), and 30-month term for violating a protection order (Count 11), for a total of 8 years and 6 months. The court also imposed a concurrent 36-month term for domestic violence (Count 12) and 6-month term for endangering children (Count 13).

{¶ 8} On appeal, Littlejohn raises the following assignments of error for our review:

I. The trial court erred to Appellant's prejudice and in violation of the Double Jeopardy Clause when it imposed a prison sanction on an allied offense of similar import, acknowledged by all on the record to have merged.

II. Appellant's statutory and constitutional rights to a speedy trial were violated.

III. The trial court erred to Appellant's prejudice by imposing consecutive sentences which are not supported by the record.

{¶ 9} For ease of discussion, we will address these assignments of error out of order. We consider his speedy-trial claim before we review the two sentencing issues he raises.

Speedy-Trial Right

{¶ 10} "The right to a speedy trial is a fundamental right of a criminal defendant that is guaranteed by the United States and Ohio Constitutions. Sixth Amendment to the U.S. Constitution; Ohio Constitution, Article I, Section 10." *State v. Ramey*, 2012-Ohio-2904, ¶ 14. To that end, Ohio enacted R.C. 2945.71, which sets forth time requirements for the State to bring an accused to trial. Under the statute, a defendant charged with a felony "[s]hall be brought to trial within two hundred seventy days after the person's arrest." R.C. 2945.71(C)(2). Moreover, for purposes of calculating speedy-trial time, "each day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as three days." R.C. 2945.71(E). Therefore, subject to certain tolling events, a jailed defendant must be tried within 90 days. *Ramey* at ¶ 15. R.C. 2945.72 enumerates ten categories of tolling events.

{¶ 11} Littlejohn, however, pleaded guilty under a plea agreement. "A guilty plea generally waives a defendant's right to challenge his or her conviction on statutory speedy trial grounds." *State v. Forrest*, 2021-Ohio-122, ¶ 9 (8th Dist.), citing *State v. Kelley*, 57 Ohio St.3d 127 (1991), paragraph one of the syllabus, and *State v. Yonkings*, 2013-Ohio-1890, ¶ 14-15 (8th Dist.).

{¶ 12} Nonetheless, this court has held that, while a guilty plea generally waives a defendant's right to challenge his conviction on statutory speedy-trial grounds, a defendant who pleads guilty does not waive his constitutional right to a speedy trial. *Forrest* at ¶ 10, citing *State v. Kutkut*, 2013-Ohio-1442, ¶ 9 (8th Dist.), citing *State v. Carmon*, 1999 Ohio App. LEXIS 5458, *4 (8th Dist. Nov. 18, 1999).

***Barker* Analysis**

{¶ 13} When considering whether a defendant's constitutional right to a speedy trial is violated, the statutory time requirements of R.C. 2945.71 to 2945.73 are not relevant; rather, we are to balance the factors enumerated by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514, 530-533 (1972). *Kutkut* at ¶ 10. These factors are "(1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his speedy trial right; and (4) prejudice to the defendant." *Id.*, citing *Barker* at 530-533. No single factor controls; rather, these factors are to be considered together with relevant circumstances. *Id.*, citing *Barker* at 533. "Review of a speedy-trial claim involves a mixed question of law and fact." *State v. Long*, 2020-Ohio-5363, ¶ 15.

{¶ 14} In this case, Littlejohn was arrested on July 9, 2022, and arraigned on July 20, 2022. The docket reflects nine continuances at the request of the defense from his arraignment to February 1, 2023. On February 1, 2023, the case was continued to allow the State to reindict Littlejohn. On February 14, 2023, the State reindicted him. Thereafter, as the docket shows, several more continuances were charged to the defense. On May 18 and May 22, 2023, Littlejohn filed duplicate pro

se motions invoking his statutory and constitutional speedy-trial right but did not set forth any argument in support. Thereafter, the trial court held several hearings, the transcript of which are contained in the record.

{¶ 15} At a hearing held on May 30, 2023, the trial court noted that Littlejohn had been transferred to its mental health docket and that he was currently incarcerated on a probation violation in Cuyahoga C.P. No. CR-20-654071 — a case involving a fourth-degree felony burglary committed against the same victim. The trial court denied Littlejohn's motion for a speedy trial based on its review of the docket. The court noted the trial was set for June 26, 2023, and explained to Littlejohn the differences between a jury trial and a bench trial as well as the potential impact of his criminal history in a jury trial. On June 26, 2023, the trial was continued to July 31, 2023, due to plea negotiations.

{¶ 16} On July 11, 2023, the trial court held another hearing, which was necessitated by the victim's report that Littlejohn repeatedly contacted her by jail calls and letters asking her not to appear for trial — despite the existence of a protection order. Because of Littlejohn's conduct, the State filed a motion to revoke all non-attorney phone, mail, and visitation privileges. The trial court granted the State's motion. At this hearing, Littlejohn expressed his desire to have a trial.

{¶ 17} A docket entry on July 11, 2023, indicates that the July 31, 2023 trial date was rescheduled to September 18, 2023, for further discovery and plea negotiations. On September 18, 2023, the trial court held another pretrial hearing; the trial was continued to November 13, 2023, due to trial court's unavailability.

{¶ 18} On October 6, 2023, Littlejohn filed a motion for bond reduction and to modify bail. On October 23, 2023, the trial court held a hearing on the motion. It denied the motion on the ground that Littlejohn was being held for a probation violation and awaiting trial for a case involving a first-degree felony. Littlejohn again expressed his desire to go to trial.

{¶ 19} On November 13, 2023, the trial court held another hearing. The court acknowledged that Littlejohn has been held in jail for over 400 days. The parties reported on the progress of the plea negotiations, the terms of the State's proposed plea agreement, and Littlejohn's wish of pleading guilty only to a third-degree felony of domestic violence. The defense reported that Littlejohn was wavering between a bench trial and a jury trial and that he had expressed a desire to represent himself pro se. Littlejohn again stated he was ready to go to trial and would opt for a jury trial. He also inquired again about his speedy-trial right. The trial court explained that he was being incarcerated for a probation violation in a different case and therefore the State would have 270 days to bring him to trial, which could be increased by various tolling events. The court noted that the State was within the time limit due to the preparation of mental health reports ordered in this case and the continuances for discovery requests and plea negotiations. After a recess, the court indicated that Littlejohn asked for new counsel. Littlejohn complained that his counsel did not discuss defense strategy with him and had not talked to his mother, who would be his alibi witness. The trial court explained the challenges his counsel potentially faced in planning a trial strategy, including his

prior criminal history, probation violation in a case concerning the same victim, and harassing conduct toward the victim despite a protection order. The court denied his request for new counsel. The trial was rescheduled for January 17, 2024. On January 17, 2024, Littlejohn pleaded guilty to reduced charges.

{¶ 20} Because Littlejohn waived the statutory speedy-trial right in pleading guilty, we will weigh the *Barker* factors instead of calculating the number of days chargeable to either party based upon any applicable tolling events.

{¶ 21} In a *Barker* analysis, the first factor concerns the length of the delay, and it is a triggering mechanism determining the necessity of inquiry into the other factors. *State v. Robinson*, 2017-Ohio-6895, ¶ 9 (8th Dist.), citing *State v. Triplett*, 78 Ohio St.3d 566 (1997), citing *Barker,* 407 U.S. at 530. A defendant claiming a violation of a constitutional speedy-trial right must meet the "threshold requirement" of a "presumptively prejudicial" delay to trigger a *Barker* analysis. *State v. Duncan*, 2012-Ohio-3683, ¶ 8 (8th Dist.). Generally, a delay that approaches one year is presumptively prejudicial. *Long*, 2020-Ohio-5363, ¶ 14, citing *Doggett v. United States*, 505 U.S. 647, 652, fn. 1 (1992).

{¶ 22} The State conceded that Littlejohn pleaded guilty 556 days after his arrest on July 9, 2022, and he was held 281 more days even after he filed a pro se motion for a speedy trial in May 2023. Thus, the threshold requirement of a presumptively prejudicial delay is met here.

{¶ 23} The second *Barker* factor is the reason for the delay. Littlejohn acknowledges in his brief that, while the length of the delay weighs in his favor, the

second factor is "more of a mixed bag." Indeed, our review of the record, as recounted above, reflects that much of the delay can be attributed to Littlejohn. *Long* at ¶ 17 (In a *Barker* analysis, the court should consider whether some of the delay is attributable to the defendant.).

{¶ 24} Littlejohn filed a motion to substitute counsel on December 14, 2022, and a "Motion to Withdraw Counsel" on May 18, 2023. His counsel filed a "Motion to Eliminate Counsel Only Designation" on May 22, 2023, and a motion for bond reduction on October 6, 2023. In addition, because of his harassing conduct toward the victim, the State was compelled to file a motion on July 11, 2023, requesting the revocation of his phone, visitation, and mail privileges. Moreover, as the transcript indicates, Littlejohn had at one point decided on a bench trial and then changed his mind and opted for a jury trial at the November 13, 2023 hearing. Moreover, the docket entries show that most of the continuances — both before and after Littlejohn filed a motion for speedy trial — were recorded as being "at the request of defendant" due to discovery or plea negotiations. While "[d]eliberate attempts to hamper the defense weigh heavily against the government," *Long*, 2020-Ohio-5363, at ¶ 56, our review of the record reveals no evidence that the State deliberately delayed the proceedings to prejudice the defense or induce a plea. *Forrest*, 2021-Ohio-122, at ¶ 17 (8th Dist.). Based on the record before us, the second *Barker* factor weighs against Littlejohn.

{¶ 25} The third factor concerns a defendant's assertion of the speedy-trial right. While Littlejohn asserted his speedy-trial right in a motion and raised the

issue at several hearings, no properly argued brief was ever filed on his behalf even though he was represented by competent counsel. Even if we weigh this factor in favor of Littlejohn, he has not demonstrated prejudice, the final factor of the *Barker* analysis.

{¶ 26} "The prejudice factor in the analysis 'should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect.'" *Long* at ¶ 22, quoting *Barker*, 407 U.S. at 532. These interests are "'(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.'" *Id.*, quoting *Barker* at 532. "The third interest warrants special emphasis because prejudice in that context 'skews the fairness of the entire system.'" *Id.,* quoting *Barker* at 532. *See also Forrest* at ¶ 23 (the impact of the delay on the ability of the defendant to prepare his defense is the greatest concern in a prejudice analysis).

{¶ 27} Regarding prejudice, Littlejohn vaguely asserts that the delay put extreme pressure on him because he was forced to carry on his daily life from a jail cell and he was not able to plan for his future due to the uncertainty. He claims, without pointing to anything in the record to substantiate the claim, that he was put in "purgatory" until he agreed to plead guilty. We are aware that "oppressive pretrial incarceration" and "anxiety and concerns of the accused" must be taken into account in a prejudice analysis because of the detrimental impact on an individual from the time spent in jail awaiting trial. *Long,* 2020-Ohio-5363, at ¶ 26. However, in this case, Littlejohn was incarcerated due to his probation violation in a separate case

and our reading of the transcript does not indicate his incarceration in that case was a deliberate attempt by the court or the prosecutor to induce him to plead guilty. Furthermore, Littlejohn does not specify how his ability to prepare for his defense was hindered by the pretrial incarceration or the delay in trial. As such, we are unable to find the prejudice factor weighs in his favor.

{¶ 28} Balancing the *Barker* factors, we find no violation of Littlejohn's constitutional speedy-trial right. The second assignment of error is without merit.

Consecutive Sentences

{¶ 29} Littlejohn's third assignment of error states that "the trial court erred to Appellant's prejudice by imposing consecutive prison sentences which are not supported by the record." There is a presumption under Ohio's sentencing scheme that a defendant's multiple prison sentences will be served concurrently, unless the sentencing court makes findings supporting the imposition of consecutive sentences under R.C. 2929.14(C)(4). *State v. Jones*, 2024-Ohio-1083, ¶ 11. Under R.C. 2929.14(C)(4), the trial court may impose consecutive sentences if it finds that consecutive sentences are necessary to protect the public from future crime or 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, and if it also finds any of the following:

> (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 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.

{¶ 30} "Though 'a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, . . . it has no obligation to state reasons to support its findings.'" *Jones* at ¶ 11, quoting *State v. Bonnell*, 2014-Ohio-3177, ¶ 37. However, pursuant to R.C. 2953.08(G)(2), "the appellate court may increase, reduce, or otherwise modify a sentence," or vacate a sentence and remand for resentencing if it "clearly and convincingly finds" that "the record does not support the sentencing court's findings" under R.C. 2929.14(C)(4). *See also State v. Marcum*, 2016-Ohio-1002, ¶ 22.

{¶ 31} Our review indicates the trial court made the requisite statutory findings. It found that consecutive sentences are necessary in this case "to protect the public from future crime and to punish this defendant" and "[t]he consecutive sentences are not disproportionate to the seriousness of the defendant's conduct and to the danger the defendant poses to the public." The court also made the finding set forth in R.C. 2929.14(C)(4)(b), stating that "[a]t least two of the multiple offenses were committed as part of one or more courses of conduct" and that "the harm

caused by the said multiple offenses was so great or unusual that no single prison term for any of the offenses committed as any part of any of the courses of conduct adequately reflects the seriousness of this defendant's conduct." These findings are also incorporated in the court's sentencing entry.

{¶ 32} Littlejohn does not claim that the trial court failed to make the findings necessary for the imposition of consecutive sentences. Rather, he claims the findings are not supported by the record. Pursuant to R.C. 2953.08(G), we may vacate or modify a sentence if we "clearly and convincingly" find that the record does not support the trial court's findings. Clear and convincing evidence is the degree or proof "which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶ 33} The record reflects that Littlejohn held the victim captive for several days and subjected her to physical and mental abuse in front of their three-year-old child. She sustained serious injuries, and both she and the child were severely traumatized by the horrific event. While Littlejohn ultimately accepted responsibility in pleading guilty and expressed regrets regarding his actions, we affirm his consecutive sentences because the trial court's R.C. 2929.14(C)(4) findings are not "clearly and convincingly" unsupported by the record. *Jones*, 2024-Ohio-1083, at ¶ 17. Accordingly, we affirm the trial court's imposition of consecutive sentences on Counts 1, 7, and 11. The third assignment of error lacks merit.

Merged Count

{¶ 34} Under the first assignment of error, Littlejohn claims the trial court improperly imposed a term on a merged count. This issue concerns Count 7 (attempted felonious assault) and Count 12 (domestic violence). It is undisputed that Count 12 would merge into Count 7 for purposes of sentencing. The trial court expressly acknowledged the merger at the plea hearing. However, the sentencing entry states that the trial court imposes a concurrent 36-month term on Count 12.

{¶ 35} R.C. 2941.25(A) provides that where the defendant's conduct constitutes two or more allied offenses of similar import, "the indictment . . . may contain counts for all such offenses, but the defendant may be convicted of only one." R.C. 2941.25(A). Pursuant to the statute, the trial court has no authority to impose separate sentences on allied offenses. *State v. Vintson*, 2019-Ohio-3894, ¶ 5 (8th Dist.), citing *State v. Shearer*, 2019-Ohio-1352, ¶ 4 (8th Dist.).

{¶ 36} Littlejohn does not dispute his aggregate term of eight years and six months but contends that the trial court should not have imposed a concurrent term on the merged Count 12. The sentencing transcript reflects the trial court sentenced Littlejohn as follows:

> The Court . . . at this time sentences the defendant on Count 1 to 36 months in Lorain Correctional Institut[ion]; Count 7, 36 months; Count 11, 30 months in the Lorain Correctional Institut[ion]. Count 12 and Count 13 will be concurrent to Counts 1, 7 and 11. Count 12 is the domestic violence count, which as we indicated merges in relation to this. Count 13 is the misdemeanor, that's 180 days or 6 months in the county jail. Those are going to run concurrently, obviously, to Counts 1, 7, and 11.

{¶ 37} The trial court's sentencing is confusing. Although it alluded to Count 12 as having been merged, it also described Count 12 as concurrent. While Littlejohn's aggregate sentence of eight years and six months remains the same, "'the imposition of concurrent sentences is not the equivalent of merging of allied offenses of similar import.'" *Vintson* at ¶ 7, quoting *State v. Williams*, 2016-Ohio-7658, ¶ 34. *See also State v. Underwood*, 2010-Ohio-1, ¶ 31 ("[E]ven when the sentences are to be served concurrently, a defendant is prejudiced by having more convictions than are authorized by law.").

{¶ 38} The State concedes the error and requests that this court vacate Littlejohn's concurrent term on Count 12. Accordingly, we sustain the first assignment of error and vacate his concurrent term on Count 12. The trial court is to issue a corrected judgment reflecting the vacation of the term on Count 12.

{¶ 39} Judgment affirmed in part, vacated in part, and remanded.

It is ordered that appellant and appellee share the 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.

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

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MICHELLE J. SHEEHAN, JUDGE

EILEEN A. GALLAGHER, P.J., and
FRANK DANIEL CELEBREZZE, III, J., CONCUR