



State v. Haynes

2024-Ohio-3190 (2024) | Cited 0 times | Ohio Court of Appeals | August 22, 2024

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT COUNTY OF CUYAHOGA

STATE OF OHIO, :

Plaintiff-Appellee, : No. 113322 v. :

ZAKRY HAYNES, :

Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART, VACATED IN PART, AND REMANDED RELEASED AND
JOURNALIZED: August 22, 2024

Criminal Appeal from the Cuyahoga County Court of Common Pleas Case No. CR-23-678116-B

Appearances:

Prosecuting Attorney, and Ayoub Dakdouk, Assistant Prosecuting Attorney, for appellee.

Mary Catherine Corrigan, for appellant.

LISA B. FORBES, P.J.:

Appellant Zakry Haynes Haynes

trial court erred when it sentenced him to consecutive sentences and pursuant to the

Reagan Tokes Law. After reviewing the facts of the case and pertinent law, we find the trial court failed to make the findings mandated by R.C. 2929.14(C)(4) before

and remand the matter to the trial court for resentencing for the limited purpose of



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considering whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) and if so, to issue a journal entry making all the required findings.

I. Facts and Procedural History

On September 25, 2023, Haynes pled guilty to the following: Count 2 of the indictment, felonious assault pursuant to R.C. 2903.11(A)(1), a felony of the second degree, with a three-year firearm specification pursuant to R.C. 2941.145; Count 12, improper discharge of a firearm into a habitation, a felony of the second degree, in violation of R.C. 2923.161(A)(1), amended to delete all firearm specifications; and Count 15, having weapons while under disability, felony of the third degree pursuant to R.C. 2923.13(A)(3). The parties agreed that the offenses are nonallied and agreed to a recommended sentence of five to seven years. All other charges and specifications were dismissed by the State. The trial court engaged in a proper Crim.R. 11 colloquy with Haynes and then accepted Haynes guilty pleas to the above counts.

On October 25, 2023, Haynes appeared in court for sentencing. At the hearing, the State read into the record a summary of the letters provided by two of the victims in this case, a minor child and his mother, which emphasized that the victims are still traumatized from the incident. criminal cases that he was serving time in prison on, one case from Lorain County (Lorain C.P. No. 22-CR-107142), and the other from Lake County (Lake C.P. No. 22-



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CR- asked for the sentence in the present case to run

concurrent with these prior sentences.

The court stated that it had Haynes -investigation

report authored by the Cuyahoga County Adult Probation Department along

with Haynes sentencing memorandum, both of which it reviewed prior to

sentencing. The trial court stated on the record that the PSI report indicated Haynes

had a criminal history that consisted of convictions for

criminal trespass in Elyria; a theft in Lorain County; domestic violence in Lorain County; drug possession in Lorain County in 2018, 2019, 2019, 2020; grant theft of a firearm; weapons under disability and discharging a firearm; breaking and entering in Lorain County; OVI in 2022; driving under OVI suspension in 2022; and receiving stolen property.

The court also noted that the Cuyahoga County Probation Department in its PSI

report classified Haynes as a high risk for reoffending.

The trial court then sentenced Haynes as follows: on Count 2, three-

years in prison for the firearm specification to be served consecutively to four years

in prison on the underlying offense; on Count 12, four years in prison; and on Count

15, two years in prison. The court explained that, pursuant to the Reagan Tokes Law,

for Counts 2 and 12 the minimum is four years in prison, and the maximum is six

years in prison with the presumption that he will be released after the minimum time has been served. The trial court sentenced Haynes to a total of seven years in

prison, ordering the counts to run concurrent to each other. The court also

sentenced him to a mandatory minimum of 18 months to a maximum of three years

of postrelease control.



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The trial court stated that sentence is to run consecutive to

Lorain County (22-CR-107142) and in Lake

County (22-CR-000386). The court made no findings in its journal entry regarding

its decision to impose a consecutive sentence, sentence would be consecutive.

Haynes appeals his sentence, and raises two assignments of error for

our review:

Assignment of error I The trial court erred by imposing consecutive sentences without engaging in the required analysis by R.C. 2929.14(c) and incorporating the findings into the sentencing journal entry.

Assignment of error II The trial court erred by imposing an unconstitutional sentence pursuant to the Reagan Tokes Act.

II. Law and Analysis

A. First Assignment of Error Consecutive Sentencing

Haynes first assignment of error argues that the trial court erred by

imposing consecutive sentences without making the requisite findings as required

by R.C. 2929.14(C)(4) such that his sentence is unlawful. We agree.

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 . . . State v. Bonnell,

2014-Ohio-3177, ¶ 37. Under R.C. 2929.14(C)(4), a trial court may order prison

protect the public from future crime or to punish the offender and that consecutive

sentences are not disproportionate to s conduct and

any of the following:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial



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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 s conduct.

consecutive sentences are necessary to protect the public from future crimes by the offender.

R.C. 2929.14(C)(4).

R.C. 2953.08(F) requires an appellate court to review the entire trial court record, including any oral or written statements made to or by the trial court at the sentencing hearing, and any presentence, psychiatric, or other investigative report that was submitted to the court in writing before the sentence was imposed.

R.C. 2953.08(F)(1) through (4). The trial court is not obligated to state reasons to support its findings, provided that the necessary findings can be found in the record and are incorporated into the senten Bonnell at ¶ 37. -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 Id at ¶ 29.

-established that where a trial court has imposed consecutive sentences in a sentencing journal entry, but failed to make all of the requisite statutory findings in support of the imposition of consecutive sentences at



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the sentencing hearing, th State v. Philpot, 2020-Ohio-104, ¶ 27 (8th Dist.). See, e.g., State v. Tidmore, 2019-

Ohio-1529, ¶ 21 (8th Dist.); State v. Lariche, 2018-Ohio-3581, ¶ 25 (8th Dist.). See

also State v. Percy, 2024-Ohio-664, ¶ 9 (8th Dist.), citing State v. Matthews, 2015-

Ohio-4072, ¶ 18 (8th Dist.), citing State v. Frost, 2014-Ohio-2645, ¶ 10 (8th Dist.).

Here, we find the trial court failed to make the findings required by

R.C. 2929.14(C)(4) at the sentencing hearing. The court did note that Haynes had a

criminal history pursuant to R.C. 2929.14(C)(4)(c), but that is the only finding the

court made for a consecutive sentence. At the sentencing hearing the court made no

findings about whether consecutive sentences were necessary to protect the public

from future crime or to punish the offender. Additionally, the trial court did not find that consecutive sentences were not disproportionate to the seriousness of Haynes

conduct nor that they were not disproportionate to the danger Haynes posed to the

public.

Furthermore, the journal entry is devoid of any of the factual

findings required by R.C. 2929.14(C)(4). As noted, the only thing the journal

entry stated Case to run consecutive to

22CR107142 and 22 CR000386, or in the cases he is currently serving time on.

In the instant case, we find trial court failed to make all the requisite

statutory findings at the hearing or in the journal entry to support the imposition of

consecutive sentences. Therefore, the imposition of consecutive sentences here is

contrary to law. Philpot, 2020-Ohio-104, at ¶ 27 (8th Dist.); see, e.g., Tidmore,



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2019-Ohio-1529, at ¶ 21 (8th Dist.); Lariche, 2018-Ohio-3581, at ¶ 25 (8th Dist.).

When the trial court fails to make the required findings for consecutive sentencing the sentence must be vacated and the matter remanded to the trial court for the limited purpose of considering whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) and to make the necessary findings, if warranted. State v. Banks, 2023-Ohio-4655, ¶ 15 (8th Dist.), citing State v. Tolbert, 2023-Ohio-532, ¶ 10 (8th Dist.), citing State v. Vargas, 2015-Ohio-2856, ¶ 15 (8th Dist.), citing State v. Nia, 2014-Ohio-2527, ¶ 28 (8th Dist.); see also Percy, 2024-Ohio-664, at ¶ 9 (8th Dist.), citing Matthews, 2015-Ohio-4072, at ¶ 18 (8th Dist.), citing Frost, 2014-Ohio-2645, at ¶ 10 (8th Dist.). Therefore, because the trial court failed to make the proper findings required for the imposition of consecutive sentences pursuant to R.C. 2929.14(C)(4), Haynes first assignment of error is sustained.

B. Second Assignment of Error Reagan Tokes

Haynes assignment of error argues the trial court violated constitutional rights when it imposed an indefinite prison term pursuant to the Rea - and second-degree felony offenses, a sentencing court impose on the offender an State v.

Hacker, 2023-Ohio-2535, ¶ 1. We disagree.

Haynes argues that the Reagan Tokes Law is unconstitutional



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because it violates the right to a jury trial, the separation-of-powers-doctrine, and the right to due process.

As this court has previously explained, the Ohio Supreme Court has rejected the arguments that the Reagan Tokes Law violates the separation-of-powers doctrine, the right to jury trial, or the right to due process. State v. McLoyd, 2023-Ohio-4306, ¶ 66 (8th Dist.), citing Hacker at ¶ 41. As such, second assignment of error is without merit and is overruled.

Judgment affirmed in part, vacated in part, and remanded for resentencing for the limited purpose of considering whether consecutive sentences are appropriate under R.C. 2929.14(C)(2), and if so, to make the necessary findings and issue a journal entry reflecting all the required findings. It is ordered that appellee and appellant share 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.

LISA B. FORBES, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and ANITA LASTER MAYS, J., CONCUR

