

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	William B. Hoffman, P.J.
Plaintiff-Appellee	:	Julie A. Edwards, J.
	:	John F. Boggins, J.
-vs-	:	
	:	Case No. 2004CA00022
PAUL A. TARVER	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal Appeal From Stark County Court of Common Pleas Case 2002CR0892

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: October 12, 2004

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Edwards, J.

{¶1} Defendant-appellant Paul Tarver appeals his sentence from the Stark County Court of Common Pleas on one count each of complicity to commit aggravated murder and complicity to commit felonious assault. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} In the early evening of March 7, 2002, appellant drove Keisha Lewis and her daughter to the Country Kitchen Restaurant on Lesh Rd. in Canton. Appellant and Lewis had previously been involved in a sexual relationship, and Lewis, who was now twelve weeks pregnant, had indicated that appellant was the father of her expected child. Appellant had requested previously that Lewis have an abortion, and at one point in January, 2002, according to Lewis, had told her "[p]retty much if [she] had the baby that we're both not going to live to see it." Tr. at 286.

{¶3} After appellant drove into the lot of the restaurant at about 7:00 PM, he parked at the back instead of using his handicap sticker to take advantage of a closer spot. As Lewis began opening the passenger door to exit appellant's pickup truck, she was confronted by an armed male wearing a hood and gloves. The man placed his pistol against Lewis' abdominal area and forced her to move over in the seat. The man further demanded money and jewelry from appellant and Lewis. After obtaining Lewis' wallet and some cash from appellant, the man directed appellant to drive off. Appellant drove the pickup to a chicken hatchery on Lesh Rd. The assailant thereupon fired three bullets into Lewis' abdomen.

{¶4} Appellant was later indicted on one count of complicity to commit aggravated murder in violation of R.C. 2923.03(A)(1) and one count of complicity to commit felonious assault in violation of R.C. 2923.03(A)(1), both with firearm specifications. The testimony adduced at trial established that appellant had arranged for the gunman to stage a robbery to act as a cover for the termination of Keisha Lewis' pregnancy. At the conclusion of the evidence and the end of deliberations, the jury found appellant guilty of both charges and of the firearm specifications.

{¶5} In November of 2002, the trial court sentenced appellant to life imprisonment with eligibility for parole after twenty years on the charge of complicity to commit aggravated murder (count one). Such sentence was to be served consecutive to a mandatory term of three years on the gun specification. The trial court further sentenced appellant on the complicity to felonious assault charge (count two) to a definite term of eight years in prison. The two firearm sentences were merged, and the trial court ordered that the sentence on count two run consecutively with the mandatory term for the firearm specification and the underlying sentence on count one, for an aggregate sentence of thirty-one years to life in prison.

{¶6} Appellant appealed his conviction and sentence. Pursuant to an Opinion filed on December 15, 2003, in *State v. Tarver*, Stark App. No. 2002CA00394, 2003-Ohio-6840, this Court affirmed appellant's conviction but reversed the matter for resentencing, finding that the trial court failed to meet the prerequisites for imposing consecutive sentences.

{¶7} On December 29, 2003, appellant appeared before the trial court for resentencing. The trial court once again sentenced appellant to consecutive sentences.

{¶8} Appellant now raises the following assignment of error on appeal:

{¶9} "THE COURT ERRED IN IMPOSING CONSECUTIVE SENTENCES AND IS CONTRARY TO LAW UNDER R.C. 2929.14(E)(4).

I

{¶10} Appellant, in his sole assignment of error, argues that the trial court erred in imposing consecutive sentences on appellant. Appellant specifically contends that the trial court failed to make any findings pursuant to R.C. 2929.14(E)(4)(a)-(c) in imposing consecutive sentences. We disagree.

{¶11} R.C. 2929.14(E)(4) provides: "If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is 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 the court also finds any of the following:

{¶12} "(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.

{¶13} "(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.

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

{¶15} In imposing consecutive sentences, the trial court, at the sentencing hearing, is required to orally make its findings and state its reasons on the record. See *State v. Comer*, 99 Ohio St.3d 467, 2003-Ohio-4165, 793 N.E.2d 473.

{¶16} Appellant, in the case sub judice, specifically maintains that the trial court failed to make any of the findings set forth in R.C. 2929.14(E)(4)(a) – (c), cited above, in sentencing appellant. Appellant maintains that “[c]learly, R. C. 2929.14(E)(4)(a) and (c) do not apply” and that the Court made “no specific findings consistent with R.C. 2929.14(E)(4)(b).

{¶17} The trial court, at the December 29, 2003 sentencing hearing, stated as follows with respect to consecutive sentences:

{¶18} “...The sentences are ordered consecutive to one another because the Court finds that this is necessary to fulfill the purposes of the Revised Code 2929.11. Is not disproportionate to the seriousness of the defendant’s conduct or the danger that the defendant poses and the Court further finds the harm caused was greater or unusual. Again, the harm being the unlawful termination of the pregnancy and serious injuries from Kisha Lewis in this respect.

{¶19} “As the Court stated earlier, the Court cannot envision a more heinous form of these crimes. The testimony was that you carefully planned and staged the

crime which resulted in the unlawful termination of your own child which was being carried by your former girlfriend. Because of the relationship between you and the victim in this case, the Court finds that the consecutive sentences, are indeed warranted in this case and because of seriousness of the harm caused and because of the fact that you had planned, the testimony was such that you had planned these crimes by staging the robbery.

{¶20} “The Court actually cannot envision with respect to these two particular crimes and therefore the course of the conduct of the multiple offenses, any form of the crime more serious than that perpetrated and by you and in fact, the testimony was such that the victim, Kisha Lewis still carries, as the Court stated previously two of three bullets in her body that she sustained physical injury and in fact at the time of trial, she described the physical injury and some of the lasting physical injuries including injuries to her wrist and leg at the time of trial, she still had no feeling in portions of her leg and was required to ambulate with the assistance of cane at that time.” Transcript of December 29, 2003, hearing at 19-20.

{¶21} Based on the foregoing, we find that the trial court made specific findings consistent with R.C. 2929.14(E)(4)(b) on the record at the December 29, 2003, hearing. The trial court, as evidenced by the language cited above, clearly found, pursuant to R.C. 2929.14(E)(4)(b), that “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 was so great or unusual that no single prison term for any of the courses of conduct adequately reflects the seriousness of the offender’s conduct”.

{¶22} Appellant’s sole assignment of error is, therefore, overruled.

{¶23} Accordingly, the judgment of the Stark County Court of Common Pleas is affirmed.

By: Edwards, J.

Hoffman, P.J. and

Boggins, J. concur

JUDGES

JAE/0712

