

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-160701
	:	TRIAL NO. B-1602521
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
JASON FISHER,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Jason Fisher was indicted on 11 drug-related counts: six counts of trafficking in heroin (felonies of the fourth degree), two counts of trafficking in heroin (felonies of the fifth degree), one count of possession of heroin (a felony of the fifth degree), aggravated trafficking in drugs (a felony of the fourth degree), and aggravated possession of drugs (a felony of the fifth degree). Fisher entered into a plea agreement in which he pleaded guilty to four counts of trafficking in heroin as fourth-degree felonies, and one count of trafficking in heroin as a fifth-degree felony. The remaining counts were dismissed. The trial court sentenced Fisher to 12 months in prison on each count. It ordered Fisher to serve three of the counts consecutively to each other, with the remaining two counts to be served concurrently with each other and concurrently with the first three counts. In total, Fischer was sentence to prison for 36 months.

In one assignment of error, Fisher claims that the trial court erred when sentencing him for three reasons. He first claims that the trial court did not properly consider the purposes and principles of sentencing before imposing sentence. He next claims that the trial court did not make the required findings in order to impose consecutive sentences. Finally, he argues that the trial court erred when it failed to

inform him that a DNA specimen would be taken and that he would be subjected to random drug testing while in prison. We will address each issue in turn.

We first consider whether the trial court properly considered the purposes and principles of sentencing before imposing Fisher's sentence. Under R.C. 2953.08(G)(2), this court may vacate or modify a sentence only if we clearly and convincingly find that the record does not support the mandatory sentencing findings or that the sentence is otherwise contrary to law. *See State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231; *State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 11 (1st Dist.).

The trial court considered the overriding purposes of felony sentencing—to protect the public from future crime by the offender and others and to punish the offender—while being mindful to use the minimum sanctions to accomplish those purposes without imposing an unnecessary burden on government resources. *See* R.C. 2929.11(A). The trial court also considered the seriousness and recidivism factors set forth in R.C. 2929.12.

Fisher argues that the trial court failed to adequately consider that he had shown remorse, acknowledged his substance abuse issues, and wished to obtain treatment. But the trial court found Fisher's criminal record more compelling. At sentencing, the trial court noted that Fisher had been to prison at least four times, and had failed to successfully complete community control repeatedly.

The trial court properly considered the seriousness and recidivism factors set forth in R.C. 2929.12, as well as the overriding purposes of felony sentencing set forth in R.C. 2929.11(A), and did not err when it determined that a prison sentence was appropriate.

Fisher next argues that the trial court failed to make the appropriate findings to justify the imposition of consecutive sentences. During the sentencing hearing, the trial court found that consecutive sentences were necessary to protect the public

from future crime and to punish Fisher. *See* R.C. 2929.14(C)(4). The trial court also found that consecutive sentences were not disproportionate to the seriousness of his conduct or to the danger he poses to the public. *Id.* The trial court further found that Fisher’s “history of criminal conduct” demonstrated that consecutive sentences were necessary to protect the public from future crime committed by Fisher. *See* R.C. 2929.14(C)(4)(c).

While the trial court made the appropriate findings to justify the imposition of consecutive sentences, it was also required to place these findings in the judgment entry of conviction. *See State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-659, 16 N.E.3d 659, ¶ 29. The trial court failed to do so in this case, but

[a] trial court's inadvertent failure to incorporate the statutory findings in the sentencing entry after properly making those findings at the sentencing hearing does not render the sentence contrary to law; rather, such a clerical mistake may be corrected by the court through a nunc pro tunc entry to reflect what actually occurred in open court.

*Id.* at ¶ 30, citing *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 15. Because the trial court failed to incorporate its findings into the sentencing entry, we must remand the cause to allow the trial court to correct its entry.

We also note that the trial court erroneously indicated that Fisher had entered into a plea agreement that included an agreed sentence, which it did not. On remand, the trial court should also correct its entry to delete the reference to an agreed sentence.

Fisher next contends that the trial court erred by failing to notify him that he should not ingest or be injected with any drug of abuse while in prison, and that he would be required to submit to random drug testing while incarcerated, pursuant to R.C. 2929.19(B)(2)(f). He also argues that the trial court erred by failing to notify him pursuant to R.C. 2901.07(B) that he would be required to submit a DNA

specimen and of the consequences for failing to do so. This court has previously rejected both arguments. *See State v Taylor*, 1st Dist. Hamilton No. C-150488, 2016-Ohio-4548, ¶ 4-6.

For the foregoing reasons, we overrule Fisher’s sole assignment of error. We affirm the judgment of the trial court, but remand the cause with instructions for the trial court to correct the sentencing entry, nunc pro tunc, to incorporate the findings it made during the sentencing hearing, and to correct the portion of the entry that erroneously referenced an agreed sentence.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**MOCK, P.J., ZAYAS and DETERS, JJ.**

To the clerk:

Enter upon the journal of the court on August 16, 2017

per order of the court \_\_\_\_\_  
Presiding Judge