

SUPREME COURT OF OHIO

State v. Comer, 99 Ohio St. 3d 463

793 N.E.2d 473 (Ohio 2003) · Decided August 27, 2003

SUMMARY

The Ohio Supreme Court held that, when imposing consecutive sentences, a trial court must make the required statutory findings and state supporting reasons at the sentencing hearing rather than solely in the sentencing entry. The court also held that a trial court imposing a nonminimum sentence on a first-time offender must make the required findings on the record at the sentencing hearing. The court vacated the consecutive sentences and the aggravated-robbery sentence and remanded for resentencing.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Francis E. Sweeney, Sr., J.; Moyer, C.J.; Sweeney, J.; Carr, J.; Pfeifer, J.; Resnick, J.; Grady, J.; Lundberg Stratton, J.; O'Connor, J.
JURISDICTION	Ohio
DECIDED	August 27, 2003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	After his appeal was reopened under Ohio Appellate Rule 26(B), appellant challenged the effectiveness of appellate counsel for failing to raise sentencing errors. The Supreme Court of Ohio accepted the certified conflict and discretionary appeal.
STANDARD OF REVIEW	The court construed the applicable felony-sentencing statutes and reviewed whether the trial court complied with statutory sentencing requirements. Appellate sentencing review could modify or vacate a sentence and remand when the record did not support it or the sentence was otherwise contrary to law.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Ohio
PARTIES	Jerry Comer Jr. v. State of Ohio

TOPICS

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sentencing guidelines

statutory interpretation

ineffective assistance

appellate procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether a trial court imposing consecutive felony sentences must make the required statutory findings and state the reasons supporting those findings orally at the sentencing hearing, rather than only in the sentencing journal entry.
2. Whether a trial court imposing a nonminimum sentence on a first-time felony offender must make the statutory findings on the record at the sentencing hearing.
3. Whether appellate counsel was ineffective for failing to raise these sentencing issues in Comer's initial appeal.

HOLDINGS

1. When imposing consecutive sentences, a trial court must make the statutorily enumerated findings and give the reasons supporting those findings at the sentencing hearing; a later journal entry cannot substitute for the required oral findings and reasons.
2. When imposing a nonminimum sentence on a first-time felony offender, the trial court must make the statutorily authorized findings on the record at the sentencing hearing.
3. Appellate counsel was not ineffective for failing to raise the sentencing issues because Ohio law was unsettled and the sentences were consistent with then-existing case law in the relevant appellate district.

KEY QUOTATIONS

“Thus, we hold that pursuant to R.C. 2929.14(E)(4) and 2929.19(B)(2)(c), when imposing consecutive sentences, a trial court is required to make the statutorily enumerated findings and give reasons supporting those findings at the sentencing hearing.” (468)

“Accordingly, we hold that pursuant to R.C. 2929.14(B); when imposing a nonminimum sentence on a first offender, a trial court is required to make its statutorily sanctioned findings on the record at the sentencing hearing.” (469)

FACTUAL BACKGROUND

In July 1999, a jury convicted Jerry Comer Jr. of murder and aggravated robbery arising from offenses committed in November 1997. The trial court imposed consecutive terms of fifteen years to life for murder and seven years for aggravated robbery. At the sentencing hearing, the court did not orally state the required findings or reasons; it later included findings in the sentencing journal entry. Comer was a first-time offender for purposes of the aggravated-robbery sentence.

PROCEDURAL HISTORY

A jury convicted Comer of murder and aggravated robbery, and the trial court imposed consecutive sentences, including a nonminimum sentence for aggravated robbery. The court of appeals affirmed the convictions in the

initial appeal, and the Supreme Court of Ohio denied jurisdiction. The court of appeals later granted reopening under App.R. 26(B), rejected the sentencing arguments, and certified a conflict concerning whether required sentencing findings could be supplied in the sentencing journal entry rather than orally at the sentencing hearing. The Supreme Court reversed and remanded for resentencing, while holding that appellate counsel was not ineffective because Ohio law was unsettled when the original appeal was litigated.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The appellate judgment was reversed, the consecutive sentences and the aggravated-robbery sentence were vacated, and the matter was remanded to the trial court for resentencing in compliance with the statutory findings and oral-reasons requirements.

CASES CITED

- State v. Murnahan, 63 Ohio St. 3d 60, 584 N.E.2d 1204 (1992)
- State v. Comer, 91 Ohio St. 3d 1428, 741 N.E.2d 892 (2001)
- State v. Perkins, Cuyahoga App. No. 81547, 2003-Ohio-656, 2003 WL 303090
- State v. Martin, 136 Ohio App. 3d 355, 362, 736 N.E.2d 907 (1999)
- State v. Williams, 136 Ohio App. 3d 570, 737 N.E.2d 139 (2000)
- State v. Blackman, Lucas App. No. L-01-1349, 2003-Ohio-2216, 2003 WL 2007105
- State v. Koch, Lake App. No. 97-L-142, 2001 WL 1647214 (Dec. 21, 2001)
- State v. Grider, 144 Ohio App. 3d 323, 326-327, 760 N.E.2d 40 (2001)
- State v. Zwiebel, Franklin App. No. 00AP-61, 2000 WL 1221017 (Aug. 29, 2000)
- State v. Winland, Wayne App. No. 99CA0029, 2000 WL 113052 (Jan. 26, 2000)
- State v. Riggs, Summit App. No. 19846, 2000 WL 1507914 (Oct. 11, 2000)
- State v. Boland, 147 Ohio App. 3d 151, 162, 768 N.E.2d 1250 (2002)
- State v. Edmonson, 86 Ohio St. 3d 324, 326, 715 N.E.2d 131 (1999)