

APPELLATE REVIEW DRAFT – 2-20-19

2953.08 Appeal as a matter of right - grounds.

(A) In addition to any other right to appeal and except as provided in division (D) of this section, a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed upon the defendant in the following circumstances:

(1) The sentencing court imposed only one sentence, or imposed multiple sentences and ordered the offender to serve the individual prison terms concurrently.

(2) The sentencing court imposed any prison term to be served consecutive to another prison term.

(3) An additional prison term was imposed upon the defendant pursuant to division (B)(2)(a) or (b) of section 2929.14 of the Revised Code.

(4) The sentence fails to comport with all mandatory sentencing provisions, indefinite sentencing provisions, or is not otherwise within the statutory range of prison terms for the applicable degree of felony as provided by section 2929.14 (A) of the Revised Code.

(5) The sentencing court abused its discretion in determining that the defendant's individual sentence comports with the principles and purposes of felony sentencing as set forth in section 2929.11 of the Revised Code and the seriousness and recidivism factors as set forth in section 2929.12 of the Revised Code.

(6) The sentencing court denied a timely motion for judicial release after a hearing conducted pursuant to 2929.20(D).

(B) In addition to any other right to appeal and except as provided in division (D) of this section, a prosecuting attorney, a city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general, if one of those persons prosecuted the case, may appeal as a matter of right a sentence imposed upon a defendant who is convicted of or pleads guilty to a felony or, in the circumstances described in division (B)(3) of this section the modification of a sentence imposed upon such a defendant, on any of the following grounds:

(1) The sentence did not include a prison term despite a presumption favoring a prison term for the offense for which it was imposed, as set forth in section 2929.13 or Chapter 2925. of the Revised Code.

(2) The sentence fails to comport with all mandatory sentencing provisions, indefinite sentencing provisions, or is not otherwise within the statutory range of prison terms for the applicable degree of felony as provided by section 2929.14 (A) of the Revised Code.

(3) The sentence is a modification under section 2929.20 of the Revised Code of a sentence that was imposed for a felony of the first or second degree.

APPELLATE REVIEW DRAFT – 2-20-19

(4) The sentencing court abused its discretion in determining that the defendant's individual sentence comports with the principles and purposes of felony sentencing as set forth in section 2929.11 of the Revised Code and the seriousness and recidivism factors as set forth in section 2929.12 of the Revised Code.

(C)(1) For the purposes of this section, "sentencing range(s)" means a jointly recommended range from which the parties request the judge to choose a sentence, and "sentencing cap(s)" means a joint recommendation for a maximum amount of time the parties are requesting be imposed.

A sentence or an aggregate prison term imposed upon a defendant is not subject to review under this section if the sentence or the aggregate prison term is authorized by law; has been jointly recommended or agreed to by the defendant and the prosecution in the case, including a specific sentence as well as a jointly recommended sentencing range(s) or sentencing cap(s); and the sentencing court imposes a sentence or aggregate prison term consistent with that agreement. The sentencing court's imposition of consecutive service shall not be subject to review if the aggregate prison term imposed is within the jointly recommended sentencing range or sentencing cap.

(2) A sentence imposed for murder pursuant to sections 2929.02 to 2929.06 of the Revised Code is not subject to review under this section.

(D) A defendant, prosecuting attorney, city director of law, village solicitor, or chief municipal legal officer shall file an appeal of a sentence under this section to a court of appeals within the time limits specified in the Rules of Appellate Procedure, provided that if the appeal is pursuant to division (A)(6) or (B)(3) of this section, the time limits specified in that rule shall not commence running until the court grants the motion that makes the sentence modification in question or denies a motion for judicial release at a hearing conducted pursuant to 2929.20(D). A sentence appeal under this section shall be consolidated with any other appeal in the case. If no other appeal is filed, the court of appeals may review only the portions of the trial record that pertain to sentencing.

(E) On the appeal of a sentence under this section, the record to be reviewed shall include all of the following, as applicable:

(1) Any presentence, psychiatric, or other investigative report that was submitted to the court in writing before the sentence was imposed. An appellate court that reviews a presentence investigation report prepared pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2 in connection with the appeal of a sentence under this section shall comply with division (D)(3) of section 2951.03 of the Revised Code when the appellate court is not using the presentence investigation report, and the appellate court's use of a presentence investigation report of that nature in connection with the appeal of a sentence under this section does not affect the otherwise confidential character of the contents of that report as described in division (D)(1) of section 2951.03 of the Revised Code and does not cause that report to become a public

APPELLATE REVIEW DRAFT – 2-20-19

record, as defined in section 149.43 of the Revised Code, following the appellate court's use of the report.

(2) The trial record in the case in which the sentence was imposed;

(3) Any oral or written statements made to or by the court at the sentencing hearing at which the sentence was imposed;

(4) Any written findings that the court was required to make in connection with the modification of the sentence pursuant to a judicial release under division (I) of section 2929.20 of the Revised Code.

(F)(1) If the sentencing court was required to make the findings required by division (B) or (D) of section 2929.13 or division (I) of section 2929.20 of the Revised Code, or to state the findings of the trier of fact required by division (B)(2)(e) or (C)(4) of section 2929.14 of the Revised Code, relative to the imposition or modification of the sentence or the manner in which the sentences are to be served, and if the sentencing court failed to state the required findings on the record, the court hearing an appeal under division (A) or (B) of this section shall reverse and remand the case to the sentencing court and instruct the sentencing court to state, on the record, the required findings. The failure to include any findings made at the time of sentencing in the sentencing entry shall be harmless error unless the offender can demonstrate prejudice.

(2) The court hearing an appeal under division (A) or (B) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court, under an abuse of discretion standard.

The appellate court may vacate an individual felony sentence, or the imposition of consecutive or concurrent service of multiple sentences, under the abuse of discretion standard of review and remand the matter to the sentencing court for a de novo resentencing hearing on that portion of the sentence or sentences only where the appellate court finds any of the following:

(a) That the trial court abused its discretion in making statutory findings because the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) of section 2929.14, division (C)(4) of section 2929.14 subject to the limitations in division (I) of this section, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence fails to comport with all mandatory sentencing provisions or is not authorized by any provision of the Revised Code;

(c) That the sentence is not within the statutory range of prison terms for the applicable degree of felony as provided by section 2929.14 (A) of the Revised Code;

APPELLATE REVIEW DRAFT – 2-20-19

(d) That the sentencing court abused its discretion in determining that the defendant's sentence imposed for any felony offense comports with the principles and purposes of felony sentencing as set forth in section 2929.11 of the Revised Code and the seriousness and recidivism factors as set forth in section 2929.12 of the Revised Code subject to the presumption established in division (H) of this section.

(G) On an appeal under division (A) or (B) of this section challenging the sentence imposed upon any individual felony offense, there is a rebuttable presumption that the individual sentence is consistent and proportional under R.C. 2929.11 and 2929.12 if the sentence(s) are within the authorized range for the offense or offenses and the individual sentences are imposed to be served concurrently. This presumption is rebuttable by either the defendant or the government.

(H) An appellate court hearing an appeal challenging the imposition of multiple sentences to be served consecutively under section (A) or (B), shall examine the purposes and principles from section 2929.11 and the factors from section 2929.12 of the Revised Code to determine if the trial court abused its discretion (1) by imposing consecutive service based on the trial court's reliance on the sentencing factors considered under R.C. 2929.19(B)(2)(a) or, (2) if the proponent of the sentencing challenge can demonstrate with specific references to the record, based on all the factors considered under R.C. 2929.12(B)(2)(a) being unsupported by any evidence. An appellate court shall not reverse the imposition of consecutive service based on any of the R.C. 2929.12 factors that are not offered for consideration or independently considered under R.C. 2929.19(B)(2)(a). If the appellate court determines that the sentencing court abused its discretion as stated in this subdivision, the appellate court may reverse and remand for a de novo sentencing hearing. In such a hearing, the sentencing court may consider the factors under section 2929.12 and section 2929.14(C)(4) of the revised code anew to determine whether some or all of the individual prison terms are to be served consecutively or concurrently.

(I) An appellate court hearing an appeal challenging the imposition of a single sentence or a series of sentences imposed concurrently under section (A) or (B), shall examine the purposes and principles from section 2929.11 and the factors from section 2929.12 of the Revised Code to determine if the trial court abused its discretion. The appellate court, reviewing such sentences, shall give the trial court's sentence a presumption that both the purposes and principles from section 2929.11 and the factors from section 2929.12 of the Revised Code were properly considered and applied. The appellate court shall not overturn a single or concurrent sentence within the applicable range because the trial court did not identify any of the relevant factors under section 2929.12. It is presumed that the individual sentence, or sentences, are consistent and proportional under R.C. 2929.11 and 2929.12 if the sentence(s) are within the authorized range for the offense or offenses and the individual sentences are imposed to be served concurrently. An appellate court shall only reverse such a sentence under section (A) or (B) where the appealing party can specifically delineate how the sentencing court abused its discretion in imposing such a sentence.

(J) A judgment or final order of a court of appeals under this section may be appealed, by leave of court, to the Supreme Court.

APPELLATE REVIEW DRAFT – 2-20-19

R.C. 2929.14(C)(4)

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 based on and articulated from the relevant seriousness and recidivism factors under R.C. 2929.12 and as required under 2929.19(B)(2)(a), 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:

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.

(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.

R.C. 2929.19(B) ((2) (a)

(2) Subject to division (B)(3) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

(a) Impose a stated prison term and, if the court imposes a mandatory prison term, notify the offender that the prison term is a mandatory prison term;

(b) In addition to any other information, include in the sentencing entry the name and section reference to the offense or offenses, the sentence or sentences imposed and whether the sentence or sentences contain mandatory prison terms, if sentences are imposed for multiple counts whether the sentences are to be served concurrently or consecutively, and the name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed for the specification or specifications;

(c) If a consecutive sentence or consecutive sentences are imposed, identify the relevant factors under R.C. 2929.12 that are either offered by the defendant or the prosecution or identified by the trial judge, that are determinate of the findings required under R.C. 2929.14(C)(4). The trial court is not required to identify the relevant factors under R.C. 2929.12 that weighed in favor of defaulting to concurrent service of the sentences imposed.