

**ORIGINAL**

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :  
:  
Plaintiff-Appellee, :  
:  
v. :  
:  
RANDALL L. BONNELL, JR., :  
:  
Defendant-Appellant. :

Case No. 13-0167  
On Appeal from the Delaware  
County Court of Appeals  
Fifth Appellate District  
  
Court of Appeals  
Case No. 12 CAA 03 0022

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MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT, RANDALL L. BONNELL, JR.

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**EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

“It may seem a hard task to condemn fellow creatures to long years of confinement in prison \* \* \* but it is not so hard if they clearly deserve it.”

- Thomas Mellon, *judge, entrepreneur, Mellon Bank founder, Mellon family patriarch*<sup>1</sup>

Despite a statute and a Rule of Criminal Procedure governing consecutive sentencing in Ohio—as well as persuasive authority from this Court’s decision interpreting a statute virtually identical to that in effect today—there is neither consistency nor clarity as to consecutive sentencing in Ohio. R.C. 2929.14; Crim.R. 32(A)(4); *State v. Comer*, 99 Ohio St. 3d 463, 2003-Ohio 4165, 793 N.E.2d 473. This stands in contravention to the goals of felony sentencing, namely protecting the public from future crime, punishing an offender through minimum sanctions without imposing an unneeded burden on state and local resources, and consistency in sentencing similarly situated offenders. R.C. 2929.11. Further, this confusion impedes criminal defendants’ right to meaningful appellate review of their sentences. R.C. 2953.08; *Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473, ¶ 10; *State v. Kalish*, 120 Ohio St.3d 23, 2008 Ohio 4912; 896 N.E.2d 124, ¶ 19, 26.

Approaches to consecutive sentencing in Ohio are so disparate that district courts do not disagree merely as to what the “findings” required by R.C. 2929.14 entail, but they do not even agree on where to place those findings in the record. For example, although the Eighth District demands that trial courts expressly make the

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<sup>1</sup> Thomas Mellon, *Thomas Mellon and His Times* 171 (University of Pittsburgh Press 1996)

findings required in the three-step process set forth in R.C. 2929.14, one panel held those findings “must be made on the record at sentencing” while another held “a trial court is not required to articulate and justify its findings at the sentencing hearing \* \* \* as long as it has made the required findings.” *Compare State v. Wilson*, 8th Dist. No. 97827, 2012-Ohio-4159, ¶ 13 with *State Walker*, 8th Dist. No. 97648, 2012-Ohio-4274, ¶ 83-84, 86. The Second and Fifth Appellate Districts agree with the Eighth that some express findings are required, but have not addressed where in the record those findings should be made. *State v. West*, 2nd Dist. No. 24998, 2012-Ohio-4615, ¶ 17; *State v. Bradley*, 5th Dist. No. 2012CA00011, 2012-Ohio-4787, ¶ 43-45; *State v. Nowlin*, 5th Dist. No. CT2012-0015, 2012-Ohio-4923, ¶ 71.

Meanwhile, other district courts appear satisfied if trial courts come “close enough” to making the statutorily-required findings when imposing consecutive sentences, whether at the sentencing hearing, in the entry, or when viewed jointly. *State v. Jones*, 1st Dist. No. C-110603, 2012-Ohio-1854, ¶ 22 (looking to the sentencing hearing transcript); *State v. Frasca*, 11th Dist. No. 2011-T-0108, 2012-Ohio-3746, ¶ 16-17, 58-60 (looking to the sentencing hearing transcript and judgment entry).

In contrast, the Ninth District appears willing to assume the required findings were considered—not made—if a consecutive sentence was imposed. *State v. Just*, 9th Dist. No. 12CA0002, 2012-Ohio-4094, ¶ 49 (“R.C. 2929.19(B) now only requires a court to consider the record and other pertinent information before

imposing a sentence and to include in its sentencing entry ‘whether the sentences are [concurrent or consecutive.]’”); *See also State v. Smith*, 12th Dist. No. CA-2012-01-004, 2012-Ohio-4523, ¶ 24-34 (following *Just* to hold that a sentencing entry need only impose a consecutive sentence, but noting the trial court expressly considered the required findings at sentencing). The First District has approved of “sentence-findings worksheet[s]” largely “because a trial court speaks only through its journal” and because absent the requirement for a trial court to articulate the reasons supporting its findings, there is little need for the findings or reasons to be raised at the sentencing hearing. *State v. Alexander*, 1st Dist. Nos. C-110828, C-110829, 2012-Ohio-3349, ¶ 17-19. Notably, in not one of the above-cited cases did a district court discuss Crim.R. 32(A) which states that, “[a]t the time of imposing sentence, the court shall do all of the following \* \* \* In serious offenses, state its statutory findings and give reasons supporting those findings[.]” Crim.R. 32(A)(4).

In short, there is little, if any, consistency in consecutive sentencing in Ohio. A little over nine years ago this Court resolved these issues as to the previous iterations of R.C. 2929.14 and Crim.R. 32(A)(4) in *Comer*, 99 Ohio St. 3d 463, 2003-Ohio 4165. Now it must do so again by accepting this case, or one the several cases presenting identical issues currently awaiting a jurisdictional decision from this Court. *State v. Reynolds*, 5th Dist. No. 12CA7, 2012-Ohio-5956, 2013-0135; *State v. Just*, No. 2012-1764, *State v. Gilbert*, 10th Dist. No. 12AP-142, 2013-0057.

In light of these and other considerations, this Court should accept this case to determine 1) whether R.C. 2929.14 and Crim.R. 32 require express findings made

on the record for purposes of consecutive sentencing, and (2) whether those findings must be made at the sentencing hearing, in the sentencing entry, or both.

### STATEMENT OF THE CASE AND FACTS

On four instances Randall L. Bonnell, Jr. and an accomplice broke into vending machines at two hotels. Bonnell was charged with tampering with a coin machine with a prior conviction and petty theft for each incident. For three of the incidents, he was charged with burglary of an occupied structure with another person present, a second-degree felony. He was also charged with engaging in a pattern of corrupt activity, possessing criminal tools, and obstructing official business. Bonnell pled guilty to one count of tampering with coin machines and three counts of third-degree burglary.

Bonnell had a lengthy, if relatively minor criminal history, consisting primarily of theft offenses related to vending machines. Bonnell acknowledged substance-abuse problems in court—also evidenced by previous drug possession convictions—but stated he was now “clean” and intended to remain drug-free. At sentencing Bonnell noted he was 40 years old and had a new baby to think about. He requested a drug treatment sentence from the court. The court stated that, “Going through all of the sentencing factors I can not [sic] overlook the fact that your record is atrocious. The courts have given you opportunities.” The court continued, “you’ve shown very little respect for society and the rules of society” and proceeded to sentence Bonnell to eleven months for tampering with a coin machine, and thirty months on each of the burglaries, all to be served consecutively.

Bonnell will serve almost eight-and-a-half years in prison for stealing between \$10 and \$23 from four vending machines.

On appeal, two of the three judges deemed the trial court's statements at sentencing fulfilled the requirements of R.C. 2929.14. Opinion pp. 6-7, Nov. 5, 2012. The majority did not discuss the Judgment Entry on Sentence. *Id.* The dissent discussed both the trial court's statements in open court, and the sentencing entry, noting that despite making findings related to other statutory sections in its entry, the trial court made no such findings as related to R.C. 2929.14. *Id.* at 9-10 (Hoffman, J. dissenting). Indeed, the trial court's entry did not even mention R.C. 2929.14. Judgment Entry on Sentence 1-4, Jan. 10, 2012. No court below ever discussed Crim.R. 32(A)(4) as it applies to Bonnell.

The Fifth District denied Bonnell's combined motion for reconsideration and en banc consideration on December 13, 2012. Judgment Entry, Dec. 13, 2012.

## ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

### Proposition of Law:

**A trial court must expressly make the findings required in R.C. 2929.14, give the reasons supporting those findings at the time of sentencing, and include said findings in its subsequent judgment entry.**

The statute at issue is relatively straightforward. If multiple prison terms are imposed for convictions on multiple offenses, a trial court can require consecutive sentencing. R.C. 2929.14(C)(4). To do so, a trial court must make findings related to a three-part test. *Id.*

First, the court must find consecutive sentences are needed for one of two reasons: (1) to protect the public from future crime; or (2) to punish the offender. *Id.* Second, the court must find that consecutive sentences are not disproportionate to both: (1) the seriousness of the offender's conduct; and (2) the danger the offender poses to the public. *Id.* Finally, the court must find one of the following three requirements to be true:

- the offender committed one or more of the offenses while awaiting trial, or was sanctioned pursuant to specific statutes, or was on post-release control; or,
- at least two of the offenses were committed as part of one or more courses of conduct and the harm caused by two or more of the offenses was so great or unusual that a single prison term would not properly reflect the seriousness of the conduct; or,
- the offender's criminal history demonstrates consecutive sentences are needed to protect the public from future crimes.

*Id.* The confusion throughout Ohio's trial and appellate courts is rooted in these required statutory findings.

The consecutive sentencing statute dovetails nicely with Crim.R. 32 which requires that when imposing sentence for serious offenses, the court shall "state its statutory findings and give reasons supporting those findings, if appropriate." Crim.R. 32((A)(4). It is a given that R.C. 2929.14 sets forth required "statutory findings" for the imposition of consecutive sentences as referenced in Crim.R. 32(A)(4). As such, the statutorily required findings must be made at sentencing, alongside the rule-based reasons supporting those findings.

The issue of consecutive sentencing and related findings has an extensive legal history starting with S.B. 2 in 1996, passing through this Court, being tangentially addressed by the Supreme Court of the United States (twice), and then again being addressed by this Court, which led to the legislature's inclusion and treatment of the issue in H.B. 86. *See generally State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768; *Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473. Though edifying—particularly as related to the omission of “reasons” from the statute—a recitation of that history is unnecessary given the plain language of R.C. 2929.14 and Crim.R. 32 mandating a sentencing court to make findings and give its reasons for consecutive sentences at the sentencing hearing.

In this case, the Fifth Appellate District determined the trial court's consecutive sentences in conjunction with its references to Bonnell's “atrocious” record and his “little respect for society and the rules of society” were sufficient to comply with R.C. 2929.14. Mr. Bonnell respectfully contends that the Fifth District was wrong. Viewed generously, the trial court's statements arguably address the first and third prongs of the required statutory findings. Nowhere did the trial court make any finding regarding the proportionality of consecutive sentences to the seriousness of Bonnell's conduct and the danger he posed to the public. Indeed, such findings are particularly necessary as to Bonnell, whose crimes were directed primarily at vending machines.

In Bonnell's case, as noted in the dissenting opinion, no findings were reflected in the judgment entry. Opinion pp. 9-10 (Hoffman, J. dissenting). This

raises the question of what a trial court's duty is regarding its findings and attendant reasons in a sentencing entry. This Court has repeatedly held that a court speaks through its journal. *See e.g. State v. Miller*, 127 Ohio St.3d 407, 2010-Ohio-5705, 940 N.E.2d 924, ¶ 12. Therefore, without findings recorded in a judgment entry, there are no findings, and consecutive sentences cannot be imposed. Indeed, such findings are critical to afford offenders a meaningful right to appeal.

Here, despite issuing several findings related to other statutory sections, the trial court made no consecutive sentence findings in its judgment entry. In short, the trial court failed to comply with both the governing statute and criminal rule regarding findings and reasons at sentencing, and then failed to "speak" or memorialize its scant findings through a journal entry. As such, Bonnell's due process rights were violated twice. The dearth of findings and complete omission of reasons precluded him from objecting at his sentencing hearing, and his right to meaningful appellate review was curtailed by a perfunctory judgment entry.

The Fifth District erred when it approved of the trial court's sentencing of Mr. Bonnell. In *State v. Kalish* this Court set forth a two-part test for appellate review of a trial court's sentencing decision. 120 Ohio St.3d 23, 2008 Ohio 4912; 896 N.E.2d 124, ¶ 26. First, a sentencing decision is reviewed to determine whether it is clearly and convincingly contrary to law. *Id.* Here, the trial court was not in "compliance with all applicable rules and statutes in imposing the sentence,"

therefore Bonnell's sentence is contrary to law. *Id.* This alone warrants reversal and remand for resentencing.

But the pervasive effects of a trial court's circumvention of the statutory and rule-based requirements for consecutive sentencing—and a district court's approval of such sentencing—are further highlighted when considered alongside the second part of the *Kalish* test on appellate review of sentences. A sentence is reviewed for an abuse of discretion, and the sentence must be affirmed unless it is unreasonable, arbitrary, or unconscionable. *Id.* at ¶ 19, 26. It is impossible for an appellate court to determine whether a trial court was unreasonable, arbitrary, or unconscionable when sentencing an offender to consecutive sentences, absent the required findings and reasons. A court's improper sentencing effectively insulates the sentence from meaningful appellate review, and thus greatly curtails an offender's right to appeal an unlawful sentence.

Mr. Bonnell is not requesting this Court reverse and remand for resentencing for the mere utterance of “magic” or “talismanic” words. Rather, Mr. Bonnell seeks to be sentenced in accordance with governing statutes and rules, such that he may be properly sentenced under Ohio law. In this way, the trial court's hard task of condemning Mr. Bonnell to nearly nine years of confinement will be made in the transparent manner contemplated by the state legislature. Indeed, the trial court will have occasion to determine whether—and Mr. Bonnell will actually know if—he clearly deserves such a sentence.

## CONCLUSION

This case involves substantial constitutional questions, as well as questions of public or great general interest. For all the above reasons, Mr. Bonnell respectfully requests the Court to accept jurisdiction and reverse the decision of the court of appeals.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



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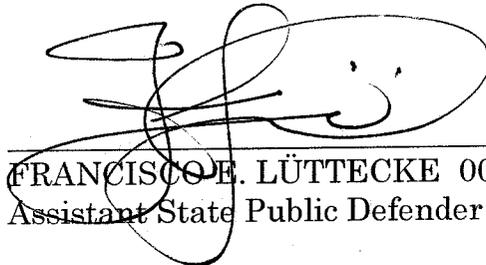
COUNSEL FOR APPELLANT,  
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing *Memorandum in Support of Jurisdiction of Appellant Randall L. Bonnell, Jr.* was sent by regular U.S. mail, postage prepaid to:

Carol Hamilton O'Brien  
Delaware County Prosecutor  
140 North Sandusky Street  
Delaware, Ohio 43015

on this 28th day of January, 2013.



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IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. _____
	:	
Plaintiff-Appellee,	:	On Appeal from the Delaware
	:	County Court of Appeals
v.	:	Fifth Appellate District
	:	
RANDALL L. BONNELL, JR.,	:	
	:	Court of Appeals
Defendant-Appellant.	:	Case No. 12 CAA 03 0022

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APPENDIX TO  
MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT, RANDALL L. BONNELL, JR.

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IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

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347

-vs-

RANDALL L. BONNELL

Defendant-Appellant

JUDGMENT ENTRY

CASE NO. 12CAA030022

JAN ANTONIOPLOS  
CLERK

2012 DEC 13 AM 11:10

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FILED

On November 9, 2012, defendant-appellant Randall L. Bonnell filed a combined motion for reconsideration and motion for en banc consideration of our November 5, 2012 decision upholding the trial court's imposition of consecutive sentences. See, *State v. Bonnell*, 5th Dist. No. 12 CAA 30022, 2012-Ohio-5150.

Under App.R. 26(A)(2)(a), if a majority of the court of appeals judges in an appellate district determine that two or more decisions of the court on which they sit are in conflict, the court "may order that an appeal or other proceeding be considered en banc." Under App.R. 26(A)(2)(b), the appellant must explain how the panel's decision conflicts with a prior panel's decision on a dispositive issue. According to the Ohio Rules of Appellate Procedure, "[c]onsideration en banc is not favored and will not be ordered unless necessary to secure or maintain uniformity of decisions within the district on an issue that is dispositive in the case in which the application is filed." App. R. 26(A)(2)(a).

Bonnell cites this Court's decisions in *State v. Williams*, 5th Dist. No. 11 CA 115, 2012-Ohio-3211, *State v. Green*, 5th Dist. No. 12-CA-17, 2012-Ohio-4362, and *State v.*



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*Bradley*, 5th Dist. No. 2012CA00011, 2012-Ohio-4787 as being in conflict with our decision in *Bonnell's* case.

In the cases cited by *Bonnell*, this court was unable to find any support in the trial court's record that the trial court had considered the findings required by R.C. 2929.14(C). Where it is not clear from the entire record that the trial court considered the factors set forth in R.C. 2929.14(C), then a remand for the trial court to articulate its reasons for imposing consecutive sentences is warranted.

There is no conflict among the decisions cited by *Bonnell*. We have consistently stated that the record must clearly demonstrate that consecutive sentences are not only appropriate, but are also clearly supported by the record. See, *State v. Fauntleroy*, 5th Dist. No. CT2012-0001, 2012-Ohio-4955. In other word, in reviewing the record we must be convinced that the trial court imposed consecutive sentences because it had found that consecutive sentences were necessary to protect the public or to punish the offender, and that they are not disproportionate to the seriousness of his conduct and the danger the offender poses to the public. In addition, in reviewing the record we must be convinced that the trial court found the offender's history of criminal conduct demonstrated that consecutive sentences were necessary to protect the public from future crime, or 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, or 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. R.C. 2929.14(C)(4).

When it is clear from the record that the trial court engaged in the appropriate analysis, little can be gained by sending the case back for the trial court to, in essence, recite the "magic" or "talismanic" words when imposing consecutive sentences. In other words, because the record supports the trial court's imposition of consecutive sentences, the trial court cannot err in imposing consecutive sentences after remand. Our review on appeal of any subsequent resentencing will be directed at looking at the entire trial court record to determine if that record supports the trial court's findings that the R.C. 2929.14(C) factors were met. This is exactly what we have done in Bonnell's case. Bonnell did not object to the imposition of consecutive sentences during the sentencing hearing and did not bring to the trial court's attention any mistake or attempt to correct any obvious errors in imposing the consecutive sentences in his case at a time when the trial court could have corrected the record.

Because there is no conflict in our decisions concerning the trial court's duty when imposing consecutive sentences, it does not represent a conflict requiring resolution through the conduct of en banc proceedings.

We now turn to Bonnell's motion for reconsideration under App.R. 26(A)(1). App. R. 26 does not provide specific guidelines to be used by an appellate court when determining whether a decision should be reconsidered or modified. In *Mathews v. Mathews*, 5 Ohio App.3d 140, 143, 450 N.E. 2d 278 218(1981), the court stated: [t]he test generally applied in [A] pp. R. 26 (A) motions] is whether the motion for reconsideration calls to the attention of the court an obvious error in its decision or

raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been." See also, *State v. Owens*, 112 Ohio App.3d 334, 678 N.E. 2d 956(11th Dist. 1996); *Erie Insurance Exchange v. Colony Development Corp.*, 136 Ohio App.3d 419, 736 N.E.2d 950(10th Dist. 2000).

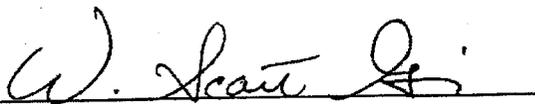
A review of appellant's motion reveals that it has not demonstrated any obvious error or pointed out any issue that was not adequately addressed in the opinion. "An Application for Reconsideration is not designed for use in instances where the parties simply disagree with the conclusions reached and logic used by an appellate court. App. R. 26 provides a mechanism by which a party may prevent miscarriages of justice that could arise when an appellate court makes an obvious error or renders an unsupportable decision under the law." *Id.* Bonnell has made no such demonstration in his application for reconsideration.

Upon a complete review of Bonnell's Motion for Reconsideration, this court finds that the issues had been thoroughly considered by this court in the original appeal. For these reasons, appellant's Motion for Reconsideration is found not well taken.

Bonnell's motion for en banc consideration is denied.

Bonnell's motion for reconsideration is denied.

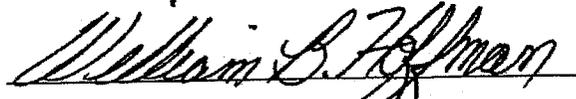
IT IS SO ORDERED.


JUDGES

*Hoffman, J., concurring*

I concur with the majority to deny both of Appellant's motions. I write separately only to note my disagreement with the majority's position regarding the sufficiency of the required findings as I stated in my dissent to the Opinion issued by this Court.

  
HON. WILLIAM B. HOFFMAN

2

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RANDALL L. BONNELL, JR.

Defendant-Appellant

37  
206

JUDGES:

Hon. W. Scott Gwin, P.J.  
Hon. William B. Hoffman, J.  
Hon. Sheila G. Farmer, J.

Case No. 12CAA030022

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Delaware County Court of  
Common Pleas, Case No. 11-CR-I-10-0542

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

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DELAWARE COUNTY, OHIO  
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CLERK



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Gwin, P. J.,

{¶1} Defendant-appellant Randall L. Bonnell, Jr. ["Bonnell"] appeals his sentence entered by the Delaware County Court of Common Pleas. Plaintiff-appellee is the state of Ohio.

*Procedural History*<sup>1</sup>

{¶2} On December 6, 2011, Bonnell entered into a negotiated plea agreement wherein he agreed to enter a plea of guilty to a fifth degree felony count of tampering with coin machines and to three counts of burglary, all third degree felonies. The tampering with coin machines charge carried a maximum penalty of twelve months imprisonment, and each count of burglary carried a sentence of up to thirty-six months in prison.

{¶3} On January 6, 2012, the trial court conducted a sentencing hearing. The court, via Judgment Entry of January 10, 2012, sentenced Bonnell to eleven months in prison for the tampering with coin machines. The court further found the three counts of burglary did not merge with the tampering count, and sentenced Bonnell to thirty months in prison for each count. The trial court ordered all four sentences to run consecutively to one another. The trial court further ordered Bonnell pay restitution in the amount of \$2,837.00.

*Assignment of Error*

{¶4} Bonnell now appeals, assigning as error:

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<sup>1</sup> A recitation of the facts is unnecessary for our disposition of this appeal.

{¶5} "I. APPELLANT'S SENTENCE WAS CONTRARY TO LAW BECAUSE THE TRIAL COURT FAILED TO MAKE THE FINDINGS REQUIRED BY R.C. 2929.14(C)(4) TO IMPOSE CONSECUTIVE SENTENCES."

{¶6} 2011 Am.Sub.H.B. No. 86, which became effective on September 30, 2011, revived the language provided in former R.C. 2929.14(E) and moved it to R.C. 2929.14(C)(4). The revisions to the felony sentencing statutes under 2011 Am.Sub.H.B. No. 86 now require a trial court to make specific findings when imposing consecutive sentences. R.C. 2929.14(C)(4) provides, in relevant part:

(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 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.

(Emphasis added). In Section 11, the legislature explained that in amending former R.C. 2929.14(E)(4), it intended "to simultaneously repeal and revive the amended language in those divisions that was invalidated and severed by the Ohio Supreme Court's decision in *State v. Foster* (2006), 109 Ohio St.3d 1." The General Assembly further explained that the amended language in those divisions "is subject to reenactment under the United States Supreme Court's decision in *Oregon v. Ice* (2009), 555 U.S. 160, and the Ohio Supreme Court's decision in *State v. Hodge* (2010), — Ohio St.3d — —, Slip Opinion No. 2010–Ohio–6320." Thus, it is the legislature's intent that courts interpret the language in R.C. 2929.14(C)(4) in the same manner as the courts did prior to *State v. Foster*, 109 Ohio St.3d 1, 2006–Ohio–856, 845 N.E.2d 470.

{¶7} The First District Court of Appeals has observed,

The consecutive-sentence findings required by R.C. 2929.14(C) are not the same as those required by former R.C. 2929.19(B)(2), which provided that the trial court "shall impose a sentence and shall make a finding that *gives its reasons* for selecting the sentence \* \* \* (c) If it imposes consecutive sentences ." (Emphasis added.) See *State v. Comer*, 99 Ohio St.3d 463, 2003–Ohio–4165, 793 N.E.2d 473, ¶ 14–16. In 2003, the Ohio Supreme Court held that the requirement that a trial court give its

reasons for selecting consecutive sentences was "separate and distinct from the duty to make the findings," and it imposed an obligation on trial courts to articulate the reasons supporting their findings at the sentencing hearing. *Id.* at ¶¶ 19–20, 793 N.E.2d 473. The trial court's obligation to "give its reasons" is now gone from the sentencing statutes. Gone with it, we hold, is the requirement that the trial court articulate and justify its findings at the sentencing hearing. A trial court is free to do so, of course. But where, as here, there is no statutory requirement that the trial court articulate its reasons, it does not commit reversible error if it fails to do so, as long as it has made the required findings. See *Phillips*, 1st Dist. No. C–960898, 1997 Ohio App. LEXIS 2615, 1997 WL 330605.

*State v. Alexander*, 1st Dist. Nos. C-110828, C-110829, 2012-Ohio-3349, ¶ 18. *Accord*, *State v. Frasca*, 11th Dist. 2011-T-0108, 2012-Ohio-3746, ¶ 57.

{¶8} The trial court is not required to recite any "magic" or "talismanic" words when imposing consecutive sentences provided it is "clear from the record that the trial court engaged in the appropriate analysis." *State v. Murrin*, 8th Dist. No. 83714, 2004–Ohio–3962, ¶ 12. *Accord*, *State v. Jones*, 1st Dist. No. C-110603, 2012-Ohio-2075, ¶ 22. An appellate court may only sustain an assignment of error challenging the imposition of consecutive sentences under R.C. 2929.14 if the appellant shows that the judgment was clearly and convincingly contrary to law. R.C. 2953.08(G).

{¶9} In the case at bar the PSI reviewed by the trial court reveals numerous theft related charges, many similar in nature to the conduct alleged in this case. The prosecutor remarked,

As I review the PSI, it appears that since the defendant turned into an adult he has received forty-four, either convictions or arrests in that time since he was eighteen...

T. Jan. 6, 2012 at 9. Although some of the charges were dismissed or merged, the trial court found that Bonnell has been to prison on five separate occasions dating back to 1994. (T., Jan. 6, 2012 at 9-10). The PSI has been made a part of the record on appeal. The report further indicates that Bonnell has violated Post Release Controls and Judicial Release in the past.

{¶10} The trial court remarked,

THE COURT: Going through all of the sentencing factors, I cannot overlook the fact your record is atrocious, the courts have given you opportunities.

\* \* \*

THE COURT: On the PSI pages 4 through 16, it's pretty clear that at this point in time you've shown very little respect for society and the rules of society. The court feels that a sentence is appropriate.

\* \* \*

The court is of the opinion that all three burglaries were separate offenses, they do not merge.

T. Jan. 6, 2012 at 14-15.

{¶11} Such findings when coupled with the trial court's acknowledgement that it has read and considered the PSI are sufficient to satisfy the factual findings requirement under R.C. 2929.19(C)(4). *Cf. State v. Jones, supra, 2012-Ohio-2075 ¶ 23* (where the

trial court stated during the sentencing hearing that it was ordering the prison terms to be served consecutively because the defendant had an extensive criminal history and the victims had been seriously injured, these statements were sufficient to show that the trial court's imposition of consecutive sentences was appropriate and complied with R.C. 2929.14(C)(4)); *State v. Johnson*, 8th Dist. No. 97579, 2012-Ohio-2508 ¶ 12 (when the court made findings related to the appellant's specific conduct in the case and his repeated engagement in criminal activity, it properly found that the sentence was not disproportionate to his conduct and threat he posed to society).

{¶12} Although the trial court in the present matter may not have used the exact wording of the statute in reaching these findings, courts have found that, in making findings regarding consecutive sentencing, "a verbatim recitation of the statutory language is not required by the trial court." *State v. Green*, 11th Dist. No. 2003-A-0089, 2005-Ohio-3268 ¶ 26, citing *State v. Grissom*, 11th Dist. No. 2001-L-107, 2002-Ohio-5154 ¶ 21. *State v. Frasca, supra*, 2012-Ohio-3746, ¶ 60.

{¶13} The entire record adequately reflects consecutive sentences were necessary to protect the public and to punish Bonnell, and that they were not disproportionate to the seriousness of his conduct and the danger he posed to the public. In addition, Bonnell's history of criminal conduct demonstrated that consecutive sentences were necessary to protect the public from future crime.

{¶14} We overrule Bonnell's sole assignment of error.

{¶15} For the reasons set forth above, the judgment of the Delaware County Court of Common Pleas is affirmed.

By: Gwin, P. J., and

Farmer, J. concur;

Hoffman J. dissents

  
\_\_\_\_\_  
HON. W. SCOTT GWIN

\_\_\_\_\_  
HON. WILLIAM B. HOFFMAN

  
\_\_\_\_\_  
HON. SHEILA G. FARMER

WSG:clw 1018

*Hoffman, J., dissenting*

{¶16} I respectfully dissent from the majority opinion. H.B. 86 revised the statutory language of R.C. 2929.14 to require the trial court to make certain statutorily enumerated factors prior to imposing consecutive sentences. H.B. 86 revives the factors previously recognized as being required by the Ohio Supreme Court in *State v. Comer* 99 Ohio St.3d 463, 2003-Ohio-4165. The revised statute however does not require the trial court to give its reasons for selecting the sentence imposed.

{¶17} At the sentencing hearing in this case, the trial court stated on the record,

{¶18} "The Court: On the PSI pages 4 through 16, it's pretty clear that at this point in time you've shown very little respect for society and the rules of society. The court feels that a sentence is appropriate.

{¶19} "As to count two, the tampering with coin machines, a felony of the fifth degree, in violation of section 2911.32(A), it will be the sentence of this court that you will serve eleven months in prison; to pay the costs of prosecution for which execution is awarded.

{¶20} "The court is of the opinion that all three burglaries were separate offenses, they do not merge. Therefore the court is going to give you a sentence on all three of those. As to count four, burglary, in violation of 2911.12(A)(3), a felony of the third degree, under house bill 86, I am limited as to what I can give you, it will be the sentence of this court that you shall serve thirty months in CRC; pay the costs of prosecution for which execution is awarded; said sentence will be served consecutive to the sentence the court imposed on count two."

{¶21} Tr. at 14-15.

{¶22} The trial court continued stating the sentences shall be served consecutive to the other sentences imposed.

{¶23} The January 10, 2012 Judgment Entry of sentence states, in pertinent part,

{¶24} "Having considered the factual background of this case, the negotiations conducted in this case, the Pre-Sentence Investigation report prepared by Adult Court Services, the Defendant's counsel's statement, the Assistant Prosecuting Attorney's statement, the Defendant's statement, and, having considered the two overriding purposes of felony sentencing set forth in Section 2929.11 of the Ohio Revised Code, and having considered the seriousness and recidivism factors set forth in Section 2929.12 of the Ohio Revised Code, which the Court considers to be advisory only, the Court makes the following FINDINGS:

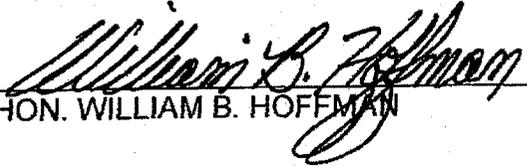
{¶25} "1. The Defendant's lengthy prison record.

{¶26} "2. A prison sentence is appropriate."

{¶27} The Judgment Entry continues in memorializing the sentence imposed by the trial court at the sentencing hearing, including the imposition of consecutive sentences.

{¶28} Although the trial court stated its findings with regard to the sentencing principles of R.C. 2929.11 and the seriousness and recidivism factors, I find this is not sufficient judicial fact-finding under the H.B. No. 86 amendments to support the imposition of consecutive sentences. Accordingly, I would vacate Appellant's sentence

and remand the matter for the limited purpose of resentencing under H.B. No. 86.

  
HON. WILLIAM B. HOFFMAN

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IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RANDALL L. BONNELL, JR.

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 12CAA030022

For the reason stated in our accompanying Opinion, the judgment of the Delaware County Court of Common Pleas is affirmed. Costs to Appellant.

*W. Scott Gwin*  
\_\_\_\_\_  
HON. W. SCOTT GWIN

\_\_\_\_\_  
HON. WILLIAM B. HOFFMAN

*Sheila G. Farmer*  
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HON. SHEILA G. FARMER

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
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IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, OHIO

THE STATE OF OHIO,

Plaintiff,

-vs-

RANDALL L. BONNELL, JR.,

Defendant.

: Case No. 11CR-I-10-0542 B

: Honorable Judge W. Duncan Whitney

: DOB: August 11, 1975

: SSN: XXX-XX-3052

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COMMON PLEAS COURT  
DELAWARE COUNTY OHIO  
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**JUDGMENT ENTRY ON SENTENCE**

This case came before the Court for Sentencing on January 6, 2012 and in conformity with the provisions of Section 2929.19 of the Ohio Revised Code. The Defendant, Randall L. Bonnell, Jr., was present in Open Court and was accompanied by his counsel, Thayne Gray, and the State of Ohio was represented by Eric C. Penkal, one of the Assistant Prosecuting Attorneys for Delaware County, Ohio. The Court then summarized all of the prior proceedings which had transpired in this case.

The Court finds that on December 6, 2011 the Defendant plead guilty to the crime of Tampering With Coin Machines, as set forth in Count Two of the Indictment, as amended, in violation of Section 2911.32(A) of the Ohio Revised Code; and guilty to the crime of Burglary, a lesser included offense of that set forth in Count Four of the Indictment, in violation of Section 2911.12(A)(3) of the Ohio Revised Code; and guilty to the crime of Burglary, a lesser included offense of that set forth in Count Seven of the Indictment, in violation of Section 2911.12(A)(3) of the Ohio Revised Code; and guilty to the crime of Burglary, a lesser included offense of that set forth in Count Ten of the Indictment, in violation of Section 2911.12(A)(3) of the Ohio Revised Code.

The Court further finds that on December 6, 2011 the Court accepted the Defendant's guilty plea and found the Defendant Guilty of the crime of Tampering With Coin Machines, as set forth in Count Two of the Indictment, as amended, in violation of Section 2911.32(A) of the Ohio Revised Code, a Felony of the Fifth Degree; and Guilty of the crime of Burglary, a lesser included offense of that set forth in Count Four of the Indictment, in violation of Section 2911.12(A)(3) of the Ohio Revised Code, a Felony of the Third Degree; and Guilty of the crime of Burglary, a lesser included offense of that set forth in Count Seven of the Indictment, in violation of Section 2911.12(A)(3) of the Ohio Revised Code, a Felony of the Third Degree; and Guilty of the crime of Burglary, a lesser included offense of that set



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forth in Count Ten of the Indictment, in violation of Section 2911.12(A)(3) of the Ohio Revised Code, a Felony of the Third Degree.

Both the Assistant Prosecutor and Attorney for Defendant acknowledged that they had read the Pre-Sentence Investigation Report prepared by Adult Court Services and were afforded the opportunity to make any corrections or additions thereto. The Assistant Prosecuting Attorney and counsel for the Defendant were afforded an opportunity to present information to the Court relevant to Imposition of Sentence in this case. The Assistant Prosecuting Attorney addressed the Court as to Sentencing in this case and counsel for the Defendant addressed the Court on behalf of the Defendant relevant to Imposition of Sentence.

The Court then inquired of the Defendant in order to determine if the Defendant had anything to say as to why Sentence should not be imposed upon him, thereby giving the Defendant an opportunity to address the Court on his own behalf. The Defendant spoke to the Court on his own behalf.

Having considered the factual background of this case, the negotiations conducted in this case, the Pre-Sentence Investigation Report prepared by Adult Court Services, the Defendant's counsel's statement, the Assistant Prosecuting Attorney's statement, the Defendant's statement, and, having considered the two overriding purposes of felony sentencing set forth in Section 2929.11 of the Ohio Revised Code, and having considered the seriousness and recidivism factors set forth in Section 2929.12 of the Ohio Revised Code, which the Court considers to be advisory only, the Court makes the following **FINDINGS**:

1. The Defendant's lengthy prison record.
2. A prison sentence is appropriate.

It was ORDERED and ADJUDGED by the Court that the Defendant, Randall L. Bonnell, Jr., as to the crime of Tampering With Coin Machines, as set forth in Count Two of the Indictment herein filed, as amended, the same being in violation of Section 2911.32(A) of the Ohio Revised Code, and being a Felony of the Fifth Degree, be imprisoned and confined at the Correctional Reception Center at Orient, Ohio, for a stated prison term of Eleven (11) months, and to pay the costs of the prosecution of this case, for which execution was awarded.

It was further ORDERED and ADJUDGED by the Court that the Defendant, Randall L. Bonnell, Jr., as to the crime of Burglary, a lesser included offense of that set forth in Count Four of the Indictment herein filed, the same being in violation of Section 2911.12(A)(3) of the Ohio Revised Code,

and being a Felony of the Third Degree, be imprisoned and confined at the Correctional Reception Center at Orient, Ohio, for a stated prison term of Thirty (30) months, said sentence to be served consecutive to the sentence imposed on Count Two;

And as to the crime of Burglary, a lesser included offense of that set forth in Count Seven of the Indictment herein filed, the same being in violation of Section 2911.12(A)(3) of the Ohio Revised Code, and being a Felony of the Third Degree, be imprisoned and confined at the Correctional Reception Center at Orient, Ohio, for a stated prison term of Thirty (30) months, said sentence to be served consecutive to the sentences imposed on Counts Two and Four;

And as to the crime of Burglary, a lesser included offense of that set forth in Count Ten of the Indictment herein filed, the same being in violation of Section 2911.12(A)(3) of the Ohio Revised Code, and being a Felony of the Third Degree, be imprisoned and confined at the Correctional Reception Center at Orient, Ohio, for a stated prison term of Thirty (30) months, said sentence to be served consecutive to the sentences imposed on Counts Two, Four, and Seven, for a total prison sentence of One Hundred One (101) months.

**The Defendant shall not be granted admittance into the Intensive Prison Program without prior approval of the Judge.**

The Defendant is hereby ORDERED to pay restitution in the amount of Two Thousand Eight Hundred Thirty-Seven Dollars (\$2,837) to the office of the Clerk of this Court. The Clerk shall distribute said restitution as follows: Twenty Dollars (\$20) to Delaware Inn Best Western, Two Thousand Six Hundred Seventeen Dollars (\$2,617) to Scioto Vending Company, and Two Hundred Dollars (\$200) to Red Roof Inn, as shown on the attached Restitution Information outline.

The Court then advised the Defendant of the provisions of Sections 2929.19(B) and 2967.28(B) of the Ohio Revised Code, as follows:

1. **As a part of this Sentence, the Parole Board may extend the stated prison term for certain violations of prison rules for up to one-half of the stated prison term.**
2. **That as a part of this Sentence, post-release control may be imposed for up to Three (3) years.**
3. **That if said Defendant violated post-release control, he could be returned to prison for up to Nine (9) months, with a maximum for repeated violations to equal fifty percent of the original stated prison term, and if the violation is a new felony, said Defendant could be both returned to prison for the remaining period of control or**

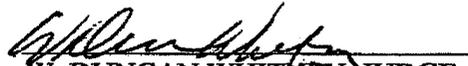
**Twelve (12) months, whichever is greater, plus receive a prison term for the new felony.**

The Court then advised the Defendant of the provisions of Sections 2929.19 and 2967.193(A)(1) of the Ohio Revised Code, as follows:

1. **A person confined in a state correctional institution may provisionally earn One (1) day or Five (5) days of credit, based on program and activity completion as set forth by the Ohio Department of Rehabilitation and Corrections, in which the person is included, toward satisfaction of the person's stated prison term for each completed month during which the person productively participates in an education program, vocational training, employment in prison industries, treatment for substance abuse, or any other constructive program developed by the department with specific standards for performance by prisoners.**
2. **The aggregate days of credit provisionally earned by a person for program or activity participation and program and activity completion under this section and the aggregate days of credit finally credited to a person under this section shall not exceed Eight percent (8%) of the total number of days in the person's stated prison term.**
3. **The Ohio Department of Rehabilitation and Corrections may deny or withdraw previously provisionally earned credit as a result of a violation of prison rules.**

Defendant was remanded to the custody of the Sheriff of Delaware County, Ohio to await transmittal to the Correctional Reception Center at Orient, Ohio, and the Clerk was ORDERED to issue a Warrant to Convey. Further, the Clerk of this Court was ORDERED to forward to the Correctional Reception Center at Orient, Ohio a certified copy of this Judgment Entry on Sentence. A copy of the Defendant's Pre-Sentence Investigation Report prepared by Adult Court Services will be made available by the Delaware County Court of Common Pleas upon request by the Correctional Reception Center. It was finally ORDERED that Bail in effect in this case be released.

Dated: January 6, 2012.

  
W. DUNCAN WHITNEY, JUDGE

cc: Eric C. Penkal, Assistant Prosecuting Attorney  
Thayne Gray, Attorney for Defendant  
Adult Court Services  
Child Support Enforcement Agency  
Correctional Reception Center, Attn: Records Office, P.O. Box 300,  
Orient, Ohio 43146

WDW/cb

State of Ohio vs. Randall L. Bonnell  
11CR-I-10-0542 B  
Restitution Information  
Total: \$2,837.00

**Delaware Inn Best Western**

Attn: Robert Reitemire  
1720 Columbus Pike  
Delaware, OH 43015

Door Repair \$20.00

**Total: \$20.00**

**Scioto Vending Company**

Attn: Ed Schroeder  
5810 Columbus Pike  
Lewis Center, OH 43035

Replace Vending Machine \$1,500.00

Cash \$117.00

Vending Machine Repair \$1,000.00

**Total: \$2,617.00**

**Red Roof Inn**

Attn: Nash Patel  
4055 Jackpot Drive  
Grove City, OH 43123

Repairs \$200.00

**Total: \$200.00**