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STATEMENT OF THE CASE AND FACTS

On October 12, 2011, the Delaware County Grand Jury indicted the Appellant Randall L. Bonnell, Jr. with numerous offenses occurring at a Red Roof Inn in August 2010 and a Best Western Hotel in November 2010, March 2011, and October 2011. Appellant and his codefendant, Raymond E. Bush, entered the vending area of a Red Roof Inn, and moved a pop machine to the side causing the rupture of the water line. As a result, the room immediately flooded. 2 Tr. 16. Given the rapidly rising water levels, Appellant and his codefendant never gained access into the machine and fled the premises. *Id.* Beginning in November 2010, Appellant and his codefendant gained access to the Best Western Hotel in Delaware, Ohio and took money from the vending machine. 2 Tr. 17. This activity was repeated on March 23, 2011 and October 3, 2011. The course of conduct ceased when Appellant and his codefendant were stopped by police while driving from the Best Western in October 2011. 2 Tr. 19.

Appellant was indicted on fourteen (14) criminal charges including: one count of Engaging in a Pattern of Corrupt Activity with Raymond E. Bush, four counts of Tampering with Coin Machines; three counts of Burglary, one count of Possession of Criminal Tools, one count of Obstruction of Official Business, and four counts of theft.

At arraignment on October 19, 2011, the Judge explained to Appellant all of the charges in the indictment returned by the Delaware County Grand Jury on October 12, 2011. For each of the fourteen (14) counts, the Judge explained the possible penalties associated with each count. Among the various charges, the Judge explained that the charge of Engaging in a Pattern of Corrupt Activity is a felony of the first degree carrying up to a possible eleven years in prison, with a presumption of prison. 1 Tr. 8. The Judge also explained that the sentences for many of

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the counts could be stacked consecutively, and that there was “no question” three separate offenses had occurred. 1 Tr. 12. Appellant entered a plea of not guilty to all counts. 1 Tr. 13.

The Court went on to note the “voluminous” nature of Appellant’s record. 1 Tr. 13. The State elaborated upon the record by highlighting 2008, 2006, and 2004 prison sentences, along with a number of drug possessions in the early 2000’s. *Id.* After establishing that Appellant’s modus operandi was to tamper with coin machines along with breaking and entering, the State pointed out that the activities alleged were of the same type of activity: breaking into an occupied hotel or other structure to obtain items. 1 Tr. 14.

On December 6, 2011, one week prior to Appellant’s scheduled jury trial, the court was tendered a written Crim.R. 11(F) Agreement. 2 Tr. 3. In the agreement, Appellant pleaded guilty to the fifth degree felony count of Tampering with Coin Machines and to three counts of Burglary, all felonies of the third degree. 2 Tr. 5. The Judge explained that the count of Tampering with Coin Machines carried a maximum penalty of twelve (12) months imprisonment, and that each of the three Burglary counts carried a sentence of up to thirty-six (36) months in prison. 2 Tr. 10. The Court informed Appellant that by changing his plea, he would be waiving most of his Constitutional rights. 2 Tr. 13. After indicating he understood this waiver, Appellant outlined the activities constituting the charged offenses and acknowledged that he and his codefendant did not have the authority to commit any of these actions. 2 Tr. 20. The Court accepted the allocution and the written Crim.R. 11(F) Agreement for these four (4) counts and signed the Nolle as to the remaining ten (10) counts of the Indictment. 2 Tr. 25.

On January 6, 2012, Appellant’s sentencing hearing commenced. The Court awarded Appellant twenty (20) days of Jail Time Credit. 3 Tr. 5. The Court also ordered restitution in the total amount of \$2,837.00. 3 Tr. 8. The State advised the Court that Appellant had a lengthy

criminal history which resulted in numerous prison and/or jail sentences. 3 Tr. 9. Based on this lengthy display of criminal activity, the State indicated that anything less than a prison sentence would demean the seriousness of the offense. *Id.* Appellant's defense counsel admitted that "there has been a long term issue between Mr. Bonnell with drugs and alcohol * * * [he] has frequently engaged in similar sorts of offenses; breaking and entering, breaking into coin machines to get relatively small amounts of money to pursue and support his drug habit." 3 Tr. 10.

Based on this information and all of the sentencing factors, the trial court was unable to overlook the "atrocious" nature of the record, belaboring that the courts had already given Appellant numerous opportunities. 3 Tr. 14. Given Appellant's lack of "respect for society and the rules of society * * * a sentence is appropriate." 3 Tr. 14. The Court sentenced Appellant to eleven (11) months in prison for Tampering with Coin Machines, a felony of the fifth degree in violation of R.C. 2911.32(A). 3 Tr. 14. The Court found the three counts of Burglary to be separate offenses which did not merge with the Tampering Count. Thereafter, the Court sentenced appellant to thirty (30) months in CRC for each count of Burglary, with all four sentences to run consecutively to one another. 3 Tr. 15.

ARGUMENT AGAINST JURISDICTION

The State of Ohio (hereinafter “Appellee”) opposes Appellant’s request for jurisdiction because discretionary jurisdiction is not warranted when applying the guidelines outlined in Rule III of the Rules of Practice of the Supreme Court of Ohio. These guidelines require an appellant to demonstrate either (1) the involvement of a substantial constitutional question; (2) the existence of a public or great general interest; or (3) in a felony case, an explanation as to why leave to appeal should be granted. S.Ct. Prac. R. III, § 1, (B)(2). Here, Appellant argues two of the above-mentioned prongs, namely that the case at bar involves public or great general interest and/or a substantial constitutional question. However, the issues presented by the Appellant are exactly the type of discretionary argument that is precluded by this Court’s Rules of Practice. Appellant argues that the trial court did not make the required findings to warrant the imposition of consecutive sentences for his Tampering with Coin Machines and Burglary convictions. Foremost, the trial court made the necessary findings pursuant to R.C. 2929.14(C)(4). The recently enacted H.B. 86 supports the trial court’s consecutive sentencing of Appellant and because the trial court made the required findings to warrant the imposition of consecutive sentences, Appellant’s argument is without merit.

The trial court made specific findings to support its decision to impose consecutive sentences and correctly included those findings in the trial record and the judgment entry. The judgment entry states that both the seriousness and recidivism factors included in R.C. 2929.14(C)(4) are applicable to the Appellant, referring to his long record of repeated offenses a factor that was addressed by the court on the record. Despite these specific findings, Appellant incorrectly argues that the trial court failed to satisfy the statutory requirements of R.C.292914(C)(4).

Appellant states that “the axiomatic rule is that a court speaks through its journal.” *State v. Miller*, 127 Ohio St. 3d 407, ¶ 12. In *Miller*, the trial court amended the original sentence to include restitution and altered the journal entry to reflect this changed sentence. *Id.* at ¶ 12. This Court held that such a modification of the journal entry by the trial court—*months* after the original sentencing—was “improper because it [did] not reflect the events that actually occurred at the sentencing hearing.” *Id.* at ¶ 15.

In contrast, there is no such instance of post-sentencing alteration of the judgment entry in the case at bar. The court here spoke clearly and consistently through its journal. The judgment entry pointed to and reflected trial court findings that the Appellant’s recidivism and continued criminal behavior warranted consecutive sentences. These findings appeared in both the trial court record and the judgment entry.

In the case at bar, both the judgment entry and the trial record are clear, consistent and unaltered in their findings. These findings indicate that consecutive sentences were considered to be necessary in order to protect the public from the Appellant’s continued criminal behavior. The record of the trial court reflects these findings consistently through its judgment entry.

The Fifth District correctly affirmed the trial court’s sentencing decision because the record included the findings necessary for consecutive sentences. When reviewing sentencing, appellate courts must first examine whether the sentence is clearly and convincingly contrary to law. *State v. Kalish*, 2008-Ohio-4912, ¶ 4. Only if it is not clearly and convincingly contrary to law may the court review the sentence under the abuse of discretion standard. *Id.*, at ¶ 4.

In *Kalish*, this Court held that when a “trial court expressly state[s] that it considered the purposes and principles of R.C. 2929.11... the sentence is not clearly and convincingly contrary to law.” *Id.*, at 26-27. Turning next to the definition of an abuse of discretion, this Court stated

finding Appellant alleges. The trial court's findings were sufficient to warrant the imposition of consecutive sentences on Appellant under the newly enacted R.C. 2929.14(C)(4).

A trial judge is not required by H.B. 86 to provide the reasons for imposing consecutive sentences. The bill methodically struck the 2929.14(C)(4) companion that would require a judge to give reasons for consecutive sentences, even though the findings themselves were revived in R.C. 2929.14(C)(4). H.B. 86 Summary: The 2011 Changes to Criminal and Juvenile Law, *Ohio Criminal Sentencing Commission*, August 2011 Draft, at 11.

The final version of the bill explicitly deleted the requirement of the former R.C. 2929.19(B)(2)(c) that the trial courts state the *reasons* underlying the finding. To comply with *Hodge*, the Senate rejected simpler language in the House-passed version of the bill in favor of the pre-existing statutory wording. *Id.* at 10. These Senate amendments deliberately remove the companion direction to judges to give reasons for consecutive sentences. *Id.* By striking R.C. 2929.19(B)(2)(c), the Senate effectively limited the value of the revived language requiring findings prior to the imposition of consecutive sentences.

2. The trial court made the required findings in order to justify imposing consecutive sentences totaling eight years and five months on Appellant.

In the case sub judice, the trial court made the necessary findings to support the consecutive-sentencing of Appellant. Pursuant to R.C. 2929.14(C)(4), the court may require a defendant to serve multiple prison terms consecutively if the court finds it “necessary to protect the public from future crime or to punish the offender and that the consecutive sentences are not disproportionate to the seriousness of the offender conduct and to the danger the offender poses to the public.” In addition to this threshold requirement, if the court finds *any* of the following three following factors to be present, consecutive-sentencing is justified under R.C. 2929.14(C)(4):

- (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, 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.

According to the Judgment Entry, the Court specifically found that given Appellant's lengthy prison record that a prison sentence was appropriate. The Judge went through all of the sentencing factors, and in doing so was unable to overlook the "atrocious" nature of Appellant's criminal record and the number of opportunities he had already been afforded by the judicial system. 3 Tr. 14. The court found it clear that Appellant had demonstrated a pattern of showing "very little respect for society and the rules of society." 3 Tr. 14. Based on these findings, a consecutive sentence was deemed necessary to protect the public from future crime or punish Appellant, and Appellant's criminal history demonstrated that consecutive sentences were necessary to protect the public from future crime.

Appellant argues that the consecutive sentence of nearly eight and a half years imprisonment is facially disproportionate to the crime committed. This argument is without merit. Fundamentally, the judge was within his sentencing discretion in imposing consecutive sentences and made Appellant fully aware that a consecutive sentence of this nature was at stake prior to accepting his plea. 2 Tr. 12. Appellant voluntarily entered into a Crim.R. 11(F) agreement with the State, resulting in the dismissal of ten (10) of the fourteen (14) charges he then faced. Notably, Appellant faced a possible sentence of three to eleven years in prison based

solely upon the first degree felony count of Engaging in a Pattern of Corrupt Activity. By entering into the Crim.R. 11(F) Agreement, Appellant presumably felt that the possible sentences he faced for the remaining four counts of the indictment were proportionate to the offenses he committed. Prior to accepting the agreement, the trial court explained that the four counts together carried a possibility of 10 years imprisonment. 2 Tr. 10. The Appellant, better than anyone else, knew his history of criminal convictions, and made a knowing, intelligent, and voluntary decision to limit his exposure at sentencing.

As such, the trial court satisfied the threshold finding of R.C. 2929.14(C)(4) that a consecutive sentence is necessary to protect the public from future crime or to punish the offender and that such sentence was not disproportionate to the seriousness of offender's conduct and the danger posed by him to the public. In compliance with the consecutive-sentencing findings requirement of R.C. 2929.14(C)(4), the trial court found that the Appellant had a "lengthy criminal history."

The offenses committed by Appellant and his history of criminal conduct together satisfy qualifications for consecutive-sentencing in R.C. 2929.14(C)(4)(c), justifying the imposition of the sentence by the trial court. Therefore, the trial court made the findings required by R.C. 2929.14(C)(4), and Appellant's consecutive-sentence was justified by these findings. As such, Appellant's assignment of error should not be well taken.

CONCLUSION

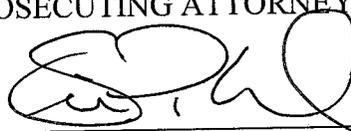
The trial court properly made the required R.C. 2929.14(C)(4) findings necessary to impose consecutive sentences on Appellant. While H.B. 86 effectively revived the statutory requirement that the trial court make certain findings before imposing consecutive sentences, the bill did not reinstate the need for the court to give reasons for those findings. Because the trial

court made the findings necessary to impose consecutive-sentences, Appellant's sentence is not contrary to law and there is not the involvement of a substantial constitutional question and/or there is not the existence of a public or great general interest in this case.

Based on the above arguments, the State of Ohio, Appellee, respectfully requests that the Appellant's request for jurisdiction be denied.

Respectfully submitted,

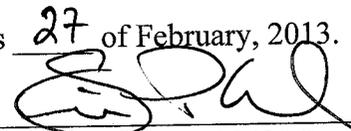
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was duly served upon Fransisco E. Luttecke, Counsel for Appellant, by U.S. mail, postage pre-paid at 250 East Broad Street Suite 1400 Columbus, Ohio 43215 on this 27 of February, 2013.



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