ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 13-0167
Plaintiff-Appellee,	:	On Appeal from the Delaware County Court of Appeals Fifth Appellate District
v.	:	
RANDALL L. BONNELL, JR.,	:	
Defendant-Appellant.	:	Court of Appeals Case No. 12 CAA 03 0022

MERIT BRIEF OF APPELLANT RANDALL L. BONNELL, JR.

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STATEMENT OF THE CASE AND FACTS

Randall L. Bonnell, Jr. was sentenced to almost a decade in prison for stealing $117 from hotel vending machines. (Change of Plea Hearing Tr. 15-19, Dec. 6, 2011; Sentencing Hearing Tr. 7-8, 15-16, Jan. 6, 2012; Judgment Entry on Sentence 5, Jan. 10, 2012). Mr. Bonnell was also ordered to pay $2,837 in restitution. (Sentencing Tr. 16).

Mr. Bonnell and an accomplice went to the Grove City Red Roof Inn to steal from the hotel's vending machine. (Plea Tr. 15). Once inside they moved a soda machine, breaking a water line that flooded the vending area. *Id.* at 15-16. Unsuccessful, they left. *Id.* at 16. Later, the two men went to the Delaware Best Western, and took $10 from a vending machine. *Id.* at 17. They returned to that Best Western twice more to take from the vending machines. *Id.* at 18-19. On their third attempt, the two made out with $23 before being arrested. *Id.* at 19.

The 14-count indictment against Mr. Bonnell charged him with engaging in a pattern of corrupt activity (F1), possession of criminal tools (F5), obstructing official business (F2), three counts of burglary (F2), four counts of theft (M1), and four counts of tampering with coin machines (F5). (Indictment 1-8, Oct. 12, 2011; Arraignment Tr. 7-11, Oct. 19, 2011).

Mr. Bonnell pleaded guilty to one count of tampering with vending machines (F5), and three count of burglary (F3). (Plea Tr. 5, 23-25). At his plea hearing, Mr. Bonnell admitted that he committed these crimes while intoxicated and "chasing a high * * * chasing drugs." *Id.* at 17, 19.

The sentencing court reviewed an updated presentence investigation report prepared by Adult Court Services. (Sentencing Tr. 3, 6). At sentencing, the State misrepresented that Mr. Bonnell had been to prison 11 times after the age of 18. *Id.* at 9. Mr. Bonnell had actually only been to prison 5 times since his 18th birthday and was 36 when he was sentenced. (Plea Tr. 3). Further, Mr. Bonnell's lengthy record was composed almost exclusively of theft-related offenses driven by his drug addiction. (Sentencing Tr. 10). Trial counsel noted the changes he witnessed in Mr. Bonnell during representation, which were driven in part by the birth of his daughter. *Id.* at 11. Counsel also highlighted that Mr. Bonnell had previously requested an opportunity to enter a drug treatment program to get help with his addiction. *Id.* at 10.

At the hearing, Mr. Bonnell admitted to struggling with addiction for over a decade. *Id.* at 12. But, to deal with his addiction, he was attending Narcotics Anonymous and Alcoholics Anonymous, and had been clean and sober for ninety-three days. *Id.* He also noted that a friend had offered him employment so that he could begin paying restitution and child support. *Id.* at 13. Again, he requested that the court sentence him to a drug treatment program. *Id.*

Before issuing its sentence, the court stated: "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. * * * 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 then

sentenced him to 11 months for tampering with a coin machine, and 30 months on each burglary, to be served consecutively to one another. *Id.* at 14-16.

The court's Judgment Entry on Sentence ("Judgment Entry") only makes two findings, both related to the purposes of felony sentencing in R.C. 2929.11: "1. The Defendant's lengthy prison record. 2. A prison sentence is appropriate." (Judgment Entry 2). The court's Entry did not cite the consecutive sentencing statute, nor did it make any related findings. *Id.* at 1-4.

Mr. Bonnell appealed, asserting his sentence was contrary to law because the court failed to make any of the findings required by R.C. 2929.14(C)(4). In a split decision, the Fifth District affirmed, finding that the trial court's pre-sentencing remarks quoted above constituted "findings" that "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)." *State v. Bonnell*, 5th Dist. No. 12CAA030022, 2012-Ohio-5150, ¶ 10-11. Concluding, the Fifth District stated:

> 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.

Id. at ¶ 13. The majority did not reference the Judgment Entry.

The dissent reviewed both the sentencing transcript and the Judgment Entry and found that: "[a]lthough 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." *Id.* at ¶ 28 (Hoffman, J., dissenting).

The Fifth District denied Bonnell's combined motion for reconsideration and en banc consideration. (Judgment Entry, Dec. 13, 2012). This appeal followed.

ARGUMENT

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.

I. Introduction

Viewed narrowly, this case is about what R.C. 2929.14(C)(4) and Crim.R. 32(A)(4) require of Ohio's trial and appellate courts. Viewed broadly, this case is about the legislature's efforts to reduce disparate sentencing through proportionality in prison sentences, to provide meaningful appellate review of those sentences, and whether Ohio's courts will partake in those efforts.

For a relatively new law, the consecutive sentencing statute before this Court today has a storied history. The issue of consecutive sentencing and a trial court's duty to make requisite findings began in 1996 with S.B. 2. Then, it passed through this Court in *State v. Comer*, and was tangentially addressed by the Supreme Court of the United States—twice—and was again addressed by this Court in *State v. Hodge*. *See generally State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768, ¶ 1-3, ¶ 10-20; *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473, ¶ 10-11.

Despite this instructive history, Ohio's trial and appellate courts are struggling with how, when, and where make the findings required by R.C. 2929.14(C)(4) and the reasons required by Crim.R. 32(A)(4). By accepting this case, this Court will provide stability and uniformity in sentencing practices, as well as protect the right to meaningful appellate review.

II. The applicable law and relevant history of consecutive sentencing.

In 1996 Am.Sub.S.B. No. 2 ("S.B. 2") took effect, representing the first major criminal law reform in Ohio since 1974. *Comer* at ¶ 10; 1996 Am.Sub.S.B. No. 2. S.B. 2 focused on truth-in-sentencing, replacing a hybrid determinate/indeterminate sentencing system with definite sentencing. *Comer* at ¶ 10; Diroll, *A Decade of Sentencing Reform: A Sentencing Commission Staff Report*, (Mar. 2007) No. 7, 11. These reforms aimed to enhance public safety, manage the prison population, simplify sentencing, and increase sentencing consistency. *A Decade of Sentencing Reform*, 11, 17. S.B. 2 has been described as a "smart-on-crime" and a "truth-in-resources" as well as a truth-in-sentencing bill. Diroll, *Prison Crowding: The Long View, with Suggestions: 2011 Monitoring Report*, (Mar. 2011), 9.

A. Opening the door to reform or Ohio's sentencing reform works.

By most rubrics, S.B. 2 was a success. Harris & Diroll, *Monitoring Sentencing Reform: A Sentencing Commission Staff Report*, (Jan. 2005) No. 6, 3, 9-53. Ohio's prison population remained static between 1997 and 2006 despite increased imprisonment for high level felony offenders. Diroll, *H.B. 86 Summary: The 2011 Changes to Criminal and Juvenile Law*, (Sept. 26, 2011), 10; *Prison Crowding*, 10,

14; *Monitoring Sentencing Reform*, 3, 11-19. Sentencing in Ohio became more consistent. *Monitoring Sentencing Reform*, 3, 11-19, 44-48. Even-handed sentencing led to a significant reduction in racial disparity at sentencing. *Id.* at 3, 19-22. The number of jury trials did not increase. *Id.* at 26. Moreover, despite the increase in the ability for meaningful sentence review, the feared onslaught of S.B. 2 appeals never happened. *Id.* at 48-52. The number of appeals actually declined. *Id.*

Among the most important reforms made in S.B. 2 was a sentencing statute requiring courts to make findings before imposing consecutive sentences, and a related statute requiring reasons for said findings. *Comer* at ¶ 10, 13-16. This Court construed those statutes in *Comer*, holding: "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 its statutory enumerated findings and give reasons supporting those findings at the sentencing hearing." *Id.*, at paragraph one of the syllabus.

B. <u>That door closes or *Foster* reverses the gains of sentencing reform.</u>

These statutes, and this Court's guidance on their application, led to many of S.B. 2's successes. But in 2006, this Court properly applied precedent from the Supreme Court of the United States and found the statutes interpreted in *Comer*—among others—were unconstitutional. *State v. Foster*, 109 Ohio St. 3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph 1 of the syllabus, ¶ 97. The statutes were severed and excised, eliminating judicial fact-finding requirements, and granting trial courts full discretion in sentencing. *Id.*, at paragraphs two and seven of the syllabus, ¶ 97, 100.

This Court suspected *Foster* would reverse S.B. 2's gains in reducing sentencing disparity and promoting uniformity, but had no choice given existing precedent. *Id.*, at ¶ 100. This Court's fears were well-founded. After *Foster*, average sentence length for inmates increased, leading to an increased prison population and overcrowding. *Prison Crowding*, 5, 14-15; *H.B. 86 Summary*, 10; Martin, *Ohio Prison Population Projections and Intake Estimates FY 2010 – FY 2018*, (July 2009), 7-9. Further, less first-time prisoners received a minimum sentence, and more offenders received a maximum prison term. *Prison Crowding*, 14.

C. And a window opens: *Hodge* and H.B. 86.

In 2009 the Supreme Court of the United States decided *Oregon v. Ice*, 555 U.S. 160, 129 S. Ct. 711, 172 L. Ed. 2d 517 (2009). This Court then revisited the consecutive sentencing findings issue in 2010, and—again—properly applied a Supreme Court of the United States' precedent. In *State v. Hodge*, this Court held that the *Foster* holding on the constitutionality of the consecutive-sentencing statutes no longer constrained the legislature's ability to require a sentencing court to make findings before sentencing a defendant. *Hodge* at ¶ 6. And although *Hodge* did not revive those provisions, the legislature could, "respond with enactment of a statutory provision in light of *Ice's* holding." *Id.*

The legislature responded swiftly. In Am.Sub.H.B. No. 86 ("H.B. 86"), it amended R.C. 2929.14(E)(4) and R.C. 2929.41(A), with the intent 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*." 2011 Am.Sub.H.B.

No. 86, Section 11. Through the passage of H.B. 86, R.C. 2929.14(E)(4) became R.C. 2929.14(C)(4), and once again, sentencing courts were required to make findings to impose consecutive sentences.

Although the legislature did not revive R.C. 2929.19(B)(2)(c), it explicitly revived the required findings needed to impose consecutive sentences in Ohio. Notably, the Senate rejected the House of Representative's language which simplified the consecutive sentencing statute. Instead, the Senate opted to revive the existing language formerly in R.C. 2929.14(E)(4) because it had been tested in Ohio's courts since 1996. *H.B. 86 Summary*, 10; *Minutes of the Ohio Criminal Sentencing Commission and the Criminal Sentencing Advisory Committee*, (Sept. 15, 2011), 2.

III. Overcoming the presumption of concurrent sentences requires on-the-record findings *and* reasons.

Mr. Bonnell asks this Court to enforce the statutes and rules governing sentencing in Ohio as written.

A. <u>If a sentencing trial court chooses to sentence an offender to consecutive sentences, it must make on-the-record findings.</u>

The confusion associated with consecutive sentencing findings is not limited to where these findings must be made, but whether they should be made at all.

When interpreting a statute, this Court's "paramount concern is the legislative intent in enacting the statute." *State v. S.R.*, 63 Ohio St.3d 590, 594, 589 N.E.2d 1319 (1992). "In determining legislative intent, the court first looks to the language in the statute and the purpose to be accomplished." *Id.*

The overriding goals of felony sentencing in Ohio are to protect the public from future crime, and to punish an offender through minimum sanctions without imposing an unneeded burden on state and local resources. R.C. 2929.11(A). Any felony sentence must reasonably achieve those two goals without demeaning the offender's conduct and its impact on the victim, and remain consistent with sentences for similarly situated offenders. It is statutorily presumed that multiple sentences are to be served concurrently. R.C. 2929.41(A).

The revived consecutive sentencing statute provides:

> 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.) R.C. 2929.14(C)(4). If a sentencing court determines it is necessary to overcome the statutory presumption for concurrent sentences, it must

make the statutory findings. These findings allow for the meaningful appellate review of a trial court's departure from the statutory presumption for concurrent sentencing, by permitting the offender and a reviewing court to analyze whether a sentence is "clearly and convincingly contrary to law." *State v. Kalish*, 120 Ohio St. 3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 26. Absent findings, offenders and appellate courts must presume that a consecutive sentence—presumptively contrary to law—is in accordance with the law. This is untenable.

Nevertheless, in this case, rather than hold the sentencing court to its statutory duties, the Fifth District effectively presumed findings were made because a consecutive sentence was given. Here, the trial court's musings on "an atrocious record" and "little respect for society" were "coupled" with the existence of a PSI to satisfy the consecutive sentencing statute. *Bonnell* at ¶ 10-11. The trial court did not make the necessary requisite findings to overcome the presumption of concurrent sentences. It just ordered consecutive sentences, hoping that the appellate court would presume findings or make its findings for it. And the Fifth District did both in the concluding paragraph of its opinion. *Id.* at ¶14.

The Fifth District is not the only court to err in this regard. Similarly, other districts have openly presumed findings were made because 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* and stating that, "the record overwhelmingly supports the finding of the third factor."). Others hold that "close enough" findings comply with the statutes. *State v. Jones*, 1st Dist. No. C-110603, 2012-Ohio-1854, ¶ 22 ("we are convinced that the trial court imposed consecutive sentences because it had found [appellate court makes findings]"); *State v. Frasca*, 11th Dist. No. 2011-T-0108, 2012-Ohio-3746, ¶ 16-17, 58-60 (parsing through the records to conclude that findings were made).

In this case, even accepting that it is the duty of counsel and the appellate courts to parse through the record and cobble together findings of their own accord, the findings were simply not made. The trial court never addressed the second step of the analysis—whether consecutive sentences were not disproportionate to the seriousness of Mr. Bonnell's conduct and the danger he posed to the public. Indeed, it is difficult to imagine that analysis took place because Mr. Bonnell is serving the better part of a decade in prison for the nonviolent property crime of stealing change from vending machines.

The trial court did not make the statutory findings required for consecutive sentencing. Accordingly, Mr. Bonnell's sentence is clearly and convincingly contrary to law.

B. <u>If a sentencing trial court chooses to sentence an offender to consecutive sentences, it must provide the reasons at the sentencing hearing.</u>

The Ohio Rules of Criminal Procedure state that, "[a]t the time of imposing sentence, the court shall * * * [i]n serious offenses, state its statutory findings and

give reasons supporting those findings if appropriate." Crim.R. 32(A)(4). The legislature may not have revived R.C. 2929.19(B)(2)(c), but the applicable criminal rules still demands the statutory findings, and reasons, be stated on-the-record, at a defendant's sentencing hearing.

At least one court has addressed Crim.R. 32(A)(4), noting that the Staff Notes to the rule cite *Comer* as the impetus to amend the rule in 2004. *State v. Wilson*, 10th Dist. No. 12AP-551, 2013-Ohio-1520, ¶ 20. In *Wilson* the Tenth District held that the revisions to H.B. 86 superseded Crim.R. 32(A)(4). This is not the case. If anything, *Foster's* severance of the relevant statutes briefly mooted Crim.R. 32(A)(4). But rather than supersede Crim.R. 32(A)(4), H.B. 86's reviving of statutory findings gives the rule new relevance and applicability. Further, Crim.R. 32 was amended in 2009, post-*Foster*, and Crim.R. 32(A)(4) remained intact. Crim.R. 32(A)(4) survives to this day, as does its procedural import.

IV. The statutory findings and accompanying reasons must be stated at the sentencing hearing *and* included in the sentencing entry.

This Court must determine where the statutory findings must be made. Otherwise, even appellate courts requiring trial courts to make statutory findings are left at a loss as to where those findings must be made. *Compare State v. Nowlin*, 5th Dist. No. CT2012-0015, 2012-Ohio-4923, ¶ 69, 71 (absent former R.C. 2929.19(B)(2) the only requirement is that the findings be made somewhere); *State v. Bradley*, 5th Dist. No. 2012CA00011, 2012-Ohio-4787, ¶ 43-45 (looking to both the hearing transcript and entry before holding findings were not made); *State v. West*, 2nd Dist. No. 24998, 2012-Ohio-4615, ¶ 16-17 (ordering de novo sentencing,

instructing trial court on required three-part analysis, but offering no instruction on where to make findings); *State v. Walker*, 8th Dist. No. 97648, 2012-Ohio-4274, ¶ 83-84, 86 (record must reflect that required analysis done and findings made); *with State v. Alexander*, 1st Dist. Nos. C-110828, C-110829, 2012-Ohio-3349, ¶ 17-19 (approving sentence-finding worksheet because trial courts speak only through their journal); *State v. Reynolds*, 5th Dist. No. 12CA7, 2012-Ohio-5956, ¶ 16-19 (affirming findings made exclusively in judgment entry); *and State v. Wilson*, 8th Dist. No. 97827, 2012-Ohio-4159, ¶ 12-13 (findings must be made explicitly, on-the-record, at sentencing hearing).

Criminal Rule 32(A)(4) dictates that sentencing courts must make, and state, their findings in open court, at the sentencing hearing. Crim.R. 32(A)(4). Practical considerations and judicial economy support this, as all interested parties are present at sentencing, where obvious errors can be corrected. *Comer* at ¶ 22. Indeed, that Crim.R. 43 requires the defendant's presence at every stage of the proceedings, including the imposition of sentence, further supports making findings with all parties present.

To the extent this Court rejects the rule-based reasons requirement, the duty to make findings is separate and distinct from the duty to give reasons. *Id.* at ¶ 19. As such, the Crim.R. 32(A)(4) requirement that statutory findings be made at the sentencing hearing, on-the-record, should remain.

Nevertheless, courts demanding that findings be made in a judgment entry find support in the law as well. It is "axiomatic" that a court speaks only through its

journal entries. *State v. Miller*, 127 Ohio St.3d 407, 2010-Ohio-5705, 940 N.E.2d 924, ¶ 12; *Andrews v. Bd. of Liquor Control*, 164 Ohio St. 275, 131 N.E.2d 390 (1955), paragraph three of the syllabus. At least one court addressing consecutive sentencing findings has held that a defendant is not sentenced until an entry is journalized. *State v. Jones*, 1st Dist. No. C-110603, 2012-Ohio-1854, ¶ 11. As a practical matter, making the findings in an entry is equally appropriate, as any impediments to a full and complete transcript are averted.

This Court should require sentencing courts to make the requisite statutory findings at both the sentencing hearing and in its judgment entry. This is what is required by rule and by the longstanding notion that a court speaks only through its journal. Most importantly, however, is that courts be required to make specific findings somewhere concrete. Absent such a dictate, an appellate court's review is reduced "to combing through the trial record in a speculative attempt to discover what factors the trial court may have relied upon in determining the length of a prison term * * * [which] is surely not the 'meaningful appellate review' that the legislature apparently intended." *State v. Martin*, 136 Ohio App. 3d 355, 361, 736 N.E.2d 907 (3rd Dist. 1999).

Here, the sentencing court did not make the required statutory findings necessary to sentence Mr. Bonnell to consecutive terms. At best, the findings made were incomplete and improperly entered. This Court must reverse the Fifth District's decision, vacate Mr. Bonnell's sentence, and remand his case to the trial court for resentencing.

CONCLUSION

Mr. Bonnell is serving consecutive sentences that are clearly and convincingly contrary to law. The sentencing court shirked its duties to make statutorily-required findings under R.C. 2929.14(C)(4) regarding his conduct. The legislative intent behind R.C. 2929.14(C)(4) was to provide an offender like Mr. Bonnell the right to a meaningful appellate review of his sentence, as well as provide uniformity and consistency to sentencing in Ohio. The trial court's refusal to make those findings, and the court of appeals' permissiveness when faced with that refusal, have stripped Mr. Bonnell of his right to an appeal and resulted in a non-violent offender serving nearly a decade in prison. This Court must reverse the judgment of the court of appeals, vacate Mr. Bonnell's sentence, and remand to the trial court for resentencing.

Respectfully submitted,

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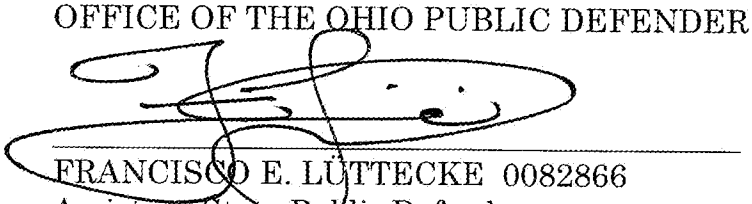

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CERTIFICATE OF SERVICE

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

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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
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APPENDIX TO
MERIT BRIEF OF APPELLANT RANDALL L. BONNELL, JR.

IN THE SUPREME COURT OF OHIO

13-0167

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

RANDALL L. BONNELL, JR.'S NOTICE OF APPEAL

OFFICE OF THE OHIO PUBLIC DEFENDER

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COUNSEL OF RECORD

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COUNSEL FOR APPELLEE

Court of Appeals
Delaware Co., Ohio
I hereby certify the within be a true copy of the original on file in this office.
Jan Antonopolos, Clerk of Courts
By PM Cline Deputy

FILED
JAN 28 2013
CLERK OF COURT
SUPREME COURT OF OHIO

COURT OF APPEALS
DELAWARE COUNTY, OHIO
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JAN ANTONOPLOS
CLERK

Notice of Appeal

Appellant Randall L. Bonnell, Jr., hereby gives notice of appeal to the Supreme Court of Ohio from the Opinion and Journal Entry of the Delaware County Court of Appeals, Fifth Appellate District, entered in Appellate Case No. 12CAA030022 on November 5, 2012.

Appellant filed a "Combined Application for Reconsideration and En Banc Consideration" on November 9, 2012. The Delaware County Court of Appeals issued a judgment entry denying both requests made in that Combined Application on December 13, 2012.

This case raises a substantial constitutional question, involves a felony, and is of public or great general interest.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

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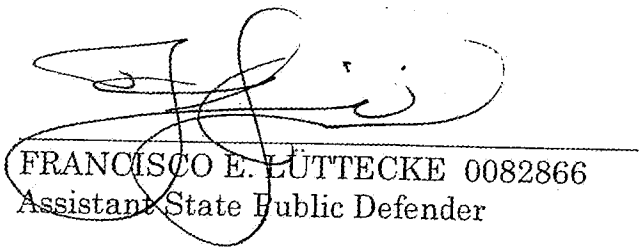
RANDALL L. BONNELL, JR.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Randall L. Bonnell Jr.'s Notice of Appeal* 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.



FRANCISCO E. LUTTECKE 0082866
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COUNSEL FOR APPELLANT,
RANDALL L. BONNELL, JR.

#386046

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

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STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
RANDALL L. BONNELL, JR.	:	
Defendant-Appellant	:	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.

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. SHEILA G. FARMER

COURT OF APPEALS
DELAWARE COUNTY, OHIO
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COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RANDALL L. BONNELL, JR.

Defendant-Appellant

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2006

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:

APPEARANCES:

For Plaintiff-Appellee

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DELAWARE COUNTY, OHIO
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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[1]

{¶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:

[1] 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

IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
RANDALL L. BONNELL Defendant-Appellant	:	CASE NO. 12CAA030022

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COURT OF APPEALS
DELAWARE COUNTY, OHIO
FILED
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JAN ANTONOPLOS
CLERK

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.

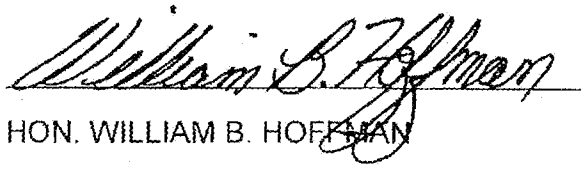
W. Scott Gwin

Julie A. Farmer

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

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, OHIO

THE STATE OF OHIO,
Plaintiff,
-vs-
RANDALL L. BONNELL, JR.,
Defendant.

575/349

Case No. 11CR-I-10-0542 B
Honorable Judge W. Duncan Whitney
DOB: August 11, 1975
SSN: XXX-XX-3052

COMMON PLEAS COURT DELAWARE COUNTY, OHIO FILED 2012 JAN 10 AM 9:53 JAN ANTONOPLOS CLERK

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

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**

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*** Rules current through rule amendments received through June 1, 2013 ***
*** Annotations current through April 8, 2013 ***

Ohio Rules Of Criminal Procedure

Ohio Crim. R 32 (2013)

Review Court Orders which may amend this Rule.

Rule 32. Sentence

(A) Imposition of sentence.

Sentence shall be imposed without unnecessary delay. Pending sentence, the court may commit the defendant or continue or alter the bail. At the time of imposing sentence, the court shall do all of the following:

(1) Afford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.

(2) Afford the prosecuting attorney an opportunity to speak;

(3) Afford the victim the rights provided by law;

(4) In serious offenses, state its statutory findings and give reasons supporting those findings, if appropriate.

(B) Notification of right to appeal.

(1) After imposing sentence in a serious offense that has gone to trial, the court shall advise the defendant that the defendant has a right to appeal the conviction.

(2) After imposing sentence in a serious offense, the court shall advise the defendant of the defendant's right, where applicable, to appeal or to seek leave to appeal the sentence imposed.

(3) If a right to appeal or a right to seek leave to appeal applies under division (B)(1) or (B)(2) of this rule, the court shall also advise the defendant of all of the following:

(a) That if the defendant is unable to pay the cost of an appeal, the defendant has the right to appeal without payment;

(b) That if the defendant is unable to obtain counsel for an appeal, counsel will be appointed without cost;

(c) That if the defendant is unable to pay the costs of documents necessary to an appeal, the documents will be provided without cost;

(d) That the defendant has a right to have a notice of appeal timely filed on his or her behalf.

Upon defendant's request, the court shall forthwith appoint counsel for appeal.

(C) Judgment.

A judgment of conviction shall set forth the plea, the verdict, or findings, upon which each conviction is based, and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall

sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.

HISTORY: Amended, eff 7-1-92; 7-1-98; 7-1-04; 7-1-09.

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*** Rules current through rule amendments received through June 1, 2013 ***
*** Annotations current through April 8, 2013 ***

Ohio Rules Of Criminal Procedure

Ohio Crim. R 43 (2013)

Review Court Orders which may amend this Rule.

Rule 43. Presence of the defendant

(A) Defendant's presence.

(1) Except as provided in Rule 10 of these rules and division (A)(2) of this rule, the defendant must be physically present at every stage of the criminal proceeding and trial, including the impaneling of the jury, the return of the verdict, and the imposition of sentence, except as otherwise provided by these rules. In all prosecutions, the defendant's voluntary absence after the trial has been commenced in the defendant's presence shall not prevent continuing the trial to and including the verdict. A corporation may appear by counsel for all purposes.

(2) Notwithstanding the provisions of division (A)(1) of this rule, in misdemeanor cases or in felony cases where a waiver has been obtained in accordance with division (A)(3) of this rule, the court may permit the presence and participation of a defendant by remote contemporaneous video for any proceeding if all of the following apply:

(a) The court gives appropriate notice to all the parties;

(b) The video arrangements allow the defendant to hear and see the proceeding;

(c) The video arrangements allow the defendant to speak, and to be seen and heard by the court and all parties;

(d) The court makes provision to allow for private communication between the defendant and counsel. The court shall inform the defendant on the record how to, at any time, communicate privately with counsel. Counsel shall be afforded the opportunity to speak to defendant privately and in person. Counsel shall be permitted to appear with defendant at the remote location if requested.

(e) The proceeding may involve sworn testimony that is subject to cross examination, if counsel is present, participates and consents.

(3) The defendant may waive, in writing or on the record, the defendant's right to be physically present under these rules with leave of court.

(B) Defendant excluded because of disruptive conduct.

Where a defendant's conduct in the courtroom is so disruptive that the hearing or trial cannot reasonably be conducted with the defendant's continued physical presence, the hearing or trial may proceed in the defendant's absence or by remote contemporaneous video, and judgment and sentence may be pronounced as if the defendant were present. Where the court determines that it may be essential to the preservation of the constitutional rights of the defendant, it may take such steps as are required for the communication of the courtroom proceedings to the defendant.

HISTORY: Amended, eff. 7-1-08.

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*** Annotations current through April 22, 2013 ***

TITLE 29: CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
PENALTIES FOR FELONY

Go to the Ohio Code Archive Directory

ORC Ann. 2929.11 (2013)

§ 2929.11. Purposes of felony sentencing; discrimination prohibited

(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

(C) A court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

HISTORY:

146 v S 2. Eff 7-1-96; 2011 HB 86, § 1, eff. Sept. 30, 2011.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
PENALTIES FOR FELONY

Go to the Ohio Code Archive Directory

ORC Ann. 2929.14 (2013)

§ 2929.14. Basic prison terms

(A) Except as provided in division (B)(1), (B)(2), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (E), (G), (H), or (J) of this section or in division (D)(6) of *section 2919.25 of the Revised Code* and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a definite prison term that shall be one of the following:

(1) For a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, ten, or eleven years.

(2) For a felony of the second degree, the prison term shall be two, three, four, five, six, seven, or eight years.

(3) (a) For a felony of the third degree that is a violation of *section 2903.06, 2903.08, 2907.03, 2907.04*, or *2907.05 of the Revised Code* or that is a violation of *section 2911.02* or *2911.12 of the Revised Code* if the offender previously has been convicted of or pleaded guilty in two or more separate proceedings to two or more violations of *section 2911.01, 2911.02, 2911.11*, or *2911.12 of the Revised Code*, the prison term shall be twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months.

(b) For a felony of the third degree that is not an offense for which division (A)(3)(a) of this section applies, the prison term shall be nine, twelve, eighteen, twenty-four, thirty, or thirty-six months.

(4) For a felony of the fourth degree, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.

(5) For a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

(B) (1) (a) Except as provided in division (B)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a specification of the type described in *section 2941.141, 2941.144*, or *2941.145 of the Revised Code*, the court shall impose on the offender one of the following prison terms:

(i) A prison term of six years if the specification is of the type described in *section 2941.144 of the Revised Code* that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony;

(ii) A prison term of three years if the specification is of the type described in *section 2941.145 of the Revised Code* that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense;

(iii) A prison term of one year if the specification is of the type described in *section 2941.141 of the Revised Code* that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the felony.

(b) If a court imposes a prison term on an offender under division (B)(1)(a) of this section, the prison term shall not be reduced pursuant to section 2967.19, section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. Except as provided in division (B)(1)(g) of this section, a court shall not impose more than one prison term on an offender under division (B)(1)(a) of this section for felonies committed as part of the same act or transaction.

(c) Except as provided in division (B)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a violation of *section 2923.161 of the Revised Code* or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type described in *section 2941.146 of the Revised Code* that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the violation of *section 2923.161 of the Revised Code* or for the other felony offense under division (A), (B)(2), or (B)(3) of this section, shall impose an additional prison term of five years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one additional prison term on an offender under division (B)(1)(c) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (B)(1)(c) of this section relative to an offense, the court also shall impose a prison term under division (B)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense.

(d) If an offender who is convicted of or pleads guilty to an offense of violence that is a felony also is convicted of or pleads guilty to a specification of the type described in *section 2941.1411 of the Revised Code* that charges the offender with wearing or carrying body armor while committing the felony offense of violence, the court shall impose on the offender a prison term of two years. The prison term so imposed, subject to divisions (C) to (I) of *section 2967.19 of the Revised Code*, shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(1)(d) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term under division (B)(1)(a) or (c) of this section, the court is not precluded from imposing an additional prison term under division (B)(1)(d) of this section.

(e) The court shall not impose any of the prison terms described in division (B)(1)(a) of this section or any of the additional prison terms described in division (B)(1)(c) of this section upon an offender for a violation of *section 2923.12* or *2923.123 of the Revised Code*. The court shall not impose any of the prison terms described in division (B)(1)(a) or (b) of this section upon an offender for a violation of section 2923.122 that involves a deadly weapon that is a firearm other than a dangerous ordnance, *section 2923.16*, or *section 2923.121 of the Revised Code*. The court shall not impose any of the prison terms described in division (B)(1)(a) of this section or any of the additional prison terms described in division (B)(1)(c) of this section upon an offender for a violation of *section 2923.13 of the Revised Code* unless all of the following apply:

(i) The offender previously has been convicted of aggravated murder, murder, or any felony of the first or second degree.

(ii) Less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.

(f) If an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1412 of the Revised Code* that charges the offender with committing the offense by discharging a firearm at a peace officer as defined in *section 2935.01 of the Revised Code* or a corrections officer, as defined in *section 2941.1412 of the Revised Code*, the court, after imposing a prison term on the offender for the felony offense under division (A), (B)(2), or (B)(3) of this section, shall impose an additional prison term of seven years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. If an offender is convicted of or pleads guilty to two or more felonies that include, as an essential element, causing or attempting to cause the death or physical harm to another

and also is convicted of or pleads guilty to a specification of the type described under division (B)(1)(f) of this section in connection with two or more of the felonies of which the offender is convicted or to which the offender pleads guilty, the sentencing court shall impose on the offender the prison term specified under division (B)(1)(f) of this section for each of two of the specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications. If a court imposes an additional prison term on an offender under division (B)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (B)(1)(a) or (c) of this section relative to the same offense.

(g) If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose on the offender the prison term specified under division (B)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

(2) (a) If division (B)(2)(b) of this section does not apply, the court may impose on an offender, in addition to the longest prison term authorized or required for the offense, an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

(i) The offender is convicted of or pleads guilty to a specification of the type described in *section 2941.149 of the Revised Code* that the offender is a repeat violent offender.

(ii) The offense of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(iii) The court imposes the longest prison term for the offense that is not life imprisonment without parole.

(iv) The court finds that the prison terms imposed pursuant to division (B)(2)(a)(iii) of this section and, if applicable, division (B)(1) or (3) of this section are inadequate to punish the offender and protect the public from future crime, because the applicable factors under *section 2929.12 of the Revised Code* indicating a greater likelihood of recidivism outweigh the applicable factors under that section indicating a lesser likelihood of recidivism.

(v) The court finds that the prison terms imposed pursuant to division (B)(2)(a)(iii) of this section and, if applicable, division (B)(1) or (3) of this section are demeaning to the seriousness of the offense, because one or more of the factors under *section 2929.12 of the Revised Code* indicating that the offender's conduct is more serious than conduct normally constituting the offense are present, and they outweigh the applicable factors under that section indicating that the offender's conduct is less serious than conduct normally constituting the offense.

(b) The court shall impose on an offender the longest prison term authorized or required for the offense and shall impose on the offender an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

(i) The offender is convicted of or pleads guilty to a specification of the type described in *section 2941.149 of the Revised Code* that the offender is a repeat violent offender.

(ii) The offender within the preceding twenty years has been convicted of or pleaded guilty to three or more offenses described in division (CC)(1) of *section 2929.01 of the Revised Code*, including all offenses described in that division of which the offender is convicted or to which the offender pleads guilty in the current prosecution and all offenses described in that division of which the offender previously has been convicted or to which the offender previously pleaded guilty, whether prosecuted together or separately.

(iii) The offense or offenses of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the

first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(c) For purposes of division (B)(2)(b) of this section, two or more offenses committed at the same time or as part of the same act or event shall be considered one offense, and that one offense shall be the offense with the greatest penalty.

(d) A sentence imposed under division (B)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20, section 2967.19, or section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. The offender shall serve an additional prison term imposed under this section consecutively to and prior to the prison term imposed for the underlying offense.

(e) When imposing a sentence pursuant to division (B)(2)(a) or (b) of this section, the court shall state its findings explaining the imposed sentence.

(3) Except when an offender commits a violation of *section 2903.01* or *2907.02 of the Revised Code* and the penalty imposed for the violation is life imprisonment or commits a violation of *section 2903.02 of the Revised Code*, if the offender commits a violation of *section 2925.03* or *2925.11 of the Revised Code* and that section classifies the offender as a major drug offender, if the offender commits a felony violation of section 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161, 4729.37, or 4729.61, division (C) or (D) of section 3719.172, division (C) of section 4729.51, or division (J) of *section 4729.54 of the Revised Code* that includes the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and the court imposing sentence upon the offender finds that the offender is guilty of a specification of the type described in *section 2941.1410 of the Revised Code* charging that the offender is a major drug offender, if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, or if the offender is guilty of an attempted violation of *section 2907.02 of the Revised Code* and, had the offender completed the violation of *section 2907.02 of the Revised Code* that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the violation of *section 2907.02 of the Revised Code*, the court shall impose upon the offender for the felony violation a mandatory prison term of the maximum prison term prescribed for a felony of the first degree that, subject to divisions (C) to (I) of *section 2967.19 of the Revised Code*, cannot be reduced pursuant to section 2929.20, section 2967.19, or any other provision of Chapter 2967. or 5120. of the Revised Code.

(4) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of *section 2929.13 of the Revised Code*, the sentencing court shall impose upon the offender a mandatory prison term in accordance with that division. In addition to the mandatory prison term, if the offender is being sentenced for a fourth degree felony OVI offense, the court, notwithstanding division (A)(4) of this section, may sentence the offender to a definite prison term of not less than six months and not more than thirty months, and if the offender is being sentenced for a third degree felony OVI offense, the sentencing court may sentence the offender to an additional prison term of any duration specified in division (A)(3) of this section. In either case, the additional prison term imposed shall be reduced by the sixty or one hundred twenty days imposed upon the offender as the mandatory prison term. The total of the additional prison term imposed under division (B)(4) of this section plus the sixty or one hundred twenty days imposed as the mandatory prison term shall equal a definite term in the range of six months to thirty months for a fourth degree felony OVI offense and shall equal one of the authorized prison terms specified in division (A)(3) of this section for a third degree felony OVI offense. If the court imposes an additional prison term under division (B)(4) of this section, the offender shall serve the additional prison term after the offender has served the mandatory prison term required for the offense. In addition to the mandatory prison term or mandatory and additional prison term imposed as described in division (B)(4) of this section, the court also may sentence the offender to a community control sanction under *section 2929.16* or *2929.17 of the Revised Code*, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of *section 2929.13 of the Revised Code* and the court imposes a mandatory term of local incarceration, the court may impose a prison term as described in division (A)(1) of that section.

(5) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of *section 2903.06 of the Revised Code* and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1414 of the Revised Code* that charges that the victim of the offense is a peace officer, as defined in *section 2935.01 of the Re-*

vised Code, or an investigator of the bureau of criminal identification and investigation, as defined in *section 2903.11 of the Revised Code*, the court shall impose on the offender a prison term of five years. If a court imposes a prison term on an offender under division (B)(5) of this section, the prison term, subject to divisions (C) to (I) of *section 2967.19 of the Revised Code*, shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(5) of this section for felonies committed as part of the same act.

(6) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of *section 2903.06 of the Revised Code* and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1415 of the Revised Code* that charges that the offender previously has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of *section 4511.19 of the Revised Code* or an equivalent offense, as defined in *section 2941.1415 of the Revised Code*, or three or more violations of any combination of those divisions and offenses, the court shall impose on the offender a prison term of three years. If a court imposes a prison term on an offender under division (B)(6) of this section, the prison term, subject to divisions (C) to (I) of *section 2967.19 of the Revised Code*, shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(6) of this section for felonies committed as part of the same act.

(7) (a) If an offender is convicted of or pleads guilty to a felony violation of section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323, or division (B)(1), (2), (3), (4), or (5) of *section 2919.22 of the Revised Code* and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1422 of the Revised Code* that charges that the offender knowingly committed the offense in furtherance of human trafficking, the court shall impose on the offender a mandatory prison term that is one of the following:

(i) If the offense is a felony of the first degree, a definite prison term of not less than five years and not greater than ten years;

(ii) If the offense is a felony of the second or third degree, a definite prison term of not less than three years and not greater than the maximum prison term allowed for the offense by division (A) of *section 2929.14 of the Revised Code*;

(iii) If the offense is a felony of the fourth or fifth degree, a definite prison term that is the maximum prison term allowed for the offense by division (A) of *section 2929.14 of the Revised Code.*

(b) Subject to divisions (C) to (I) of *section 2967.19 of the Revised Code*, the prison term imposed under division (B)(7)(a) of this section shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(7)(a) of this section for felonies committed as part of the same act, scheme, or plan.

(8) If an offender is convicted of or pleads guilty to a felony violation of *section 2903.11*, *2903.12*, or *2903.13 of the Revised Code* and also is convicted of or pleads guilty to a specification of the type described in *section 2941.1423 of the Revised Code* that charges that the victim of the violation was a woman whom the offender knew was pregnant at the time of the violation, notwithstanding the range of prison terms prescribed in division (A) of this section for felonies of the same degree as the violation, the court shall impose on the offender a mandatory prison term that is either a definite prison term of six months or one of the prison terms prescribed in *section 2929.14 of the Revised Code* for felonies of the same degree as the violation.

(C) (1) (a) Subject to division (C)(1)(b) of this section, if a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(a) of this section for having a firearm on or about the offender's person or under the offender's control while committing a felony, if a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(c) of this section for committing a felony specified in that division by discharging a firearm from a motor vehicle, or if both types of mandatory prison terms are imposed, the offender shall serve any mandatory prison term imposed under either division consecutively to any other mandatory prison term imposed under either division or under division (B)(1)(d) of this section, consecutively to and prior to any prison term imposed for the underlying felony pursuant to division (A), (B)(2), or (B)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(b) If a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(d) of this section for wearing or carrying body armor while committing an offense of violence that is a felony, the offender shall serve the mandatory term so imposed consecutively to any other mandatory prison term imposed under that division or under

division (B)(1)(a) or (c) of this section, consecutively to and prior to any prison term imposed for the underlying felony under division (A), (B)(2), or (B)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(c) If a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(f) of this section, the offender shall serve the mandatory prison term so imposed consecutively to and prior to any prison term imposed for the underlying felony under division (A), (B)(2), or (B)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(d) If a mandatory prison term is imposed upon an offender pursuant to division (B)(7) or (8) of this section, the offender shall serve the mandatory prison term so imposed consecutively to any other mandatory prison term imposed under that division or under any other provision of law and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(2) If an offender who is an inmate in a jail, prison, or other residential detention facility violates *section 2917.02*, *2917.03*, or *2921.35 of the Revised Code* or division (A)(1) or (2) of *section 2921.34 of the Revised Code*, if an offender who is under detention at a detention facility commits a felony violation of *section 2923.131 of the Revised Code*, or if an offender who is an inmate in a jail, prison, or other residential detention facility or is under detention at a detention facility commits another felony while the offender is an escapee in violation of division (A)(1) or (2) of *section 2921.34 of the Revised Code*, any prison term imposed upon the offender for one of those violations shall be served by the offender consecutively to the prison term or term of imprisonment the offender was serving when the offender committed that offense and to any other prison term previously or subsequently imposed upon the offender.

(3) If a prison term is imposed for a violation of division (B) of *section 2911.01 of the Revised Code*, a violation of division (A) of *section 2913.02 of the Revised Code* in which the stolen property is a firearm or dangerous ordnance, or a felony violation of division (B) of *section 2921.331 of the Revised Code*, the offender shall serve that prison term consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(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.

(5) If a mandatory prison term is imposed upon an offender pursuant to division (B)(5) or (6) of this section, the offender shall serve the mandatory prison term consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of *section 2903.06 of the Revised Code* pursuant to division (A) of this section or *section 2929.142 of the Revised Code*. If a mandatory prison term is imposed upon an offender pursuant to division (B)(5) of this section, and if a mandatory prison term also is imposed upon the offender pursuant to division (B)(6) of this section in relation to the same violation, the offender shall serve the mandatory prison term imposed pursuant to division (B)(5) of this section consecutively to and prior to the mandatory prison term imposed pursuant to division (B)(6) of this section and consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of *section 2903.06 of the Revised Code* pursuant to division (A) of this section or *section 2929.142 of the Revised Code*.

(6) When consecutive prison terms are imposed pursuant to division (C)(1), (2), (3), (4), or (5) or division (H)(1) or (2) of this section, the term to be served is the aggregate of all of the terms so imposed.

(D) (1) If a court imposes a prison term for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division. If a court imposes a sentence including a prison term of a type described in this division on or after July 11, 2006, the failure of a court to include a post-release control requirement in the sentence pursuant to this division does not negate, limit, or otherwise affect the mandatory period of post-release control that is required for the offender under division (B) of *section 2967.28 of the Revised Code. Section 2929.191 of the Revised Code* applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(2) If a court imposes a prison term for a felony of the third, fourth, or fifth degree that is not subject to division (D)(1) of this section, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division, if the parole board determines that a period of post-release control is necessary. *Section 2929.191 of the Revised Code* applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(E) The court shall impose sentence upon the offender in accordance with *section 2971.03 of the Revised Code*, and Chapter 2971. of the Revised Code applies regarding the prison term or term of life imprisonment without parole imposed upon the offender and the service of that term of imprisonment if any of the following apply:

(1) A person is convicted of or pleads guilty to a violent sex offense or a designated homicide, assault, or kidnapping offense, and, in relation to that offense, the offender is adjudicated a sexually violent predator.

(2) A person is convicted of or pleads guilty to a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after January 2, 2007, and either the court does not impose a sentence of life without parole when authorized pursuant to division (B) of *section 2907.02 of the Revised Code*, or division (B) of *section 2907.02 of the Revised Code* provides that the court shall not sentence the offender pursuant to *section 2971.03 of the Revised Code.*

(3) A person is convicted of or pleads guilty to attempted rape committed on or after January 2, 2007, and a specification of the type described in *section 2941.1418, 2941.1419,* or *2941.1420 of the Revised Code.*

(4) A person is convicted of or pleads guilty to a violation of *section 2905.01 of the Revised Code* committed on or after January 1, 2008, and that section requires the court to sentence the offender pursuant to *section 2971.03 of the Revised Code.*

(5) A person is convicted of or pleads guilty to aggravated murder committed on or after January 1, 2008, and division (A)(2)(b)(ii) of section 2929.022, division (A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(d) of section 2929.03, or division (A) or (B) of *section 2929.06 of the Revised Code* requires the court to sentence the offender pursuant to division (B)(3) of *section 2971.03 of the Revised Code.*

(6) A person is convicted of or pleads guilty to murder committed on or after January 1, 2008, and division (B)(2) of *section 2929.02 of the Revised Code* requires the court to sentence the offender pursuant to *section 2971.03 of the Revised Code.*

(F) If a person who has been convicted of or pleaded guilty to a felony is sentenced to a prison term or term of imprisonment under this section, sections 2929.02 to 2929.06 of the *Revised Code, section 2929.142* of the *Revised Code, section 2971.03* of the Revised Code, or any other provision of law, *section 5120.163 of the Revised Code* applies regarding the person while the person is confined in a state correctional institution.

(G) If an offender who is convicted of or pleads guilty to a felony that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in *section 2941.142 of the Revised Code* that charges the offender with having committed the felony while participating in a criminal gang, the court shall impose upon the offender an additional prison term of one, two, or three years.

(H) (1) If an offender who is convicted of or pleads guilty to aggravated murder, murder, or a felony of the first, second, or third degree that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in *section 2941.143 of the Revised Code* that charges the offender with having committed the offense in a

school safety zone or towards a person in a school safety zone, the court shall impose upon the offender an additional prison term of two years. The offender shall serve the additional two years consecutively to and prior to the prison term imposed for the underlying offense.

(2) (a) If an offender is convicted of or pleads guilty to a felony violation of *section 2907.22, 2907.24, 2907.241,* or *2907.25 of the Revised Code* and to a specification of the type described in *section 2941.1421 of the Revised Code* and if the court imposes a prison term on the offender for the felony violation, the court may impose upon the offender an additional prison term as follows:

(i) Subject to division (H)(2)(a)(ii) of this section, an additional prison term of one, two, three, four, five, or six months;

(ii) If the offender previously has been convicted of or pleaded guilty to one or more felony or misdemeanor violations of *section 2907.22, 2907.23, 2907.24, 2907.241,* or *2907.25 of the Revised Code* and also was convicted of or pleaded guilty to a specification of the type described in *section 2941.1421 of the Revised Code* regarding one or more of those violations, an additional prison term of one, two, three, four, five, six, seven, eight, nine, ten, eleven, or twelve months.

(b) In lieu of imposing an additional prison term under division (H)(2)(a) of this section, the court may directly impose on the offender a sanction that requires the offender to wear a real-time processing, continual tracking electronic monitoring device during the period of time specified by the court. The period of time specified by the court shall equal the duration of an additional prison term that the court could have imposed upon the offender under division (H)(2)(a) of this section. A sanction imposed under this division shall commence on the date specified by the court, provided that the sanction shall not commence until after the offender has served the prison term imposed for the felony violation of *section 2907.22, 2907.24, 2907.241,* or *2907.25 of the Revised Code* and any residential sanction imposed for the violation under *section 2929.16 of the Revised Code*. A sanction imposed under this division shall be considered to be a community control sanction for purposes of *section 2929.15 of the Revised Code*, and all provisions of the Revised Code that pertain to community control sanctions shall apply to a sanction imposed under this division, except to the extent that they would by their nature be clearly inapplicable. The offender shall pay all costs associated with a sanction imposed under this division, including the cost of the use of the monitoring device.

(I) At the time of sentencing, the court may recommend the offender for placement in a program of shock incarceration under *section 5120.031 of the Revised Code* or for placement in an intensive program prison under *section 5120.032 of the Revised Code*, disapprove placement of the offender in a program of shock incarceration or an intensive program prison of that nature, or make no recommendation on placement of the offender. In no case shall the department of rehabilitation and correction place the offender in a program or prison of that nature unless the department determines as specified in *section 5120.031* or *5120.032 of the Revised Code*, whichever is applicable, that the offender is eligible for the placement.

If the court disapproves placement of the offender in a program or prison of that nature, the department of rehabilitation and correction shall not place the offender in any program of shock incarceration or intensive program prison.

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison, and if the offender is subsequently placed in the recommended program or prison, the department shall notify the court of the placement and shall include with the notice a brief description of the placement.

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison and the department does not subsequently place the offender in the recommended program or prison, the department shall send a notice to the court indicating why the offender was not placed in the recommended program or prison.

If the court does not make a recommendation under this division with respect to an offender and if the department determines as specified in *section 5120.031* or *5120.032 of the Revised Code*, whichever is applicable, that the offender is eligible for placement in a program or prison of that nature, the department shall screen the offender and determine if there is an available program of shock incarceration or an intensive program prison for which the offender is suited. If there is an available program of shock incarceration or an intensive program prison for which the offender is suited, the department shall notify the court of the proposed placement of the offender as specified in *section 5120.031* or *5120.032 of the Revised Code* and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement.

(J) If a person is convicted of or pleads guilty to aggravated vehicular homicide in violation of division (A)(1) of *section 2903.06 of the Revised Code* and division (B)(2)(c) of that section applies, the person shall be sentenced pursuant to *section 2929.142 of the Revised Code.*

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 88 (Eff 9-3-96); 146 v H 445 (Eff 9-3-96); 146 v H 154 (Eff 10-4-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 151 (Eff 9-16-97); 147 v H 32 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 147 v H 2 (Eff 1-1-99); 148 v S 1 (Eff 8-6-99); 148 v H 29 (Eff 10-29-99); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v S 222 (Eff 3-22-2001); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 130. Eff 4-7-2003; 149 v S 123, § 1, eff. 1-1-04; 150 v H 12, §§ 1, 3, eff. 4-8-04*; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 137, § 1, eff. 7-11-06; 151 v H 137, § 3, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07; 151 v S 281, § 1, eff. 1-4-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v S 184, § 1, eff. 9-9-08; 152 v S 220, § 1, eff. 9-30-08; 152 v H 280, § 1, eff. 4-7-09; 152 v H 130, § 1, eff. 4-7-09; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2012 SB 337, § 1, eff. Sept. 28, 2012.

Page's Ohio Revised Code Annotated:
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*** Annotations current through April 22, 2013 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
PENALTIES FOR FELONY

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ORC Ann. 2929.19 (2013)

§ 2929.19. Sentencing hearing

(A) The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was convicted of or pleaded guilty to a felony and before resentencing an offender who was convicted of or pleaded guilty to a felony and whose case was remanded pursuant to *section 2953.07* or *2953.08 of the Revised Code*. At the hearing, the offender, the prosecuting attorney, the victim or the victim's representative in accordance with *section 2930.14 of the Revised Code*, and, with the approval of the court, any other person may present information relevant to the imposition of sentence in the case. The court shall inform the offender of the verdict of the jury or finding of the court and ask the offender whether the offender has anything to say as to why sentence should not be imposed upon the offender.

(B) (1) At the sentencing hearing, the court, before imposing sentence, shall consider the record, any information presented at the hearing by any person pursuant to division (A) of this section, and, if one was prepared, the presentence investigation report made pursuant to *section 2951.03 of the Revised Code* or *Criminal Rule 32.2*, and any victim impact statement made pursuant to *section 2947.051 of the Revised Code.*

(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) Notify the offender that the offender will be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person. This division applies with respect to all prison terms imposed for an offense of a type described in this division, including a term imposed for any such offense that is a risk reduction sentence, as defined in *section 2967.28 of the Revised Code*. If a court imposes a sentence including a prison term of a type described in division (B)(2)(c) of this section on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(2)(c) of this section that the offender will be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the mandatory period of supervision that is required for the

offender under division (B) of *section 2967.28 of the Revised Code. Section 2929.191 of the Revised Code* applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(2)(c) of this section and failed to notify the offender pursuant to division (B)(2)(c) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(d) Notify the offender that the offender may be supervised under *section 2967.28 of the Revised Code* after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to division (B)(2)(c) of this section. This division applies with respect to all prison terms imposed for an offense of a type described in this division, including a term imposed for any such offense that is a risk reduction sentence, as defined in *section 2967.28 of the Revised Code. Section 2929.191 of the Revised Code* applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(2)(d) of this section and failed to notify the offender pursuant to division (B)(2)(d) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

(e) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(2)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of *section 2967.131 of the Revised Code*, the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender. If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(2)(e) of this section that the parole board may impose a prison term as described in division (B)(2)(e) of this section for a violation of that supervision or a condition of post-release control imposed under division (B) of *section 2967.131 of the Revised Code* or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the authority of the parole board to so impose a prison term for a violation of that nature if, pursuant to division (D)(1) of *section 2967.28 of the Revised Code*, the parole board notifies the offender prior to the offender's release of the board's authority to so impose a prison term. *Section 2929.191 of the Revised Code* applies if, prior to July 11, 2006, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B)(2)(e) of this section regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

(f) Require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in *section 341.26, 753.33*, or *5120.63 of the Revised Code*, whichever is applicable to the offender who is serving a prison term, and require that the results of the drug test administered under any of those sections indicate that the offender did not ingest or was not injected with a drug of abuse.

(g) (i) Determine, notify the offender of, and include in the sentencing entry the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and by which the department of rehabilitation and correction must reduce the stated prison term under *section 2967.191 of the Revised Code*. The court's calculation shall not include the number of days, if any, that the offender previously served in the custody of the department of rehabilitation and correction arising out of the offense for which the prisoner was convicted and sentenced.

(ii) In making a determination under division (B)(2)(g)(i) of this section, the court shall consider the arguments of the parties and conduct a hearing if one is requested.

(iii) The sentencing court retains continuing jurisdiction to correct any error not previously raised at sentencing in making a determination under division (B)(2)(g)(i) of this section. The offender may, at any time after sentencing, file a motion in the sentencing court to correct any error made in making a determination under division (B)(2)(g)(i) of this section, and the court may in its discretion grant or deny that motion. If the court changes the number of days in its determination or redetermination, the court shall cause the entry granting that change to be delivered to the department of rehabilitation and correction without delay. *Sections 2931.15* and *2953.21 of the Revised Code* do not apply to a motion made under this section.

(iv) An inaccurate determination under division (B)(2)(g)(i) of this section is not grounds for setting aside the offender's conviction or sentence and does not otherwise render the sentence void or voidable.

(3) (a) The court shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, and the court shall comply with the requirements of *section 2950.03 of the Revised Code* if any of the following apply:

(i) The offender is being sentenced for a violent sex offense or designated homicide, assault, or kidnapping offense that the offender committed on or after January 1, 1997, and the offender is adjudicated a sexually violent predator in relation to that offense.

(ii) The offender is being sentenced for a sexually oriented offense that the offender committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iii) The offender is being sentenced on or after July 31, 2003, for a child-victim oriented offense, and the offender is a tier III sex offender/child-victim offender relative to that offense.

(iv) The offender is being sentenced under *section 2971.03 of the Revised Code* for a violation of division (A)(1)(b) of *section 2907.02 of the Revised Code* committed on or after January 2, 2007.

(v) The offender is sentenced to a term of life without parole under division (B) of *section 2907.02 of the Revised Code.*

(vi) The offender is being sentenced for attempted rape committed on or after January 2, 2007, and a specification of the type described in *section 2941.1418, 2941.1419,* or *2941.1420 of the Revised Code.*

(vii) The offender is being sentenced under division (B)(3)(a), (b), (c), or (d) of *section 2971.03 of the Revised Code* for an offense described in those divisions committed on or after January 1, 2008.

(b) Additionally, if any criterion set forth in divisions (B)(3)(a)(i) to (vii) of this section is satisfied, in the circumstances described in division (E) of *section 2929.14 of the Revised Code,* the court shall impose sentence on the offender as described in that division.

(4) If the sentencing court determines at the sentencing hearing that a community control sanction should be imposed and the court is not prohibited from imposing a community control sanction, the court shall impose a community control sanction. The court shall notify the offender that, if the conditions of the sanction are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to *section 2929.14 of the Revised Code.*

(5) Before imposing a financial sanction under *section 2929.18 of the Revised Code* or a fine under *section 2929.32 of the Revised Code,* the court shall consider the offender's present and future ability to pay the amount of the sanction or fine.

(6) If the sentencing court sentences the offender to a sanction of confinement pursuant to *section 2929.14* or *2929.16 of the Revised Code* that is to be served in a local detention facility, as defined in *section 2929.36 of the Revised Code,* and if the local detention facility is covered by a policy adopted pursuant to *section 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56,* or *2947.19 of the Revised Code* and *section 2929.37 of the Revised Code,* both of the following apply:

(a) The court shall specify both of the following as part of the sentence:

(i) If the offender is presented with an itemized bill pursuant to *section 2929.37 of the Revised Code* for payment of the costs of confinement, the offender is required to pay the bill in accordance with that section.

(ii) If the offender does not dispute the bill described in division (B)(6)(a)(i) of this section and does not pay the bill by the times specified in *section 2929.37 of the Revised Code,* the clerk of the court may issue a certificate of judgment against the offender as described in that section.

(b) The sentence automatically includes any certificate of judgment issued as described in division (B)(6)(a)(ii) of this section.

(7) The failure of the court to notify the offender that a prison term is a mandatory prison term pursuant to division (B)(2)(a) of this section or to include in the sentencing entry any information required by division (B)(2)(b) of this section does not affect the validity of the imposed sentence or sentences. If the sentencing court notifies the offender at the sentencing hearing that a prison term is mandatory but the sentencing entry does not specify that the prison term is mandatory, the court may complete a corrected journal entry and send copies of the corrected entry to the offender and

the department of rehabilitation and correction, or, at the request of the state, the court shall complete a corrected journal entry and send copies of the corrected entry to the offender and department of rehabilitation and correction.

(C) (1) If the offender is being sentenced for a fourth degree felony OVI offense under division (G)(1) of *section 2929.13 of the Revised Code*, the court shall impose the mandatory term of local incarceration in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of *section 2929.18 of the Revised Code*, and, in addition, may impose additional sanctions as specified in *sections 2929.15, 2929.16, 2929.17*, and *2929.18 of the Revised Code*. The court shall not impose a prison term on the offender except that the court may impose a prison term upon the offender as provided in division (A)(1) of *section 2929.13 of the Revised Code*.

(2) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of *section 2929.13 of the Revised Code*, the court shall impose the mandatory prison term in accordance with that division, shall impose a mandatory fine in accordance with division (B)(3) of *section 2929.18 of the Revised Code*, and, in addition, may impose an additional prison term as specified in *section 2929.14 of the Revised Code*. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may impose a community control sanction on the offender, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(D) The sentencing court, pursuant to division (I)(1) of *section 2929.14 of the Revised Code*, may recommend placement of the offender in a program of shock incarceration under *section 5120.031 of the Revised Code* or an intensive program prison under *section 5120.032 of the Revised Code*, disapprove placement of the offender in a program or prison of that nature, or make no recommendation. If the court recommends or disapproves placement, it shall make a finding that gives its reasons for its recommendation or disapproval.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349 (Eff 9-22-2000); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 170. Eff 9-6-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 137, § 1, eff. 7-11-06; 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v H 130, § 1, eff. 4-7-09; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2012 HB 487, § 101.01, eff. Sept. 10, 2012; 2012 SB 337, § 1, eff. Sept. 28, 2012.

Page's Ohio Revised Code Annotated:
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Current through Legislation passed by the 130th Ohio General Assembly
and filed with the Secretary of State through File 18
*** Annotations current through April 22, 2013 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
MULTIPLE SENTENCES

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ORC Ann. 2929.41 (2013)

§ 2929.41. Multiple sentences

(A) Except as provided in division (B) of this section, division (C) of section 2929.14, or division (D) or (E) of *section 2971.03 of the Revised Code*, a prison term, jail term, or sentence of imprisonment shall be served concurrently with any other prison term, jail term, or sentence of imprisonment imposed by a court of this state, another state, or the United States. Except as provided in division (B)(3) of this section, a jail term or sentence of imprisonment for misdemeanor shall be served concurrently with a prison term or sentence of imprisonment for felony served in a state or federal correctional institution.

(B) (1) A jail term or sentence of imprisonment for a misdemeanor shall be served consecutively to any other prison term, jail term, or sentence of imprisonment when the trial court specifies that it is to be served consecutively or when it is imposed for a misdemeanor violation of *section 2907.322*, *2921.34*, or *2923.131 of the Revised Code*.

When consecutive sentences are imposed for misdemeanor under this division, the term to be served is the aggregate of the consecutive terms imposed, except that the aggregate term to be served shall not exceed eighteen months.

(2) If a court of this state imposes a prison term upon the offender for the commission of a felony and a court of another state or the United States also has imposed a prison term upon the offender for the commission of a felony, the court of this state may order that the offender serve the prison term it imposes consecutively to any prison term imposed upon the offender by the court of another state or the United States.

(3) A jail term or sentence of imprisonment imposed for a misdemeanor violation of *section 4510.11*, *4510.14*, *4510.16*, *4510.21*, or *4511.19 of the Revised Code* shall be served consecutively to a prison term that is imposed for a felony violation of *section 2903.06*, *2903.07*, *2903.08*, or *4511.19 of the Revised Code* or a felony violation of *section 2903.04 of the Revised Code* involving the operation of a motor vehicle by the offender and that is served in a state correctional institution when the trial court specifies that it is to be served consecutively.

When consecutive jail terms or sentences of imprisonment and prison terms are imposed for one or more misdemeanors and one or more felonies under this division, the term to be served is the aggregate of the consecutive terms imposed, and the offender shall serve all terms imposed for a felony before serving any term imposed for a misdemeanor.

HISTORY:

134 v H 511 (Eff 1-1-74); 137 v H 202 (Eff 10-9-78); 139 v S 1 (Eff 10-19-81); 139 v S 199 (Eff 1-5-83); 140 v S 210 (Eff 7-1-83); 142 v H 51 (Eff 3-17-89); 143 v S 258 (Eff 11-20-90); 144 v H 561 (Eff 4-9-93); 145 v H 571 (Eff 10-6-94); 146 v S 2 (Eff 7-1-96); 146 v H 154 (Eff 10-4-96); 146 v H 180 (Eff 1-1-97); 148 v S 107 (Eff 3-23-2000);

148 v S 22. Eff 5-17-2000; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2012 SB 337, § 1, eff. Sept. 28, 2012.