

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,)	Case No. 2015-1093
)	
Plaintiff-Appellant,)	On Appeal from the
)	Lake County Court of Appeals,
v.)	Eleventh Appellate District
)	
WILLIAM D. SERGENT)	
)	Court of Appeals Case No. 2013-L-125
Defendant-Appellee.)	

REPLY BRIEF OF APPELLANT STATE OF OHIO

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ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW

IN THE CONTEXT OF A JOINTLY-RECOMMENDED SENTENCE, THE TRIAL COURT IS NOT REQUIRED TO MAKE CONSECUTIVE-SENTENCE FINDINGS UNDER R.C. 2929.14(C) IN ORDER FOR ITS SENTENCE TO BE AUTHORIZED BY LAW AND THUS NOT APPEALABLE.

Porterfield is controlling precedent; trial courts should not be required to make consecutive sentencing findings in the context of a jointly recommended sentence.

This Court should reaffirm its holding in *State v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, 829 N.E.2d 690: a defendant's sentence is not appealable if it is jointly recommended, imposed by a sentencing judge, and authorized by law, and the lack of consecutive sentencing findings on the record does not change whether a sentence is authorized by law.

Appellee contends that *Porterfield* is "outdated, outmoded, and against the public policy established by the legislature with regard to Ohio's current sentencing structure." (Appellee's Br. 3). Particularly, Appellee avers that at the time of *Porterfield*, the statutory scheme was different than that which exists today. (Appellee's Br. 4). But at the time that this Court decided *Porterfield*, the statutory sentencing scheme was comparable to the one in existence today. While Appellee is correct that the statutes in effect at the time of *Porterfield* required a sentencing court to make findings and to provide its reasoning in support of those findings, the current sentencing scheme requires the identical findings to

be made before the imposition of consecutive sentences. The fact that reasons are no longer required does not impact the application of *Porterfield*; for this reason, *Porterfield* should still be controlling precedent.

Appellee instead argues that *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, should be the controlling law in this case. (Appellee's Br. 4). *Bonnell* contemplated two situations: (1) when consecutive sentencing findings were made during the sentencing hearing but omitted from the judgment entry, and (2) when consecutive sentencing findings were not made at the sentencing hearing and were omitted from the judgment entry. In *Bonnell*, this Court held that "[i]n order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry." *Id.* at syllabus.

In support of his assertion that *Bonnell* should govern, Appellee submits that the question of whether a sentence is jointly recommended is irrelevant. (Appellee's Br. 3). This is simply not the case. When a sentence is jointly recommended, all parties, including the defendant himself, agree that the sentence is appropriate. As this Court explained in *Porterfield*, "the General Assembly intended a jointly recommended sentence to be protected from review precisely because the parties agreed that the sentence is appropriate. Once a defendant stipulates that a particular sentence is justified, the sentencing judge no

longer needs to independently justify the sentence." *Porterfield* at ¶ 25. If the trial court does not find that the jointly recommended sentence is appropriate, it is free to impose any sentence authorized by law, including one with consecutive sentences as long as the consecutive sentencing findings are made.

Additionally, Appellee directs this Court to the legislative intent of the current sentencing scheme for further proof that *Bonnell* should be the guiding law. He submits that:

In **Bonnell**, this Court noted the intent of the Ohio legislature in enacting the current provisions of R.C. 2929.14(C)(4) and stated that the statute was enacted "with a legislative purpose to reduce the state's prison population and to save the associated costs of incarceration by diverting certain offenders from prison and by shortening the terms of other offenders sentenced to prison." **Bonnell, supra**, at Paragraph 20.

(Appellee's Br. 6). In other words, Appellee would like this Court to find that requiring a trial court to make the consecutive sentencing findings, even in the context of joint recommendations, furthers legislative intent. To hold this would be to nullify R.C. 2953.08(D). And further to the contrary, requiring the statutory findings in cases with a joint sentencing recommendation does not ensure that defendants are not receiving overly lengthy prison terms because a trial court is free to impose any appropriate sentence and is not bound by the joint recommendation; thus, despite the joint recommendation, a trial court can impose a more lenient sentence, or even a harsher one, and make the R.C.

2929.14(C) findings. To be sure, the sentencing court is entrusted with the responsibility of imposing an appropriate and lawful sentence.

Appellee further asserts that this Court in *Bonnell* did not create an exception to the consecutive sentencing requirement for jointly recommended sentences. (Appellee's Br. 6). An exception in *Bonnell* was not necessary, however, because this Court had already decided a case on point, that being *Porterfield*. And as appellate courts have held, *Bonnell* is distinguishable from the situation in *Porterfield*, and therefore, the present situation as well:

While *Bonnell* reaffirmed that trial courts are required to make the findings mandated by R.C. 2929.14(C)(4) prior to imposing consecutive terms of imprisonment, *Bonnell* only involved a negotiated plea agreement, not an agreed sentence. *** . Thus, *Bonnell* is factually distinguishable and does not control the outcome of the present case.

State v. Pulliam, 4th Dist. Scioto No. 14CA3609, 2015-Ohio-759, at ¶ 10. And the present case is factually distinguishable from the situation contemplated by *Bonnell*; here, no findings were made at the hearing, yet the consecutive sentencing findings were included in the sentencing judgment entry. Therefore, *Bonnell* is not controlling precedent in the instant case.

Finally, Appellee suggests that the trial court felt that the statutory findings were necessary in this case: "In the case at bar, the Trial Court clearly recognized the necessity of making the findings in question, as the Trial Judge included those findings in its

Sentencing Entry.” (Appellee’s Br. 5). He is mistaken; the inclusion of the findings in the judgment entry was a clerical error made by the State while preparing the judgment entry and acknowledged by the State in the court below, not an indication of the trial court’s state of mind regarding consecutive sentencing findings.

Accordingly, for the above reasons, this Court should reject Appellee’s arguments regarding *Bonnell* and hold that *Porterfield* remains good law and is controlling precedent for the issue now before this Court.

CONCLUSION

For the reasons discussed above, the State respectfully requests that this Honorable Court hold that *State v. Porterfield* is controlling, and thus, in the context of a jointly recommended sentence, a trial court is not required to make consecutive sentencing findings under R.C. 2929.14(C) in order for its sentence to be authorized by law and not appealable.

Respectfully submitted,

By: Charles E. Coulson, Prosecuting Attorney

By: /s/ Teri R. Daniel
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COUNSEL FOR APPELLANT
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PROOF OF SERVICE

A copy of the foregoing Reply Brief of Appellant, State of Ohio, was sent by regular U.S. Mail, postage prepaid, to counsel for the Appellee, Michael A. Partlow, Esquire, 112 South Water Street, Suite C, Kent, OH 44240, and, pursuant to S.Ct.R. XIV, Section 2, the Ohio Public Defender, Timothy Young, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, on this 11th day of January, 2016.

/s Teri R. Daniel
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TRD/klb