

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William Hoffman, P.J.
	:	Hon. Sheila Farmer, J.
Plaintiff-Appellee	:	Hon. Julie Edwards, J.
	:	
-vs-	:	
	:	Case No. 02CA-A-07-037
BERNARD WILLIS	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal Appeal from Delaware County Court of Common Pleas Case 02-CR-I-03-158

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: April 22, 2003

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Edwards, J.

{¶1} Defendant-appellant Bernard Willis appeals his July 2, 2002, conviction and sentence in the Delaware County Court of Common Pleas on two counts of aggravated robbery, without firearm specifications, in violation of R. C. 2911.01(A)(1). Plaintiff-appellee is the State of Ohio.

#### STATEMENT OF THE FACTS AND CASE

{¶2} On March 26, 2002, appellant was indicted on two counts of aggravated robbery, in violation of R. C. 2911.01(A)(1), with firearm specifications, and two counts of theft, in violation of R. C. 2913.02(A)(5). Upon arraignment, appellant entered a plea of not guilty to all charges. Subsequently, on May 29, 2002, appellant entered *Alford* pleas of guilty to the two counts of aggravated robbery, without firearm specifications. The firearm specifications and the two counts of theft were dismissed.

{¶3} A sentencing hearing was conducted on July 1, 2002. By Judgment Entry filed July 2, 2002, the trial court sentenced appellant to seven years of incarceration on each count of aggravated robbery. The trial court ordered that the sentences be served consecutively.

{¶4} It is from the July 2, 2002, Judgment Entry that appellant appeals, raising the following assignments of error:

{¶5} “I. THE TRIAL COURT ERRED IN SENTENCING DEFENDANT TO SERVE SEVEN YEARS ON EACH COUNT.

{¶6} “II. THE TRIAL COURT ERRED IN SENTENCING DEFENDANT TO SERVE CONSECUTIVE SEVEN (7) YEAR TERMS ON THE TWO COUNTS.”

I

{¶7} In the first assignment of error, appellant argues that the trial court erred when it sentenced appellant to more than the shortest term of imprisonment and failed to

make the findings required to impose such a sentence. We disagree.

{¶8} Appellant was sentenced on two felonies of the first degree. For a felony of the first degree, the sentencing court may choose among the following terms of imprisonment: “three, four, five, six, seven, eight, nine or ten years.” R.C. 2929.14(A)(1). In this case, the trial court chose seven years for each felony of the first degree.

{¶9} Revised Code 2929.14(B) states that if the defendant has not previously served a prison term, a sentencing court should impose the shortest prison term authorized unless the sentencing court makes certain findings on the record. See R.C. 2929.14(B)(2). However, R.C. 2929.14 does not require the trial court to make any specific findings before imposing more than the shortest prison term if the defendant had previously served a prison term. Appellant has previously served a prison sentence. Therefore, that the trial court was not required to make specific findings to sentence appellant to more than the shortest possible sentence.

{¶10} Appellant’s first assignment of error is overruled.

## II

{¶11} In the second assignment of error, appellant argues that the trial court erred when it sentenced appellant to consecutive sentences. However, appellant’s arguments are not entirely clear. Appellant first states that appellant’s aggregate sentence of 14 years exceeds the maximum sentence for either of the individual offenses. This may be an attempt to appeal appellant’s consecutive sentences pursuant to R.C. 2953.08(C). Revised Code 2953.08(C) states the following: “In addition to the right to appeal a sentence granted under division (A) or (B) of this section, a defendant who is convicted of or pleads guilty to a felony may seek leave to appeal a sentence imposed upon the defendant on the basis that the sentencing judge has imposed consecutive sentences . . . and that the consecutive sentences exceed the maximum prison term allowed . . . for the

most serious offense of which the defendant was convicted.”

{¶12} However, an appeal pursuant to R.C. 2953.08(C) requires leave of this court and appellant did not seek leave. Therefore, this court is without jurisdiction to consider any argument appellant may be presenting pursuant to R.C. 2953.08(C).

{¶13} However, appellant next asserts that the sentences were contrary to law because the trial court failed to make the requisite statutory findings to impose consecutive sentences. Pursuant to R.C. 2953.08(A)(4), a defendant may appeal as a matter of right if the sentence is contrary to law. R.C. 2953.08(A)(4). No leave of court is necessary to bring an appeal pursuant to R.C. 2953.08(A)(4). Therefore, we will consider appellant’s argument that the sentences were contrary to law.

{¶14} Revised Code 2929.14(E)(4) states as follows:

{¶15} “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:

{¶16} “(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.

{¶17} “(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.

{¶18} “(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.”

{¶19} Revised Code 2929.19(B)(2)(c) further requires that a trial court state its reasons for imposing consecutive sentences.

{¶20} In this case, the trial court stated in its Sentencing Entry that consecutive sentences were imposed as “being necessary to fulfill the purposes of R. C. 2929.11, and not disproportionate to the seriousness of the offender’s conduct or the danger the offender poses and the Court FURTHER FINDS that the Defendant’s criminal history requires consecutive sentences.” Judgment Entry, July 2, 2002. At the sentencing hearing, the trial court stated that the sentences were to be served consecutively because it was “necessary to fulfill the purposes of 2929.11, not disproportionate to the seriousness of your conduct of [sic] the danger you posed and, certainly, your criminal history requires consecutive sentences.”<sup>1</sup>

{¶21} A review of the trial court’s findings reveals that the trial court made each of the required findings and stated its reasons for imposing consecutive sentences. First, while the trial court did not expressly state that “consecutive service is necessary to protect the public from future crime or to punish the offender”, the trial court made this finding when it found that consecutive sentences were necessary to fulfill the purposes of R.C. 2929.11. Revised Code 2929.11 states that the overriding purposes of felony sentencing is to protect the public from future crime and to punish the offender. Thus, the trial court found that consecutive sentences were necessary to protect the public from future crime and punish the offender.

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<sup>1</sup> Prior to imposing consecutive sentences, the trial court noted appellant’s three prior convictions for robbery and multiple misdemeanor convictions.

{¶22} Second, the trial court explicitly found that the consecutive sentences were not disproportionate to the seriousness of the offender's conduct or the danger appellant poses. Thus, the second of the requirements was met.

{¶23} Third, the trial court found that appellant's history of criminal conduct demonstrated that consecutive sentences were necessary to protect the public from future crime by appellant when it found that appellant's criminal history required consecutive sentences.

{¶24} Lastly, we find that the trial court's reference to appellant's prior criminal history was a sufficient statement of its reasons for imposing consecutive sentences.

{¶25} Therefore, we find that the trial court made all of the requisite findings to impose consecutive sentences and stated its reasons for doing so. Appellant's second assignment of error is overruled.

{¶26} The judgment of the Delaware County Court of Common Pleas is affirmed.

By Edwards, J.

Hoffman, P.J. and

Farmer, J. concur

In Re: Agg. Robbery - Sentencing