

[Cite as *State v. Bizon*, 2015-Ohio-2400.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 102094

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**PETER BIZON**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
REVERSED AND REMANDED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-13-580973-A

**BEFORE:** Boyle, J., Kilbane, P.J., and McCormack, J.

**RELEASED AND JOURNALIZED:** June 18, 2015

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MARY J. BOYLE, J.:

{¶1} Defendant-appellant, Peter Bizon, appeals his sentence, arguing in his sole assignment of error that “[t]he trial court erred in imposing maximum, consecutive sentences without making the findings required by [R.C. 2929.14(C)(4)].” We agree, vacate his sentence, and reverse and remand.

#### Procedural History and Factual Background

{¶2} In February 2014, Bizon was indicted on 24 counts of gross sexual imposition and 20 counts of kidnapping. The gross sexual imposition charges carried sexually violent predator specifications, and the kidnapping charges carried sexually violent predator and sexual motivation specifications. The charges arose after four victims (born in 1995, 1997, 1998, and 2005) came forward, alleging that Bizon molested them over a period of 12 years. The victims were members of Bizon’s family.

{¶3} In June 2014, Bizon pleaded guilty to an amended indictment of 17 counts of gross sexual imposition in violation of R.C. 2907.05(A)(4), felonies of the third degree. The specifications were deleted from the gross sexual imposition counts, and the remaining charges were nolle.

{¶4} The trial court sentenced Bizon to five years for each count of gross sexual imposition. The trial court ordered that the first count regarding each victim be served consecutive to one another, but that the remaining counts be served concurrent to each other, for a total of 20 years in prison. The trial court further notified Bizon that he

would be labeled a Tier II sex offender and be subject to five years of postrelease control upon his release from prison.

### Consecutive Sentences

{¶5} Bizon argues that the trial court failed to make the required findings under R.C. 2929.14(C)(4).

{¶6} When reviewing the imposition of consecutive sentences,

“R.C. 2953.08(G)(2)(a) directs the appellate court ‘to review the record, including the findings underlying the sentence’ and to modify or vacate the sentence ‘if it clearly and convincingly finds \* \* \* [t]hat the record does not support the sentencing court’s findings under [R.C. 2929.14(C)(4)].’”

*State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 28, quoting R.C. 2953.08(G)(2)(a).

{¶7} R.C. 2929.14(C)(4) requires trial courts to engage in a three-step analysis when imposing consecutive sentences. First, the trial court must find that “consecutive service is necessary to protect the public from future crime or to punish the offender.” *Id.* Next, the trial court must find that “consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public.” *Id.* Finally, the trial court must find that at least one of the following applies: (1) the offender committed one or more of the multiple offenses while awaiting trial or sentencing, while under a sanction imposed under R.C. 2929.16, 2929.17, or 2929.18, or while under postrelease control for a prior offense; (2) 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 offenses 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; or (3) the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. *Id.*

{¶8} Compliance with R.C. 2929.14(C)(4) requires the trial court to make the statutory findings as part of the sentencing hearing. *Bonnell* at syllabus. But “a word-for-word recitation of the language of the statute is not required. As long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld.” *Id.* at ¶ 29. The Ohio Supreme Court further explained that the word “finding” in this context means that the trial court ““must note that it engaged in the analysis”” and that it ““considered the statutory criteria and specific[d] which of the given bases warrants its decision.”” *Id.*, quoting *State v. Edmonson*, 86 Ohio St.3d 324, 326, 715 N.E.2d 131 (1999). The court emphasized that the trial court is not required to give a “talismanic incantation” of the words of the statute, provided the necessary findings can be found in the record. *Id.* at ¶ 37.

{¶9} At the sentencing hearing in this case, after hearing from the state, defense counsel, Bizon's son, and the mother of two of the victims, the trial court stated: “The hardest part of raising children is keeping them alive and well and safe. And who better to trust than your parents and then your grandparents. And Mr. Bizon, you violated that trust.” The trial court then imposed Bizon's sentence. After review, we conclude that

the trial court erred in imposing consecutive sentences as we cannot discern from the record that it made any of the required findings under R.C. 2929.14(C)(4).

{¶10} Accordingly, we vacate Bizon's sentence and remand the case for resentencing for the trial court to consider whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) and, if so, to make the required findings on the record. *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659; *State v. Nia*, 8th Dist. Cuyahoga No. 99387, 2014-Ohio-2527, 15 N.E.3d 892, ¶ 22 (the holding in *Nia* regarding the remand on a consecutive sentence error was not affected by *Bonnell*). The trial court is reminded that, according to *Bonnell*, the statutory findings must not only be pronounced in open court, but must also be placed in the journal entry of sentence.

{¶11} Bizon's sole assignment of error is sustained.

{¶12} Judgment reversed, sentence vacated, and case remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and  
TIM McCORMACK, J., CONCUR