

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 113471  
 v. :  
 :  
 DANIEL MOBLEY, :  
 :  
 Defendant-Appellant. :  
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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: October 10, 2024**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-22-668014-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting  
Attorney, and Kevin Filiatraut, Assistant Prosecuting  
Attorney, *for appellee*.

Susan J. Moran, *for appellant*

WILLIAM A. KLATT, J.:

{¶ 1} Appellant Daniel Mobley (“Mobley”) appeals his sentence in lower case number CR-22-668014-A. After reviewing the facts of the case and pertinent law, we find the trial court did not err, and Mobley’s assignments of error are overruled.

## **I. Facts and Procedural History**

**{¶ 2}** On October 6, 2023, Mobley pled guilty to the following counts as amended:

Count 1 Aggravated Murder, unspecified felony, R.C. 2903.01(A), with a 3-year firearm specification;  
Count 4 Aggravated Burglary, F1, R.C. 2911.11(A)(1);  
Count 6 Aggravated Robbery, F1, R.C. 2911.01(A)(1);  
Count 10 Theft, F5, R.C. 2913.02(A)(1);  
Count 11 Receiving Stolen Property, F4, R.C. 2913.51(A);  
Count 12 Receiving Stolen Property, F5, R.C. 2913.51(A);  
Count 15 Trafficking, F2, R.C. 2925.03(A)(2);  
Count 20 Possessing Criminal Tools, F4, R.C. 2923.24(A), with the forfeiture of a cell phone in a drug case;  
Count 21 Having Weapons While Under Disability, F3, R.C. 2923.13(A)(3) with the forfeiture of weapons.

**{¶ 3}** On November 20, 2023, a sentencing hearing was held for Mobley and his codefendant Christopher Webb (“Webb”). At the sentencing hearing the trial court sentenced codefendant Webb to life with the possibility of parole after 25 years, with a three-year firearm specification, for a total of 28 years.

**{¶ 4}** At the sentencing hearing the court sentenced Mobley in CR-20-652644-A simultaneously with CR-22-668014-A. In CR-22-668014-A the trial court sentenced Mobley to three years on the firearm specification in Count 1, to be served prior and consecutive to a term of life in prison with the first chance of parole after 30 years on Count 1, for a total term of life in prison with the first chance of parole after 33 years. Sentences for the remaining Counts 4, 6, 10, 11, 12, 15, 20, and 21 were run concurrent to each other and concurrent to the sentence for Count 1. This sentence was five years longer than Webb’s sentence because the trial court found Mobley to be the “primary person when this happened.”

**{¶ 5}** The trial court then on the record ordered that this sentence was to run consecutive to Mobley's sentence in CR-20-652644-A. CR-20-652644-A is a separate criminal case Mobley had in front of the court whereby Mobley pled guilty to count one, attempted drug trafficking, and count three, drug possession. In CR-20-652644-A the court imposed two 18-month sentences to run consecutively for 36 months and to run consecutive to the sentence in CR-22-668014-A. The court found on the record that Mobley's sentence in CR-20-652644-A is

necessary to protect the public and punish the offender and not to be disproportionate to the conduct and at least two of the multiple offenses were committed as a part of one or more courses of conduct, and that the harm was so great or unusual that a single prison term does not adequately reflect the seriousness of the conduct.

And this sentence will run consecutive by law to case number 668014.

**{¶ 6}** On November 27, 2023, the trial court issued its sentencing journal entry for CR-22-668014-A. In it, the only mention the trial court makes regarding consecutive sentencing is the three-year firearm specification for Count 1. There are no other findings or orders regarding consecutive sentences. The court's judgment entry ordered all counts in this case to run concurrently.

**{¶ 7}** On December 4, 2023, the trial court sua sponte issued a nunc pro tunc entry to correct the sentence in CR-20-652644-A to be 18 months for Count 1 and 12 months for Count 3 and ordered that they run consecutively for 30 months.

**{¶ 8}** Mobley appealed the sentences in CR-20-652644-A and CR-22-668014-A, which this court consolidated. This court then dismissed CR-20-652644-

A finding the appeal lacked a final appealable order and remanded that case back to the trial court for resentencing.

{¶ 9} It is from this judgment entry in CR-22-668014-A that Mobley appeals raising two assignments of error for our review:

**Assignment of error I**

The trial court erred in imposing a greater sentence for Mr. Mobley than his co-defendant after making an erroneous finding that he was the primary offender, which was not supported by the record, thereby depriving him of his due process rights.

**Assignment of error II**

The trial court erred by imposing maximum consecutive sentences which were not supported by the record and were contrary to law.

**II. Law and Analysis**

**A. Standard of Review**

{¶ 10} We review felony sentences under the standard set forth in R.C. 2953.08(G)(2). *State v. Marcum*, 2016-Ohio-1002, ¶ 1, 16; *see also State v. Keith*, 2024-Ohio-1591, ¶ 7 (8th Dist.). “In Ohio, there is a presumption that a defendant’s multiple prison sentences will be served concurrently, *see* R.C. 2929.41(A), unless certain circumstances apply under R.C. 2929.14(C)(1)-(3) or the trial court makes findings supporting the imposition of consecutive sentences under R.C. 2929.14(C)(4).” *Keith* at ¶ 7.

{¶ 11} Under R.C. 2929.14(C)(4) a trial court may order prison terms to be served consecutively if it finds “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.” Further, the court must also find 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 crimes by the offender.

R.C. 2929.14(C)(4); *Keith* at ¶ 8.

**{¶ 12}** R.C. 2953.08(G)(2) provides that when reviewing felony sentences, a court may overturn the imposition of consecutive sentences only where the court “clearly and convincingly” finds that (1) “the record does not support the sentencing court’s findings under R.C. 2929.14(C)(4),” or (2) “the sentence is otherwise contrary to law.” *State v. Jones*, 2024-Ohio-1083, ¶ 12; *see also Keith* at ¶ 8 (applying *Jones*).

**{¶ 13}** R.C. 2953.08(F) requires an appellate court to review the entire trial court record, including any oral or written statements made to or by the trial court at the sentencing hearing, and any presentence, psychiatric, or other investigative report that was submitted to the court in writing before the sentence was imposed. R.C. 2953.08(F)(1) through (4); *Jones* at ¶ 12; *see also Keith* at ¶ 8 (applying *Jones*).

## **B. Disproportionate Sentence**

{¶ 14} In his first assignment of error, Mobley argues that the trial court's sentence for count 1 was disproportionate compared to his codefendant's sentence and was not supported by the record, depriving him of due process rights. We disagree.

{¶ 15} In *State v. Berlingeri*, 2011-Ohio-2528 (8th Dist.), this court addressed a similar proportionality argument and noted:

There is no requirement that co-defendants receive equal sentences. Each defendant is different and nothing prohibits a trial court from imposing two different sentences upon individuals convicted of similar crimes. When that happens, the task of the appellate court is to determine whether the sentence is so unusual as to be outside the mainstream of local judicial practice. We bear in mind that although offenses may be similar, there may be distinguishing factors that justify dissimilar sentences.

(Internal citations and quotations omitted). *Id.* at ¶ 12.

{¶ 16} This court has previously held that in order to support a contention that a sentence is disproportionate to sentences imposed upon other offenders, the defendant must raise this issue before the trial court and present some evidence, however minimal, in order to provide a starting point for analysis and to preserve the issue for appeal. *State v. Jones*, 2013-Ohio-3141, ¶ 17 (8th Dist.), citing *State v. Edwards*, 2007-Ohio-6068 (8th Dist.). When a review of the record reveals the defendant did not object to the sentence proportionality, the assignment of error is properly overruled on appeal. *State v. Gibson*, 2013-Ohio-4372, ¶ 77 (8th Dist.).

{¶ 17} Here we find that Mobley did not object to his sentence being disproportionate to his codefendant's sentence nor did he provide any evidence to support his position. As such, the assignment of error is properly overruled. *Id.*

{¶ 18} Furthermore, even if he had properly objected and presented evidence, we would still find that Mobley's sentence to 33 years to life with the possibility parole after 33 years for Count 1 aggravated murder is not so unusual as to be outside the mainstream of judicial practice. His sentence is within the statutory range for aggravated murder pursuant to R.C. 2929.03(A)(1), and his sentence in Count 1 is only five years longer than his codefendant Webb's sentence. The trial court's reference to Mobley as the primary aggressor seems to refer to the fact that Mobley knew the victim, targeted him, and planned the attack. The record demonstrates that the court imposed a sentence that is within the range of sentences for the offense (20, 25, or 30 years) and that the trial court considered the objectives of R.C. 2929.11(B) when sentencing Mobley. This sentence is not contrary to law.

{¶ 19} Accordingly, his first assignment of error is overruled.

### **C. Maximum Consecutive Sentence**

{¶ 20} In his second assignment of error, Mobley argues that the trial court erred by imposing maximum consecutive sentences that were not supported by the record and were contrary to law. Mobley argues specifically that the court erred when it ordered the sentence for the probation violations in case number CR-20-652644-A to be served consecutively to the sentence in this case, CR-22-668014-A, and it erred by running Counts 1 and 3 in case number CR-20-652644-A

consecutively to each other as well. Last, Mobley argued that his sentence to 18 months in prison in case number CR-20-652644-A was outside the statutory range. All three of Mobley's arguments in this assignment of error concern the sentencing for case number CR-20-652644-A, which was dismissed by this court on appeal for lack of a final appealable order and is no longer before us for review.

**{¶ 21}** As such, upon review of the record and journal entry in CR-22-668014-A we find Mobley's arguments here are moot because the judgment entry in this appeal did not find or order consecutive sentences for the amended counts. The court, in the journal entry that is being appealed in this case, did not make any findings for a consecutive sentence and instead explicitly found all counts were to be served concurrently. There are no consecutive sentences for this court to review for this case in the journal entry for CR-22-668014-A.

**{¶ 22}** Wherefore, we find Mobley's second assignment of error is moot.

**{¶ 23}** Judgment is affirmed.

It is ordered that appellee recover from appellant 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. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.



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

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WILLIAM A. KLATT, JUDGE \*

SEAN C. GALLAGHER, P.J., and  
ANITA LASTER MAYS, J., CONCUR

(\*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court  
of Appeals.)