

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 108528
	:	
v.	:	
	:	
ANTWUAN HARRIS,	:	
	:	
Defendant-Appellant.	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: February 27, 2020**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-18-626290-A

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***Appearances:***

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

Timothy F. Sweeney, *for appellant*.

PATRICIA ANN BLACKMON, J.:

{¶ 1} Antwuan Harris (“Harris”) appeals from his nine-year prison sentence associated with his convictions for two robberies and assigns the following errors for our review:

- I. The trial court erred when it ordered Harris to serve his firearm specification sentences consecutively in violation of R.C. 2929.14(B)(1)(b), the Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, Sections 10 and 16 of the Ohio Constitution.
- II. Harris was denied his right to effective assistance of trial counsel as guaranteed by the U.S. and Ohio Constitutions.
- III. The sentence imposed is contrary to law and/or not supported by the record, thereby requiring this Court to take action under *State v. Jones*, 2018-Ohio-498 (8th Dist. App. 2018) (en banc) and R.C. 2953.08

**{¶ 2}** Having reviewed the record and pertinent law, we affirm the trial court's judgment. The apposite facts follow.

**{¶ 3}** On August 20, 2018, Harris pled guilty to robbery in violation of R.C. 2911.02(A)(1), a second-degree felony, with a three-year firearm specification; attempted aggravated robbery in violation of R.C. 2923.02 and 2911.01(A)(1), with a one-year firearm specification; telecommunications fraud in violation of R.C. 2913.05, a fifth-degree felony; and carrying a concealed weapon in violation of R.C. 2923.12(A)(2), a fourth-degree felony.

**{¶ 4}** On September 20, 2018, the court sentenced Harris to three years in prison for robbery, two years in prison for attempted aggravated robbery, three years in prison for the first gun specification, and one year in prison for the second gun specification. The court ran these sentences consecutively, for a total prison term of nine years. The court also sentenced Harris to 12 months in prison for telecommunications fraud and 18 months in prison for carrying a concealed weapon and ran these sentences concurrent to the nine-year sentence.

{¶ 5} It is from this prison sentence that Harris appeals.

### **Consecutive Firearm Specifications**

{¶ 6} Pursuant to R.C. 2929.14(B)(1)(b), “a court shall not impose more than one [firearm specification] prison term on an offender \* \* \* for felonies committed as part of the same act or transaction.” In reviewing firearm specification sentences, we turn to R.C. 2953.08(G)(2)(b), which states in part that an “appellate court may \* \* \* increase, reduce, or otherwise modify a sentence \* \* \* if it clearly and convincingly finds \* \* \* [t]hat the sentence is \* \* \* contrary to law.” *See State v. Sheffey*, 8th Dist. Cuyahoga No. 98944, 2013-Ohio-2463, ¶ 26 (“We review Sheffey’s challenge of the trial court’s imposition of multiple firearm specifications to determine whether it is contrary to law”).

{¶ 7} Harris argues that the court erred by running his firearm specification sentences consecutively, because his offenses “were all unambiguously part of the same series of continuous acts, committed on the same day with the same co-defendants and for the same purpose \* \* \*.” The state, on the other hand, argues that “criminals are not entitled to a bulk discount on firearm specifications merely for consolidating their malfeasance into a continuing felonious extravaganza \* \* \*.”

{¶ 8} In sentencing Harris, the following facts were made part of the record: Harris and his codefendants went on a social networking app called Grinder, “acted as if they were going to hook up for a relationship with gay gentlemen,” went to the victims’ houses, tied them up, and robbed them. They did this twice on the same day to two victims. The second victim arranged for the police to show up

during the offense. The police arrested Harris and his codefendants and found a gun in the car the offenders were using.

{¶ 9} From these facts, the court found that the robbery and the attempted aggravated robbery “occurred the same day, but they’re different incidents and different places with different victims.” The court further stated that it did not have to run the sentences for the firearm specifications consecutively, “but in this circumstance, different victims, different places, same method to commit a crime against those that are in a vulnerable position. I think that they are warranted.”

{¶ 10} In *State v. Newton*, 8th Dist. Cuyahoga No. 104878, 2017-Ohio-7068, ¶ 16-17, the court affirmed the imposition of consecutive firearm specification sentences based on the following facts:

One of the three-year firearm specifications was linked to the robbery of the priest and the good Samaritan (the three-year firearm specification as to each victim merged as part of Newton’s plea). The second three-year firearm specification was part of the robbery of the law student. That crime occurred in a different location and subsequent to the robbery of the priest and good Samaritan. The third three-year firearm specification occurred over an hour later in the parking lot of Rite Aid when Newton and his cohorts tried to carjack an elderly man.

Although Newton and his codefendants committed three robberies as part of a single evening crime spree, their purpose or intent behind each crime was to rob separate victims. Each robbery was a separate criminal transaction with a separate criminal purpose or objective. Therefore, the trial court did not err in running the firearm specifications consecutive to one another.

{¶ 11} Upon review, we find that the case at hand is factually similar to *Newton*. Although the crimes occurred on the same day, they were committed at separate locations and involved separate victims. Therefore, we find that the

robbery and the attempted aggravated robbery were separate criminal acts, and Harris's consecutive sentences for firearm specifications are not contrary to law. Accordingly, Harris's first assigned error is overruled.

### **Ineffective assistance of counsel**

{¶ 12} To succeed on a claim of ineffective assistance of counsel, a defendant must establish that his or her attorney's performance was deficient and that the defendant was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). However, "a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel's performance." *Id.* at 697. *See also State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 3743 (1989).

{¶ 13} Harris argues that his trial counsel was ineffective because he "failed to object to, and to correct, the trial court's erroneous belief that it had 'discretion' on whether Harris' firearm specifications were made concurrent or consecutive \* \* \*." As explained in our analysis of Harris's first assigned error, Harris's consecutive sentences for firearm specifications are not contrary to law. Therefore, defense counsel was not deficient, and Harris was not prejudiced. Harris's second assigned error is overruled.

### **Felony sentencing standard of review**

{¶ 14} R.C. 2953.08(G)(2) provides, in part, that when reviewing felony sentences, the appellate court's standard is not whether the sentencing court abused

its discretion; rather, if this court “clearly and convincingly” finds that (1) “the record does not support the sentencing court’s findings under” certain provisions of R.C. Chapter 2929 or (2) “the sentence is otherwise contrary to law,” then we may conclude that the court erred in sentencing. *See also State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231.

**{¶ 15}** A sentence is not clearly and convincingly contrary to law “where the trial court considers the purposes and principles of sentencing under R.C. 2929.11 as well as the seriousness and recidivism factors listed in R.C. 2929.12, properly applies post-release control, and sentences a defendant within the permissible statutory range.” *State v. A.H.*, 8th Dist. Cuyahoga No. 98622, 2013-Ohio-2525, ¶ 10.

**{¶ 16}** Pursuant to R.C. 2929.11(A), the three overriding purposes of felony sentencing are “to protect the public from future crime by the offender and others,” “to punish the offender,” and “to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden of state or local government resources.” Additionally, the sentence imposed shall be “commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact on the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.” R.C. 2929.11(B).

**{¶ 17}** Furthermore, in imposing a felony sentence, “the court shall consider the factors set forth in [R.C. 2929.12(B) and (C)] relating to the seriousness of the

conduct [and] the factors provided in [R.C. 2929.12(D) and (E)] relating to the likelihood of the offender's recidivism \* \* \*." R.C. 2929.12. However, this court has held that "[a]lthough the trial court must consider the principles and purposes of sentencing as well as the mitigating factors, the court is not required to use particular language or make specific findings on the record regarding its consideration of those factors." *State v. Carter*, 8th Dist. Cuyahoga No. 103279, 2016-Ohio-2725, ¶ 15.

### **Consecutive Sentences**

{¶ 18} Additionally, "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 \* \* \*." *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37. Pursuant to R.C. 2929.14(C)(4), the court must find consecutive sentences are "necessary to protect the public from future crime or to punish the offender"; "not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public"; and at least one of the following three factors:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction \* \* \*, 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.

**{¶ 19}** Furthermore, under R.C. 2953.08(G)(2), an appellate court may find that the record does not support the trial court's findings under R.C. 2929.14(C)(4).

**{¶ 20}** In the case at hand, the court sentenced Harris to more-than-the-minimum, consecutive sentences for two second-degree felonies. The prison term for a second-degree felony is two to eight years. R.C. 2929.14(A)(2). Harris was sentenced to a three-year prison term for robbery and a two-year prison term for attempted aggravated robbery. This is within the permissible statutory range. Additionally, the court properly applied post-release control when sentencing Harris.

**{¶ 21}** Turning to the R.C. Chapter 2929 sentencing factors, Harris argues that "the record reflects that the sentencing court did not give sufficient consideration to these required factors," noting that the "relevant sentencing statutes of 2929.11 and 2929.12 were barely addressed."

**{¶ 22}** In sentencing Harris, the court found the following:

So you understand you're causing great pain to your family, but at the same time I'm concerned about the people who are being robbed. They can pursue their life however they want and they shouldn't be preyed upon. You are a predator. Your brother, your cousin, predators. You had weapons. You knew that people were in a vulnerable position, all right, and you took advantage of them for your own monetary gain. That's a predator. So under the law that does not go unpunished. \* \* \* There is no one who wins in this situation, including the community.

**{¶ 23}** The court noted the "overall purpose" of the felony sentencing statutes and "considered the need for incapacitation, deterrence, rehabilitation, and



restitution.” The court stated that it had “to fashion a sentence that’s commensurate with and not demeaning to the seriousness of your conduct, its impact on the victim, and a sentence that’s consistent with what others have received for similar crimes in similar circumstances.” The court continued:

Indicators [that] your conduct is more serious under 2929.12(B), this is organized. You all went on a website or an app site, Grinder, and had conversations with people and set up meetings with them. Indicators [that] your conduct is less serious, Court notes that you are taking some psych meds. Indicators that you’re more likely to reoffend under 2929.12(D), this occurred while you were on probation to this court in Case 611543, and in Portage County. You do have prior juvenile adjudications including two robberies and a theft. As far as adult matters you had a breaking and entering, weapons charge in which you’re on probation with me, and another breaking and entering, different case, in Portage County, theft charge from South Euclid.

Positive things I can say for you under 2929.12(E), you admit your involvement, you’re a high school grad. You did complete the CBCF,<sup>1</sup> and you have family support.

There is no merger between Count 1 and Count 6. These occurred the same day but they’re different incidents and different places with different victims.

\* \* \*

Court finds under 2929.14(C)(4) that consecutive sentence is necessary to protect the public from future crime by you since you were on probation in two different counties and still committed these offenses. It also will be a punishment for you. Court also finds that consecutive sentences are not disproportionate to the seriousness of your conduct where you lured people into a situation where you could bind them and rob them and then hope that they wouldn’t report it to the police because they would be embarrassed or afraid. And the Court finds that you also do pose a danger to the public because this is a very — using apps and things to commit the crime.

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<sup>1</sup> Community Based Correctional Facility.

Court also finds that these offense in Count 1 and Count 6 were committed while you were under a sanction imposed by this Court and by Portage County and that your history of criminal conduct demonstrates consecutive sentences are necessary to protect the public from future crime.

{¶ 24} Upon review, we find that the court properly considered the purposes and principles of sentencing under R.C. 2929.11, as well as the seriousness and recidivism factors listed in R.C. 2929.12. Furthermore, the record supports the sentencing court's findings under R.C. 2929.14(C)(4), and Harris's sentence is not otherwise contrary to law.

{¶ 25} Judgment 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 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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PATRICIA ANN BLACKMON, JUDGE

MARY J. BOYLE, P.J., and  
EILEEN A. GALLAGHER, J., CONCUR