[Cite as *State v. Tuff*, 2011-Ohio-6846.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
- vs -	:	**CASE NOS. 2010-L-082 and 2010-L-083**
ERIC D. TUFF,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case Nos. 09 CR 000265 and 09 CR 000539.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Alana A. Rezaee*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} These appeals are from the final sentencing judgments in two separate criminal proceedings before the Lake County Court of Common Pleas. Under the first appeal, appellant, Eric D. Tuff, claims that his conviction on nine counts should be reversed because certain procedural errors occurred during the proceeding. Under the second, he challenges the trial court's decision to impose consecutive sentences on his various drug-related counts.

{¶2} A review of the records in both appeals shows that appellant's convictions stemmed from an investigation by the Lake County Narcotics Agency into alleged drug deals made at a residence on Morse Avenue in Painesville, Ohio. On March 23, 2009, Special Agent 88 (SA-88) received information from Confidential Informant 828 (CI-828) indicating that a third party, Martin Badley, had stated that he might have an opportunity to buy crack cocaine from appellant. Based upon this information, SA-88 gave CI-828 a sum of money so that a transaction could be made. That evening, the following events took place: (1) SA-88 dropped off CI-828 in the general vicinity of appellant's residence; (2) CI-828 was wearing a wire and carrying a recorder; (3) CI-828 met Badley in front of a convenient store, and they began to walk through the neighborhood; (4) approximately one block from the Morse Avenue home, CI-828 gave Badley $140, and then watched him walked toward the residence; and (5) a few minutes later, Badley returned and gave packets of crack cocaine to CI-828, who in turn handed the packets to SA-88 once he had parted company with Badley.

{¶3} During the foregoing transaction, CI-828 never saw Badley proceed into appellant's residence. However, at the same time that CI-828 was walking through the neighborhood with Badley, SA-88 and a second officer were driving in the general area in an unmarked vehicle. When Badley approached the residence, SA-88 saw him go in. SA-88 also observed that appellant was the person who answered the door and allowed Badley to come inside.

{¶4} Approximately eight days later, SA-88 arranged for a second purchase of crack cocaine at the Morse Avenue residence. In this second transaction, SA-88 used the same basic procedure that had been employed for the first buy; i.e., CI-828 gave the agency funds to Badley, who then went into appellant's home and came back with the

packets of crack cocaine. Similarly, an officer associated with the narcotics agency was able to see appellant answer the door and allow Badley to enter. Yet, since Badley was an "unwitting source" and was not wearing a wire, no recording of the alleged purchase was made.

{¶5} After the completion of the second transaction, SA-88 filed an affidavit with the court of common pleas for the purpose of obtaining a search warrant for appellant's residence. In the affidavit, SA-88 gave a detailed description of the two transactions in which Badley had entered the residence with agency funds and returned with packets of crack cocaine. SA-88 further averred that CI-828 had given reliable information about drug-related offenses on a prior occasion. Upon due consideration by a common pleas judge, the search warrant was granted, and a SWAT team raided appellant's residence on April 2, 2009.

{¶6} Upon entering the structure, the police officers only found two individuals present: appellant and a person named Russell Taylor. When the officers first located appellant on the second floor of the home, he was wearing an "intact" latex glove on his right hand and a torn latex glove on his left wrist. Upon subduing appellant, the officers conducted a search of the three rooms and hallway on the second floor. In the upstairs bathroom, the officers found 67 packets of crack cocaine in the bowl of the toilet. There were also separate packets found on the bathroom floor and in the hallway.

{¶7} In the downstairs kitchen, the officers found cocaine powder strewn on the counters and the floor. The officers further found three separate "wads" of cash in this room. One of the "wads" was in a wallet which also contained a temporary identification card for appellant. The sum of money in the wallet was $4,120. In addition, the kitchen had the following items: a box of sandwich bags, a box of latex gloves, a razor blade, a

glass dish, a mason jar which contained crack cocaine, a spoon, and a breathing mask.

{¶8} Besides the foregoing, a small sandwich bag was found in the pockets of a pair of pants which were lying on a dresser in the master bedroom on the first floor. Subsequent analysis of this particular bag showed that it contained a residue of crack cocaine. Finally, a separate "wad" of $200 was found on appellant's person at the time of his arrest.

{¶9} In light of the two controlled purchases and the search of appellant's home in April 2009, the Lake County Grand Jury ultimately returned a nine-count indictment against him. These particular charges were tried in Lake C.P. No. 09-CR-000265. The nine counts included: three charges of trafficking in cocaine under R.C. 2925.03(A); two counts of permitting drug abuse under R.C. 2925.13(B); one count of illegal manufacturing of drugs under R.C. 2925.04; one count of possessing criminal tools under R.C. 2923.24; one count of possession of cocaine under R.C. 2925.11; and one count of tampering with evidence under R.C. 2921.12(A)(1).

{¶10} Before the grand jury could issue the foregoing indictment, appellant was released on bond. During this interim period, the Lake County Narcotics Agency again received information that illegal drugs were being bought at appellant's home on Morse Avenue. As a result, a special agent arranged for a new controlled purchase of drugs with agency funds. Furthermore, once this purchase was complete, a second search warrant was obtained, and appellant's residence was raided again by police officers in July 2009.

{¶11} Accordingly, at the same time the grand jury rendered the first indictment against appellant, it returned a second indictment which was based upon the separate events of July 2009. This latter indictment had six new charges, including two counts of

trafficking in cocaine under R.C. 2925.03(A), one count of possessing criminal tools under R.C. 2923.24, one count of possession of cocaine under R.C. 2925.11, one count of possession of marijuana under R.C. 2925.11, and one count of tampering with evidence under R.C. 2921.12(A). The substance of these six charges was considered in Lake C.P. No. 09-CR-000539.

{¶12} Although not consolidated, the two cases went forward together for certain limited purposes. After the parties engaged in initial discovery, appellant moved to suppress all evidence obtained during the two searches of his residence. As the sole grounds for his motion, appellant asserted that the averments in the submitted affidavits had been insufficient to establish probable cause for the warrants. After the matter was assigned to another common pleas judge for disposition, a separate oral hearing was conducted, during which the affidavits were unsealed and read into record by the judge. Upon fully considering the substance of the two affidavits, the assigned judge overruled the motion to suppress.

{¶13} Two months later, appellant moved the trial court to order an evaluation of his competency to stand trial, pursuant to R.C. 2945.37. The trial court initially granted this motion, and ultimately allowed appellant to undergo two evaluations. Following the completion of the second evaluation, the court held a hearing and heard the testimony of the medical doctor who conducted the second evaluation. Based upon that testimony, the trial court held that appellant was competent to stand trial because he was able to assist counsel in his defense and could understand both the nature and objective of the proceeding.

{¶14} A three-day jury trial was held on the first indictment in May 2010. As part of its case-in-chief, the state presented the testimony of the special agents, confidential

informants, and other police officers who had participated in the two controlled buys and the execution of the search warrant. In addition, the state submitted the testimony of an officer who had extensive knowledge regarding the production of crack cocaine, and the forensic chemist who had conducted the various tests on the evidence obtained during the two purchases and the search. Appellant did not present any evidence in response. At the end of the proceeding, the jury found appellant guilty on all nine courts.

{¶15} The trial on the second indictment was scheduled to be held in June 2010. However, immediately prior to trial, the state and appellant entered into a plea bargain, under which he agreed to plead guilty to one count of trafficking in cocaine and one count of possession of cocaine. The remaining four counts were dismissed.

{¶16} After holding a final sentencing hearing, the trial court ordered appellant to serve an aggregate term of 15 years on the nine counts in the first indictment. This term included seven years on the count of illegal manufacturing of drugs and nine years on the count of possession of cocaine, to be served concurrently. As to the remaining two counts under the second indictment, the court sentenced appellant to consecutive terms of 14 and 10 months, for an aggregate period of two years. In addition, the trial court ordered that the two aggregate terms be served consecutively, for a total term of 17 years.

{¶17} In now appealing both convictions, appellant has asserted the following six assignments of error:

{¶18} "[1.] The trial court erred when it found the defendant-appellant competent to stand trial and denied the defense request for an additional competency assessment in violation of the defendant-appellant's rights to due process and fair trial as guaranteed by the Fourth and Fourteenth Amendments to the United States

Constitution and Sections 10 and 14 [of] the Ohio Constitution.

{¶19} "[2.] The trial court erred when it denied defendant-appellant's motion to suppress the evidence resulting from the execution of the search warrant in violation of his rights to due process and to be free from unreasonable search and seizure pursuant to the Fourth and Fourteenth Amendments to the United States Constitution and Sections 10 and 14 of the Ohio Constitution.

{¶20} "[3.] The trial court erred to the prejudice of the defendant-appellant by failing to grant a motion for mistrial when witnesses testified regarding the defendant-appellant's prior bad acts, in violation of the defendant-appellant's due process rights and rights to fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Sections 5 and 10, Article I of the Ohio Constitution.

{¶21} "[4.] The trial court committed reversible error when it gave a complicity instruction over the objections of the defendant-appellant in violation of the defendant-appellant's rights to due process and fair trial as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Sections 10 and 16, Article I of the Ohio Constitution.

{¶22} "[5.] The defendant-appellant was denied effective assistance of counsel in violation of the Sixth Amendment [of] the United States Constitution.

{¶23} "[6.] The trial court erred by sentencing the defendant-appellant to the maximum term of imprisonment."

{¶24} Under his first assignment, appellant basically challenges the sufficiency of the evidence upon which the trial court predicated its ruling that he was competent to stand trial. Specifically, appellant maintains that the trial court erred in relying upon the testimony of Dr. Craig Beach because the doctor's own statements established that he

did not conduct an adequate examination to make the requisite determinations. In light of this, appellant asserts that, instead of making a final decision on the matter, the trial court should have ordered a third evaluation of his competency.

{¶25} Under both state and federal law, it is well-settled that a defendant's basic right to a fair trial will be deemed violated if he is tried while he is mentally incompetent. *State v. Mattox*, 11th Dist. No. 2005-A-0053, 2006-Ohio-2937, at ¶17. Therefore, R.C. 2945.37(B) provides that a trial court is required to hold a hearing on the "competency" issue if it is raised prior to trial. In our case, such a hearing was held, and the trial court ordered an evaluation of appellant's competency. Moreover, when the results of the first evaluation were inconclusive, the court further ordered that a second evaluation be performed.

{¶26} Regarding the merits of a "competency" determination, Ohio law expressly states that a defendant is presumed to be competent unless it can be demonstrated that he is incapable of understanding the proceedings against him or cannot fully assist in his defense. R.C. 2945.37(G); *State v. Robinson*, 8th Dist. No. 89136, 2007-Ohio-6831, at ¶20. The foregoing statute also indicates that the incompetency of the defendant must be proven by a preponderance of the evidence.

{¶27} As was noted above, the final hearing concerning appellant's competency was held after the second evaluation was completed. During this proceeding, appellant called Dr. Beach as the sole witness. At the beginning of his testimony, the doctor said that, as part of the interview process, he had attempted to ask a series of questions that were meant to show the depth of appellant's general understanding of his legal rights. The doctor further stated that he was not able to finish this line of questioning because appellant kept giving an evasive answer, such as "I don't know." In light of this, the

doctor concluded that appellant was malingering, which was consistent with the report of the psychiatric professional who had conducted the first evaluation. In support of this point, Dr. Beach indicated that, even though appellant had claimed that he was experiencing hallucinations, he never exhibited any of the usual symptoms.

{¶28} In the second part of his testimony, the doctor testified that appellant did not suffer from any mental problem which would render him unable to stand trial. The doctor then opined that, based upon his observations, appellant had the ability to both understand the nature of the pending actions and assist his counsel at trial in forming a defense. As one basis for this opinion, Dr. Beach cited the notes of hospital staff, who indicated that appellant had been seen watching television or playing cards with other patients.

{¶29} In contending that the trial court should have rejected Dr. Beach's opinion, appellant submits that the observations of the hospital staff were insufficient to warrant a finding of the mental ability to understand the trial and assist counsel. Appellant also emphasizes that the doctor admitted that he never asked during the evaluation whether appellant understood his right to a fair trial.

{¶30} While the record before this court confirms that Dr. Beach was not able to predicate his opinion upon the type of information which is normally cited in deciding if a criminal defendant is competent, it further shows that any deficiency in the information was attributable directly to appellant. That is, both of the psychiatric professionals who conducted the evaluations concluded that appellant was providing evasive answers in order to hinder or delay the process. Under such circumstances, Dr. Beach justifiably had to consider secondary sources of information in order to render a final decision on the "competency" issue.

{¶31} In reviewing a similar situation in which a physician has concluded that the defendant requested a competency evaluation for the sole purpose of malingering, the Eighth Appellate District has held that such a factor can be considered by the trial court in rendering its final decision. *Robinson*, 2007-Ohio-6831, at ¶29. In the instant action, appellant had already been afforded two opportunities to participate in the process. In addition, the sole evidence before the trial court supported the conclusion that appellant was able to understand the proceeding against him and assist in his defense. Hence, since the preponderance of the evidence did not show that appellant was incompetent to stand trial, his first assignment does not have merit.

{¶32} Under his second assignment, appellant contests the propriety of the trial court's decision to deny his motion to suppress the evidence which was obtained during the execution of the first search warrant. According to him, the search warrant should have been declared improper because the special agent's affidavit was deficient in two respects. First, the affidavit failed to set forth any facts establishing the basic reliability of the confidential informant and the "unwitting source" for the two cocaine buys, Martin Badley. Second, the affidavit did not set forth sufficient facts to demonstrate that Badley actually bought the packets of cocaine in appellant's residence.

{¶33} In regard to the "probable cause" determination for a valid search warrant, the courts of this state have noted that "'the task of the issuing (judge) is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, (***) there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" *State v. Young*, 12th Dist. No. CA2005-08-074, 2006-Ohio-1784, at ¶19, quoting *State v. George* (1989), 45 Ohio St.3d 325, paragraph one of the syllabus. To satisfy this standard, it is not necessary for the

affidavit to show the existence of criminal activity by a preponderance of the evidence; in this respect, not even a prima facie showing is mandated to justify the issuance of the search warrant. *State v. Montgomery* (Aug. 29, 1997), 11th Dist. No. 95-P-0034, 1997 Ohio App. LEXIS 3880, at *3.

{¶34} As to subsequent judicial review of the "probable cause" analysis, it has been held:

{¶35} "In reviewing the sufficiency of probable cause in a search warrant's affidavit, neither a trial court nor an appellate court should substitute its judgment for that of the issuing judge by conducting a de novo determination as to whether the affidavit contains sufficient probable cause to issue the search warrant. *George* at paragraph two of the syllabus. Rather, the duty of a reviewing court is simply to ensure that the issuing judge had a substantial basis for concluding that probable cause existed. Id. In conducting any after-the-fact scrutiny of an affidavit submitted in support of a search warrant, trial and appellate courts should accord great deference to the issuing judge's determination of probable cause, and doubtful or marginal cases in this area should be resolved in favor of upholding the warrant. Id." *Young*, 2006-Ohio-1784, at ¶20.

{¶36} Concerning the reliability of other individuals cited by the affiant, appellant essentially argues that a showing of reliability is a mandatory element which must be met before a finding of probable cause can be made. However, in addressing this exact question in *State v. Smith*, 11th Dist. No. 2004-A-0088, 2006-Ohio-5186, this court has indicated that, pursuant to a recent statement of the standard in *Illinois v. Gates* (1983), 462 U.S. 213, the failure to establish a third party's reliability is no longer a fatal defect in a "probable cause" analysis. Instead, reliability is merely one factor to be considered

in reviewing all of the averments in the affidavit. Id. at ¶30.

{¶37} In the instant affidavit, the special agent only made a conclusory assertion as to the reliability of the confidential informant, and made no statement at all regarding Badley. Nevertheless, pursuant to *Smith*, a finding of probable cause was still feasible if the special agent's other averments were sufficient to demonstrate a fair probability of criminal activity.

{¶38} In challenging the weight to be given to those other averments, appellant contends that the special agent was not able to show that Badley actually obtained the crack cocaine while inside his home. Appellant points to the fact that Badley was never searched before the confidential informant gave him the funds for the buys, and that the events inside the home were not seen or heard by another person. Building upon this, appellant asserts that it is possible that Badley had the drugs before he even went into the Morse Avenue residence.

{¶39} However, as the trial court expressly noted in its oral discussion, such an interpretation of the essential facts defies common sense. That is, if Badley already had possession of the crack cocaine before he met the confidential informant, what purpose would be served in going into appellant's residence at all. Badley could have simply handed the drugs to the confidential informant when he was first given the money. Hence, the only logical interpretation of the facts was that Badley did not come into possession of the drugs until he went inside the residence.

{¶40} Despite the fact that the statements in the special agent's affidavit did not indicate what exactly occurred inside the residence during the two controlled purchases, they were sufficient to demonstrate that crack cocaine could be obtained at appellant's home. Specifically, the averments in the affidavit contained adequate details to show

the process used to purchase the crack cocaine at that exact location. That point, in and of itself, was logically sufficient to establish that there was a fair probability that evidence of criminal activity would be present in that structure. For this reason, the record before this court supports the conclusion that probable cause for the issuance of the search warrant did exist. Appellant's second assignment is not well taken.

{¶41} Under his third assignment, appellant states that he was denied a fair trial when two of the state's witnesses testified that they had had prior "dealings" with him over the years. He submits that these references to earlier personal contact constituted inadmissible evidence of prior bad acts because, given the context of the testimony, the jury could have readily inferred that he had committed other drug offenses. Based upon this, appellant maintains that the trial court erred in overruling his motion for a mistrial because it is likely that the jury verdict on the nine counts was not predicated solely on admissible evidence.

{¶42} A review of the trial transcript shows that both of the disputed references were made by the two special agents who were involved in the underlying investigation. Our review further shows that the two statements were made when the officers tried to explain why they had been able to recognize appellant as the person who had allowed the "unwitting source" to come into the home during the two controlled purchases. The first special agent indicated that he had known appellant from prior "relationships" and "dealings." The second special agent said the following:

{¶43} "Prior to this buy I had seen [appellant] on numerous occasions on unrelated cases in the area. Plus also our agency back in 2003 had a case on [him], so he's in –"

{¶44} Appellant asserts that the foregoing testimony was inadmissible pursuant

to Evid.R. 404(B). This rule expressly provides:

{¶45} "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

{¶46} In applying the "identity" exception in this rule, the Eighth Appellate District has expressly held that a police officer's testimony as to his previous encounter with the defendant is admissible when it is presented to explain why the officer would recognize the defendant. *State v. Lane*, 8th Dist. No. 89023, 2007-Ohio-5948, at ¶28.

{¶47} In the instant proceeding, the state's ability to convict appellant on the two counts of trafficking in cocaine was premised upon proving that he was present in the Morse Avenue home when the two purchases occurred. As a result, any testimony as to the identity of the individual who answered the door was clearly relevant to a critical factual issue in the action. To this extent, the testimony of both agents was admissible under Evid.R. 404(B).

{¶48} In presenting the disputed testimony, the state never argued that the two references were admissible for purposes of establishing appellant's identity; thus, the trial court's decision to overrule the request for a mistrial was predicated upon its conclusion that the two references were too vague to be prejudicial to appellant. Nevertheless, given that the limited nature of the disputed testimony and the fact that it was admissible under the governing rule, the record before this court does not support the conclusion that appellant was denied a fair trial. Accordingly, appellant's third assignment does not state a valid reason for reversing the conviction.

{¶49} Under his next assignment, appellant maintains that the trial court erred in

instructing the jury regarding its consideration of the two counts of trafficking in cocaine. Prior to the outset of the trial, the state gave written notice that it intended to assert that appellant had been the principal offender in those offenses, or had been complicit in the commission of those crimes. At the close of the proceeding, the trial court then granted the state's request for an instruction on complicity. Appellant now contends that such an instruction was not warranted under the evidence presented by the state

{¶50} In support of this point, appellant has again raised the contention that the state's evidence was insufficient to definitively prove what occurred after Martin Badley, the unwitting source, entered the Morse Avenue residence. In this respect, he indicates that the state was unable to present the evidence of any witness who actually heard or witnessed the events inside the home. In light of this, appellant submits that the state was unable to establish that the two transactions took place in his residence, let alone what role he supposedly played in them.

{¶51} Regarding this contention, this court would first note that the state's basic evidence at trial as to the two "trafficking" counts was consistent with the statements in the special agent's affidavit for the search warrant; thus, our analysis under the second assignment of error would also apply in this instance. That is, the facts surrounding the two controlled purchases could be logically interpreted to show that Badley did not have the packets of cocaine before he entered the home, and that he obtained the packets while he was inside.

{¶52} A review of the trial transcript shows that the state also demonstrated that appellant was the individual who allowed Badley to enter the home on both occasions. When this fact is combined with the evidence that appellant was found wearing a latex glove at the time the search warrant was executed, the jury could logically infer that he

had played a role in the two purchases; i.e., he had either been the principal offender or had aided and abetted another person in the commission of those crimes.

{¶53} This court has concluded that an instruction on complicity is justified when the evidence could be interpreted to support alternative findings as to the exact role of the defendant. *State v. Sweeney*, 11th Dist. No. 2006-L-252, 2007-Ohio-5223, at ¶62. Applying this precedent to the facts of this case, the trial court did not err in granting the state's request to give the jury the complicity instruction. Therefore, appellant's fourth assignment of error is without merit.

{¶54} Under his fifth assignment, appellant claims that he was denied effective assistance of counsel when his trial attorney failed to provide additional information requested by the trial court. As part of the separate sentencing hearing, the trial court considered the issue of whether appellant was indigent for purposes of the imposition of a fine. After it was noted that appellant had an interest in certain real estate, the trial court gave his trial attorney an opportunity to submit further information regarding the extent of that interest. When the attorney did not submit any new submission, the trial court imposed a fine of $17,500.

{¶55} In contending that he was adversely affected by counsel's inaction on this point, appellant essentially asserts that if the additional information about the real estate had been submitted, the trial court would have found that he was indigent. However, in making this assertion, he does not cite to any evidence in the record as to the value of the disputed real estate. Instead, appellant maintains that his indigent status should be inferred from the fact that he has spent the majority of his adult life in prison and has a serious addiction problem.

{¶56} Notwithstanding the foregoing facts, the outcome of the indigency analysis

could have been affected if it was shown that the disputed real estate lacked significant value. Because the record before this court does not contain any indication as to the value of the property, appellant cannot establish that he was prejudiced by his trial counsel's performance. Stated otherwise, information outside the record is necessary to decide this issue; thus, the claimed error cannot be demonstrated on direct appeal. For this reason, his fifth assignment lacks merit.

{¶57} Appellant's final assignment of error pertains to the sentence the trial court imposed on the two counts to which he pled guilty under the second action. As noted above, the trial court ordered him to serve two consecutive terms of 10 and 14 months, and further required that the 24 month aggregate be served after the completion of the 15-year term under the first case. Appellant now argues that the trial court abused its discretion in imposing the consecutive terms under the facts of this case. Specifically, he asserts that the court failed to afford sufficient weight to the fact that he has both addiction and mental health problems.

{¶58} Our review of the transcript of the sentencing hearing shows that appellant was given the opportunity to present the oral statements of four individuals. In addition, appellant's trial counsel spoke on his behalf. As part of the statements, direct reference was made to his drug addiction and other problems.

{¶59} In announcing appellant's sentence at the close of the proceeding, the trial court acknowledged that it had considered the statements and the recommendations in his drug evaluation. However, the court then stated that the mitigating factors had to be weighed against the following: (1) appellant had a substantial prior criminal record, which included over 10 prior convictions; (2) he had been on parole when he committed the offenses under the first indictment; (3) he had been released on bond when he

committed the offenses under the second indictment; and (4) he had also been found guilty of five probation violations through the years.

{¶60} Under the present standard for the review of a felony sentence, if the trial court's judgment is not contrary to law, it cannot be subject to reversal unless an abuse of discretion can be shown. See *State v. Tenney*, 11th Dist. No. 2009-A-0015, 2010-Ohio-6248 at ¶12, quoting *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, at ¶26. In the instant case, the record readily shows the trial court fully considered the relevant factors. Moreover, the factors cited by that court clearly supported its ruling to impose consecutive sentences as to the two offenses under the second indictment. As a result, appellant's sixth assignment also is lacking in merit.

{¶61} Pursuant to the foregoing analysis, it is the order of this court that both judgments of the trial court are affirmed.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.