

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2014-09-069
 :
 - vs - : OPINION
 : 5/26/2015
 :
 ABDUR RAHIM ALI PETERS, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2014 CR 0264

D. Vincent Faris, Clermont County Prosecuting Attorney, Nicholas Horton, 76 South Riverside Drive, 2nd Floor, Batavia, Ohio 45103, for plaintiff-appellee

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HENDRICKSON, J.

{¶ 1} Defendant-appellant, Abdur Rahim Ali Peters, appeals from his sentence in the Clermont County Court of Common Pleas for two counts of aggravated robbery, three counts of felonious assault, one count of aggravated burglary, and the related firearm specifications for each charge. For the reasons set forth below, we affirm.

{¶ 2} On or about April 25, 2014, appellant along with his four co-defendants entered

the home of Cody Ramos, an alleged drug dealer, with the intent to steal drugs and money. Appellant, armed with a gun, entered the house, found Ramos and forced him to the floor. Appellant then "pistol whipped" Ramos, and eventually shot him in the neck. The gunshot awoke the other two occupants of the home, Ramos' mother, Melinda Ramos, and Ramos' girlfriend, Kyla Helton. When Helton came to see what was going on, she too was "pistol whipped" on the head and knocked unconscious. Appellant entered Ramos' mother's room, demanded money and drugs, and beat her on the head with his gun.

{¶ 3} On May 1, 2014, appellant was indicted in a 16-count indictment related to this incident. Each count in the indictment included a firearm specification. Appellant initially pleaded not guilty to the charges contained in the indictment, but later withdrew this plea and entered a guilty plea to 6 of the 16 counts and the firearm specifications accompanying each of the 6 counts. Specifically, appellant entered a guilty plea to two counts of aggravated robbery in violation of R.C. 2911.01(A)(1), felonies of the first degree (counts 3 and 9), three counts of felonious assault in violation of R.C. 2903.11(A)(1), felonies of the second degree (counts 5, 11, and 15), and one count of aggravated burglary in violation of R.C. 2911.11(A)(2), a felony of the first degree (count 8).¹ The remaining counts and the accompanying firearm specifications were dismissed.

{¶ 4} A sentencing hearing was held on August 29, 2014. The trial court sentenced appellant to an aggregate prison term of 27 years. With respect to count 3, the trial court imposed a three-year prison term for aggravated robbery and a three-year consecutive prison term on the firearm specification for a total of six years on count 3. With respect to count 5, the trial court imposed a two-year prison term for felonious assault and a three-year

1. Each of the felonious assault counts corresponded to the three victims. Count 5 related to the felonious assault of Cody Ramos, count 11 related to the felonious assault of Melinda Ramos, and count 15 related to the felonious assault of Kyla Helton. The two aggravated robbery offenses under counts 3 and 9 related to Cody Ramos and Melinda Ramos. Finally, the victims of the aggravated burglary offense under count 8 were Melinda Ramos and Cody Ramos as the home was owned or controlled by both of them.

consecutive term on the firearm specification for a total of five years on count 5. As to count 8, the trial court imposed a three-year prison term for aggravated burglary and a three-year consecutive prison term on the firearm specification for a total of six years as to that count. As to count 9, the trial court imposed a three-year sentence for aggravated robbery and three years on the related firearm specification. With respect to count 11 for felonious assault, the trial court imposed a two-year prison term and a three-year consecutive prison term on the related firearm specification for a total of five years as to count 11. Finally, as to count 15, the trial court imposed a two-year prison sentence on the felonious assault and a consecutive three-year prison term on the related firearm specification. The total sentence relating to count 15 was 5 years. The trial court ordered appellant's sentence on all counts with their respective firearm specification terms to be served consecutively to each other, except for count 9 and its accompanying firearm exception, which was ordered to be served concurrently with the other counts. In imposing this sentence, the trial court specifically recognized it was permitted to impose multiple sentences on the firearm specifications pursuant to R.C. 2929.14.

{¶ 5} Appellant timely appealed his sentence, raising three assignments of error. For ease of discussion, we consider appellant's arguments out of order.

{¶ 6} Assignment of Error No. 2:

{¶ 7} THE TRIAL COURT ERRED IN FAILING TO MERGE COUNTS THREE AND NINE, THE AGGRAVATED ROBBERIES, AGAINST TWO ALLEGED VICTIMS.

{¶ 8} Appellant argues in his second assignment of error that the trial court erred in failing to merge his two convictions for aggravated robbery (counts 3 and 9) at sentencing. Appellant contends that the two aggravated robbery offenses were committed with the same animus, i.e., the intent to steal drugs and money belonging to Cody Ramos, and therefore the offenses and the accompanying firearm specifications should have merged for the purposes

of sentencing. We find no merit to appellant's arguments.

{¶ 9} As an initial matter, we note appellant failed to raise the issue of allied offenses to the trial court. Nevertheless, this court will review his argument for plain error. See *State v. Horna*, 12th Dist. Butler No. CA2013-11-210, 2015-Ohio-1697, ¶ 14. Under Crim.R. 52(B), plain error exists only where there is an obvious deviation from a legal rule that affected the outcome of the proceeding. *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002). The imposition of multiple sentences for allied offenses of similar import constitutes plain error. *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, ¶ 31-33.

{¶ 10} Pursuant to R.C. 2941.25, Ohio's multiple-count statute, the imposition of multiple punishments for the same criminal conduct is prohibited. *State v. Brown*, 186 Ohio App.3d 437, 2010-Ohio-324, ¶ 7 (12th Dist.). Specifically, R.C. 2941.25 provides:

(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

Accordingly, R.C. 2941.25(A) allows only a single conviction for conduct that constitutes "allied offenses of similar import." *State v. Fields*, 12th Dist. Clermont No. CA2014-03-025, 2015-Ohio-1345, ¶ 14. However, pursuant to R.C. 2941.25(B), a defendant charged with multiple offenses may be convicted of all the offenses if any one of the following is true: (1) the conduct constitutes offenses of dissimilar import, (2) the conduct shows that the offenses were committed separately, or (3) the conduct shows that the offenses were committed with separate animus. *State v. Ruff*, Slip Opinion No. 2015-Ohio-995, ¶ 13, citing *State v. Moss*, 69 Ohio St.2d 515, 519 (1982).

{¶ 11} The Ohio Supreme Court has recently clarified the test for allied offenses. *State v. Ruff* at ¶ 25. The *Ruff* court noted that the trial court or reviewing court must "first take into account the conduct of the defendant." *Id.* In other words, this court must consider how the offenses were committed.

If any of the following is true, the offenses cannot merge and the defendant may be convicted and sentenced for multiple offenses: (1) the offenses are dissimilar in import or significance—in other words, each offense caused separate, identifiable harm, (2) the offenses were committed separately, and (3) the offenses were committed with separate animus or motivation.

Id. In *Ruff*, the Supreme Court specifically clarified the meaning of "dissimilar import" found in R.C. 2941.25(B). *Id.* at ¶ 1, 23. The Court held that "[t]wo or more offenses of dissimilar import exist within the meaning of R.C. 2941.25(B) when the defendant's conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable." *Id.* at paragraph two of the syllabus, ¶ 24.

{¶ 12} In the instant case, appellant was convicted of the aggravated robbery of Cody Ramos and the aggravated robbery of Melinda Ramos. At the plea hearing, the following facts were read into the record with regards to these two counts:

As to Count 3, the Defendant on or about April 25th of the year 2014, in Clermont County, Ohio, in attempting or committing a theft offense he did have a deadly weapon on or about his person or under his control and either displayed, brandished or indicated that he possessed or used it. Specifically, on that date and at that location the Defendant demanded property from an individual by the name of Cody Ramos while the Defendant was in possession of a handgun and displayed that handgun during the commission of that respective offense. * * * As to Count 9, the Defendant on or about April 25th of the year 2014, in Clermont County, Ohio, again in attempting or committing a theft offense he did have a deadly weapon on or about his person or under control and he either displayed, brandished, indicated he possessed or used that weapon during the commission of that offense. Specifically, the Defendant demanded property from an individual, a victim by the name of Melinda Ramos, while he was in the possession of a gun and displayed that handgun during

the commission of that respective offense.

{¶ 13} On this record, it is plainly obvious that appellant's conduct was of dissimilar import as it involved separate victims. "When a defendant's conduct victimizes more than one person, the harm for each person is separate and distinct, and therefore, the defendant can be convicted of multiple counts." *Ruff* at ¶ 26. On this record, there was no error, plain or otherwise, in the trial court's failure to merge the two aggravated robbery convictions.

{¶ 14} Appellant's second assignment of error is overruled.

{¶ 15} Assignment of Error No. 1:

{¶ 16} THE TRIAL COURT ERRED IN SENTENCING APPELLANT CONSECUTIVELY AS TO THE GUN SPECIFICATION IN RELATION TO THE AGGRAVATED BURGLARY UNDER [R.C.] 2929.14(B)(1)(g).

{¶ 17} Appellant argues in his first assignment of error that the trial court erred in imposing a three-year consecutive prison term on the firearm specification corresponding to the aggravated burglary conviction. Appellant contends that pursuant to R.C. 2929.14(B)(1)(g), the trial court lacked discretion to impose such a prison term.

{¶ 18} Appellant pleaded guilty to six firearm specifications under R.C. 2941.145 relating to each of the six offenses to which he pleaded guilty. R.C. 2941.145 carries a three-year mandatory prison term where "the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense." R.C. 2941.145(A); R.C. 2929.14(B)(1)(a)(ii). Under R.C. 2929.14(B)(1)(b), a sentencing court generally may not impose multiple firearm specifications for felonies that were committed as part of the same act or transaction. However, R.C. 2929.14(B)(1)(g) carves out an exception to this general rule and permits a court, under certain circumstances, to sentence a defendant to multiple firearm specifications. R.C.

2929.14(B)(1)(g) states:

If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, *the sentencing court shall impose* on the offender the prison term specified under division (B)(1)(a) of this section *for each of the two most serious specifications of which the offender is convicted* or to which the offender pleads guilty *and, in its discretion, also may impose* on the offender the prison term specified under that division for any or all of the remaining specifications.

(Emphasis added.)

{¶ 19} The plain language of the statute along with this court's accompanying case law dictates that a trial court is required to impose a separate prison term for each of the two most serious specifications where (1) a defendant pleads guilty to two or more felonies, one of which is a felony specifically enumerated in the statute, such as aggravated robbery or felonious assault, and (2) the defendant also pleads guilty to firearm specifications under R.C. 2929.14(B)(1)(a) in connection with two or more of the felonies. *See State v. Israel*, 12th Dist. Warren No. CA2011-11-115, 2012-Ohio-4876, ¶ 70; *State v. Fields*, 12th Dist. Clermont No. CA2014-03-025, 2015-Ohio-1345, ¶ 21; *see also State v. Murphy*, 8th Dist. Cuyahoga No. 98124, 2013-Ohio-2196, ¶ 8. Thereafter, the trial court maintains discretion to impose a prison term for any of the remaining specifications. *See State v. Israel*, 2012-Ohio-4876 at ¶ 70.

{¶ 20} Here, appellant pleaded guilty to multiple felonies, to wit: three counts of felonious assault, two counts of aggravated robbery, and one count of aggravated burglary. Furthermore, appellant pleaded guilty to the firearm specifications to each of these six felonies. Finally, at least one of the felonies to which appellant pleaded guilty is one of the specific felonies listed in R.C. 2929.14(B)(1)(g). Specifically, appellant pleaded guilty to

felonious assault and aggravated robbery. Accordingly, each of the conditions required to trigger the exception found in R.C. 2929.14(B)(1)(g) are present here, and the trial court was required to impose a separate prison term for each of the two most serious specifications. As recognized by the trial court at the sentencing hearing, the two most serious offenses in this case were counts 3 and 8 for the aggravated robbery and aggravated burglary of Cody Ramos. The trial court, pursuant to the mandate found in R.C. 2929.14(B)(1)(g), was therefore required to impose the mandatory prison term for each of these two specifications. We find no error in the court's conclusion in this regard.

{¶ 21} Appellant, however, contends that the trial court imposed the sentence on the firearm specification related to the aggravated burglary count pursuant to its discretionary authority under R.C. 2929.14(B)(1)(g). Appellant construes the language "any or all of the remaining specifications" found in R.C. 2929.14(B)(1)(g) to refer only to those felonies specifically enumerated in the statute. According to appellant, because aggravated burglary is not one of the enumerated felonies, the trial court was unable to impose a prison term on the accompanying firearm specification. We find no merit to appellant's arguments.

{¶ 22} As established above, the trial court imposed a prison term on the firearm specification accompanying the aggravated burglary offense as part of the mandatory requirements under R.C. 2929.14(B)(1)(g). Even if the court had sentenced appellant pursuant to its discretionary authority granted under R.C. 2929.14(B)(1)(g), the court certainly was entitled, within its discretion to impose a prison sentence on the firearm specification underlying the aggravated burglary charge. Contrary to appellant's assertions, once it was determined that R.C. 2929.14(B)(1)(g) was applicable and the court imposed a prison term for each of the two most serious specifications, the trial court was then permitted to impose a sentence on "any or all of the remaining specifications." The statute is unequivocal and there is no need to engage in statutory interpretation. The plain language of the statute provides

the trial court with discretion to impose a prison term for *any* of the remaining specifications. See *State v. Israel*, 12th Dist. Warren No. CA2011-11-115, 2012-Ohio-4876, ¶ 70. The statute does not limit the trial court's discretion in this regard to only those offenses previously listed in the statute. Accordingly, even if the trial court had imposed a sentence on the firearm specification underlying the burglary offense under its discretionary authority, there would be no error.

{¶ 23} Based on the foregoing, we find the trial court properly imposed a prison term on the firearm specification underlying the aggravated burglary offense pursuant to R.C. 2929.14(B)(1)(g). Appellant's first assignment of error is overruled.

{¶ 24} Assignment of Error No. 3:

{¶ 25} THE SENTENCE OF TWENTY-SEVEN (27) YEARS PLACES AN UNREASONABLE BURDEN ON THE STATE OF OHIO.

{¶ 26} In appellant's third and final assignment of error, he contends his sentence violates R.C. 2929.11. Appellant contends that the purposes and principles of sentencing under R.C. 2929.11 could have been achieved with a more lenient sentence. According to appellant, the sentence imposed places an unnecessary financial burden on state resources in light of the fact that the total cost of incarcerating appellant for the length of his sentence will be "roughly \$702,000." Appellant further argues that the purposes and principles of sentencing will be accomplished in less than 27 years and therefore he should be resentenced.

{¶ 27} We review the imposed sentence under the standard of review set forth in R.C. 2953.08(G)(2), which governs all felony sentences. *State v. Crawford*, 12th Dist. Clermont No. CA2012-12-088, 2013-Ohio-3315, ¶ 6. "When considering an appeal of a trial court's felony sentencing decision under R.C. 2953.08(G)(2), [t]he appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the

sentence and remand the matter to the sentencing court for resentencing." *Id.* at ¶ 7, quoting R.C. 2953.08(G)(2). However, an appellate court's review of an imposed sentence is not whether the sentencing court abused its discretion. *Id.*; *State v. Moore*, 12th Dist. Clermont No. CA2014-02-016, 2014-Ohio-5191, ¶ 6. Rather, an appellate court may take any action authorized by R.C. 2953.08(G)(2) only if the court "clearly and convincingly finds" that either (1) "the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;" or (2) "[t]hat the sentence is otherwise contrary to law." R.C. 2953.08(G)(2)(a)-(b). A sentence is not clearly and convincingly contrary to law where the trial court makes the required findings under R.C. 2929.14(C)(4) and the record supports those findings, and where the trial court considers the purposes and principles of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, properly applies postrelease control, and sentences appellant within the permissible statutory range. *State v. Conn*, 12th Dist. Warren Nos. CA2014-04-059, CA2014-04-061 and CA2014-06-084, 2015-Ohio-1755, ¶ 21, citing *State v. Stamper*, 12th Dist. Butler No. CA2012-08-166, 2013-Ohio-5669, ¶ 9.

{¶ 28} In the instant case, it is clear from the sentencing hearing and the sentencing entry that the trial court considered the principles and purposes of sentencing under R.C. 2929.11 before imposing appellant's sentence. The judgment entry sentencing appellant explicitly stated that the trial court had considered "the principles and purposes of sentencing under [R.C.] 2929.11." In addition, at the sentencing hearing, the trial court specifically noted that it was required "to impose a sentence that is consistent with the purposes and the principles of sentencing which really boils down to two things: punishment and protection of the public from the Defendant." After considering the seriousness of the offenses committed by appellant, the impact the offenses had on the victims, and his past criminal history, the

trial court concluded that "[a] significant period of incarceration is warranted to protect the public from future crime and to appropriately punish this defendant."

{¶ 29} Moreover, as this court has previously stated, "[a]lthough resource burdens are a relevant sentencing criterion under newly-enacted language in R.C. 2929.11(A), a sentencing court is not required to elevate resource conservation above seriousness and recidivism factors." *State v. Henry*, 12th Dist. Butler No. CA2013-03-050, 2014-Ohio-1318, ¶ 9-12, quoting *State v. Wilson*, 2d Dist. Montgomery No. 24978, 2012-Ohio-4756, ¶ 6. "Where the interests of public protection and punishment are well served by a prison sentence, the claim is difficult to make that the prison sentence imposes an unnecessary burden on government resources." *Id.*

{¶ 30} Here, as evidenced above, the trial court clearly took into consideration the purposes and principles of sentencing under R.C. 2929.11, including the burden on state and local government resources. The court also made further findings regarding the nature and extent of the crimes committed by appellant. After considering all the relevant factors, the trial court found that the 27-year sentence was necessary to protect the public and punish appellant. Accordingly, we cannot say that appellant's sentence poses an unnecessary burden on government resources.

{¶ 31} Based on this record, we find that appellant's sentence is not clearly and convincingly contrary to law. Appellant's third and final assignment of error is overruled.

{¶ 32} Judgment affirmed.

S. POWELL, P.J., and RINGLAND, J., concur.