

[Cite as *State v. Leet*, 2015-Ohio-1668.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 25966
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2010-CR-635
v.	:	
	:	(Criminal Appeal from
GREGORY LEET	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

.....

OPINION

Rendered on the 1st day of May, 2015.

.....

MATHIAS H. HECK, JR., by KIRSTEN A. BRANDT, Atty. Reg. No. 0070162,
Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts
Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45402
Attorney for Plaintiff-Appellee

GARY C. SCHAENGOLD, Atty. Reg. No. 0007144, 4 East Schantz Avenue, Dayton, Ohio
45409
Attorney for Defendant-Appellant

.....

FAIN, J.

{¶ 1} Defendant-appellant Gregory Leet appeals from his conviction and sentence
for two counts of Murder (purposeful), two counts of Felony Murder, two counts of

Felonious Assault (deadly weapon), two counts of Felonious Assault (serious physical harm), and one count of Tampering with Evidence. His assigned appellate counsel filed a brief under the authority of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), indicating that he was unable to find any potential assignments of error having arguable merit.

{¶ 2} By entry dated October 24, 2014, we concluded that there was at least one potential assignment of error having arguable merit – that the trial court had erred by imposing consecutive sentences without making the findings required by R.C. 2929.14(C)(4). We rejected the *Anders* brief, new counsel was appointed, and a new brief was filed, raising that issue. The State concedes error in this regard. We agree. Consequently, the sentence is Reversed, and this cause is Remanded for re-consideration whether to impose consecutive sentences.

**I. Leet Drives his Two Victims to a Remote Location,
Shoots them Dead, and Drags their Bodies to a Creek**

{¶ 3} One night in late February, 2010, Leet, accompanied by Kenneth Bailey and Tylor Blevins, went to Hammerjax, a bar in downtown Dayton. Leet was driving a Chevy Suburban. When the bar closed, Leet approached a man named Abdul Jihad, seeking to buy cocaine. Jihad told Leet he could obtain cocaine for \$100 at a nearby apartment building. Leet drove himself, Bailey, Blevins, and Jihad to the apartment building.

{¶ 4} Jihad formed the intent to steal Leet's \$100. When they arrived at the apartment building, Jihad and Leet entered the building, and went upstairs several stories. Jihad told Leet that Leet would have to wait outside the room while Jihad

purchased the cocaine. Leet gave Jihad the money, which actually totaled about \$80. Jihad ostensibly entered the room, but actually, the door he went through was into a stairwell. Jihad went down the stairs and left the building, with Leet's money.

{¶ 5} Bailey, who was sitting outside in the Suburban with Blevins, saw Jihad leaving the apartment building. He called Leet on a cell phone. When Leet realized he had been robbed, he became enraged. After walking around looking for Jihad, Leet got into the Suburban and began driving around, somewhat recklessly, looking for Jihad.

{¶ 6} At one point, Leet got out of the Suburban and attacked a man on the sidewalk, knocking him down. Local residents then emerged from their apartments, and began yelling at Leet. Leet got into his suburban, but did not leave the area.

{¶ 7} Two men, Nathan Gay and Harvey Sims, Jr., approached and asked Leet what was the matter. When Leet explained, they offered to help him find the man who had robbed him, in exchange for \$100 each. Leet said he had to go home to get the money, and Gay and Sims got into the Suburban. Bailey and Blevins asked to be taken home, but Leet refused to do so. Leet then drove the five of them to his home, went inside briefly, and returned. Leet then drove to a wooded area a little over a mile and a half away.

{¶ 8} Leet got stuck in the snow, and Bailey, Blevins, Gay, and Sims got out of the vehicle and helped Leet get the car out of the snow. After driving across the road, Leet stopped, and he and Bailey got out. According to Bailey, Leet was still in a rage, and was upset with Bailey for not having helped Leet assault the man downtown. Gay and Sims then got out of the Suburban. According to both Bailey and Blevins, Leet then shot both Gay and Sims with a revolver, and, after pausing to reload, emptied his gun, shooting

each man five times.

{¶ 9} Leet demanded that Bailey and Blevins assist him in dragging the bodies down to a nearby creek. Blevins was too upset to be able to help. Leet and Bailey dragged the bodies down to the creek, where they were discovered a few hours later.

{¶ 10} According to Bailey, Leet retrieved a toboggan hat and a wallet from one of the bodies. Leet and Bailey then got back in the Suburban with Blevins, and drove away. Leet had put the expended shells from the revolver on the front bench seat of his Suburban. He put them and the wallet in the toboggan hat. While they were driving away, Leet threw the toboggan hat, with the shells and the wallet inside, outside the Suburban. They were not recovered.

II. The Course of Proceedings

{¶ 11} Leet was arrested and charged with the murders and felonious assaults of Gay and Sims, with firearm specifications. He was also charged with tampering with evidence and with aggravated robbery. Following a jury trial, Leet was convicted of all charges and specifications except the aggravated robbery charge. He was acquitted of that charge.

{¶ 12} On appeal, we reversed, holding that the trial court had erred in overruling a motion to suppress statements Leet had made to police. *State v. Leet*, 2d Dist. Montgomery No. 24692, 2012-Ohio-6186.

{¶ 13} On remand, Leet was again convicted of all charges and specifications (except, of course, the aggravated robbery charge, which had not survived his first trial). The trial court merged the murder and felonious assault convictions pertaining to each

victim into one purposeful murder conviction for each victim. The trial court also merged all the firearm specifications into one firearm specification. Leet was sentenced to fifteen years to life in prison for each of the murder convictions, to three years for the firearm specification, and to three years for the tampering with evidence conviction, with all sentences to be served consecutively, for a total sentence of 36 years to life.

{¶ 14} From his conviction and sentence, Leet appeals. His assigned appellate counsel filed an *Anders* brief, indicating that counsel could not find any potential assignments of error having arguable merit. We rejected the *Anders* brief, concluding that there is at least one potential assignment of error having arguable merit -- that the trial court had erred by imposing consecutive sentences without making the findings required by R.C. 2929.14(C)(4). Newly assigned appellate counsel has filed a brief, setting forth a single assignment of error:

THE TRIAL COURT ERRED IN IMPOSING CONSECUTIVE SENTENCES WITHOUT HAVING MADE THE NECESSARY STATUTORY FINDINGS SET FORTH IN §2929.14(C)(4) OF THE OHIO REVISED CODE.

III. The Trial Court Failed to Make the Statutory Findings Required for the Imposition of Consecutive Sentences

{¶ 15} R.C. 2929.14(C)(4) provides that a trial court “may require the offender to serve [multiple] prison terms consecutively if the court finds that 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, and if the court also finds” any one of three facts specified in subdivisions (a), (b), and (c). In order to impose consecutive sentences, a trial court must make the findings required by the statute at the sentencing hearing and in its sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37.

{¶ 16} In the case before us, the trial court did not make the findings required by the statute for consecutive sentences, either at the sentencing hearing, or in its sentencing entry. The State concedes error in this regard. Leet’s sole assignment of error is sustained.

IV. Conclusion

{¶ 17} Leet’s sole assignment of error having been sustained, the sentence imposed by the trial court is Reversed, and this cause is Remanded for reconsideration of whether the prison terms should be imposed consecutively, consistent with this opinion.

.....

FROELICH, P.J., and WELBAUM, J., concur.

Copies mailed to:

Mathias H. Heck
Kirsten A. Brandt
Gary C. Schaengold
Hon. Barbara P. Gorman