

**IN THE COURT OF APPEALS OF OHIO  
THIRD APPELLATE DISTRICT  
HENRY COUNTY**

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**STATE OF OHIO,**

**PLAINTIFF-APPELLEE,**

**CASE NO. 7-14-17**

**v.**

**CHAD M. PULTZ,**

**OPINION**

**DEFENDANT-APPELLANT.**

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**STATE OF OHIO,**

**PLAINTIFF-APPELLEE,**

**CASE NO. 7-14-18**

**v.**

**CHAD M. PULTZ,**

**OPINION**

**DEFENDANT-APPELLANT.**

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**Appeals from Henry County Common Pleas Court  
Trial Court Nos. 14 CR 0036 and 14 CR 0059**

**Judgments Reversed, Sentences Vacated and Causes Remanded**

**Date of Decision: April 13, 2015**

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**APPEARANCES:**

***Todd B. Guelde* for Appellant**

***John H. Hanna* for Appellee**

**SHAW, J.**

{¶1} Defendant-appellant, Chad M. Pultz (“Pultz”) appeals the November 7, 2014 judgments of the Henry County Court of Common Pleas journalizing his convictions on three counts of unlawful sexual conduct with a minor, in violation of R.C. 2907.04(A) and sentencing him to a prison term of twelve months for each offense to be served consecutively for a total term of thirty-six months in prison. On appeal, Pultz argues that the trial court failed to make the statutory findings required to impose consecutive sentences.

{¶2} On May 20, 2014, in case number 14 CR 0036, the Henry County Grand Jury indicted Pultz on four counts of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A), each a felony of the fourth degree. The indictment identified two victims, Jane and Sally Doe, and alleged that Pultz engaged in sexual conduct with the victims knowing that they were “thirteen years of age or older, but less than sixteen years of age, or being reckless in that regard.” (Case No. 14 CR 0036, Doc. No. 2).

{¶3} On July 8, 2014, in case number 14 CR 0059, the Henry County Grand Jury indicted Pultz on one count of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A), a felony of the fourth degree, and one count of illegal use of a minor in nudity-oriented material or performance in violation of R.C. 2907.323(A)(1), a felony of the second degree. The indictment identified

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one victim, L.L., and alleged that Pultz engaged in sexual conduct with L.L. knowing that L.L. was “thirteen years of age or older, but less than sixteen years of age, or being reckless in that regard.” (Case No. 14 CR 0059, Doc. 1). The indictment also alleged that Pultz photographed L.L. in a state of nudity.

{¶4} Pultz subsequently entered pleas of not guilty to the charges stated in the indictments in both 14 CR 0036 and 14 CR 0059.

{¶5} On September 26, 2014, Pultz appeared before the trial court on both cases and pursuant to a negotiated plea agreement withdrew his previously tendered not guilty pleas and entered pleas of guilty to count one in the indictment of case number 14 CR 0036, unlawful sexual conduct with a minor, and count one of the indictment in 14 CR 0059, unlawful sexual conduct with a minor. Pultz also entered a no contest plea to count four of the indictment in case number 14 CR 0036, unlawful sexual conduct with a minor. The prosecution dismissed the remaining two counts of unlawful sexual conduct with a minor in case number 14 CR 0036, and the one count of illegal use of a minor in nudity-oriented material or performance in case number 14 CR 0059 as a result of the parties’ agreement. The trial court subsequently accepted Pultz’s guilty and no contest pleas.

{¶6} On November 6, 2014, Pultz appeared for a sentencing and classification hearing. The trial court heard statements from two of the victims’ mothers and asked Pultz to explain how the circumstances underlying the offenses

developed. The trial court then imposed a prison term of twelve months on each of the three counts and ordered the prison terms to run consecutively, for a total term of thirty-six months, and classified Pultz as a tier II sex offender.

{¶7} Pultz filed this appeal asserting the following assignments of error.

**ASSIGNMENT OF ERROR NO. I**

**THE TRIAL COURT ERRED WHEN IT FAILED TO CONSIDER ALL THE FACTORS REQUIRED BY LAW AND MAKE THE SPECIFIC FINDINGS NECESSARY TO SENTENCE APPELLANT TO CONSECUTIVE SENTENCES.**

**ASSIGNMENT OF ERROR NO. II**

**APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL IN SUCH A MANNER THAT APPELLANT WAS PREJUDICED BY COUNSEL'S DEFICIENT PERFORMANCE.**

**First and Second Assignments of Error**

{¶8} In his first assignment of error, Pultz argues that the trial court failed to make the necessary findings under R.C. 2929.14(C)(4) to impose consecutive sentences.

{¶9} A trial court's sentence will not be disturbed on appeal absent a defendant's showing by clear and convincing evidence that the sentence is unsupported by the record; the sentencing statutes' procedure was not followed or there was not a sufficient basis for the imposition of a prison term; or that the sentence is contrary to law. *State v. Ramos*, 3d Dist. Defiance No. 4-06-24,

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2007–Ohio–767, ¶ 23 (the clear and convincing evidence standard of review set forth under R.C. 2953.08(G)(2) remains viable with respect to those cases appealed under the applicable provisions of R.C. 2953.08(A), (B), and (C) \* \* \*); *State v. Rhodes*, 12th Dist. Butler No. CA2005–10–426, 2006–Ohio–2401, ¶ 4; *State v. Tyson*, 3d Dist. Allen Nos. 1–04–38 and 1–04–39, 2005–Ohio–1082, ¶ 19, citing R.C. 2953.08(G).

{¶10} Clear and convincing evidence is that “which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus; *State v. Boshko*, 139 Ohio App.3d 827, 835 (12th Dist.2000). An appellate court should not, however, substitute its judgment for that of the trial court because the trial court is “ ‘clearly in the better position to judge the defendant’s dangerousness and to ascertain the effect of the crimes on the victims.’ ” *State v. Watkins*, 3d Dist. Auglaize No. 2–04–08, 2004–Ohio–4809, ¶ 16, quoting *State v. Jones*, 93 Ohio St.3d 391, 400 (2001).

{¶11} “Except as provided in \* \* \* division (C) of section 2929.14, \* \* \* a prison term, jail term, or sentence of imprisonment shall be served concurrently with any other prison term, jail term, or sentence of imprisonment imposed by a court of this state, another state, or the United States.” R.C. 2929.41(A). Specifically, R.C. 2929.14(C) provides in relevant part that:

**(4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the 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 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 crime by the offender.**

{¶12} Thus, R.C. 2929.14(C)(4) requires a trial court to make specific findings on the record before imposing consecutive sentences. *State v. Hites*, 3d Dist. Hardin No. 6–11–07, 2012–Ohio–1892, ¶ 11; *State v. Peddicord*, 3d Dist. Henry No. 7–1224, 2013–Ohio–3398, ¶ 33. The Supreme Court of Ohio in *State v. Bonnell* clarified a trial court's duty with respect to making the required statutory findings for imposing consecutive sentences under R.C. 2929.14(C)(4):

**When imposing consecutive sentences, a trial court must state the required findings as part of the sentencing hearing, and by**

doing so it affords notice to the offender and to defense counsel. And because a court speaks through its journal the court should also incorporate its statutory findings into the sentencing entry. However, a word-for-word recitation of the language of the statute is not required, and as long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld.

140 Ohio St.3d 209; 2014-Ohio-3177, ¶ 29 (internal citations omitted).

{¶13} In the case sub judice, the trial court stated the following regarding the imposition of consecutive sentences on Pultz at the sentencing hearing.

**Trial Court: \* \* \*** Well, as [Defense Counsel] indicated these are difficult cases because the injury can't be diminished. You know, there is no question that the sexual worries and the community has changed over the last 20-25 years. And yet some things are the same. I do kind of view this situation differently than what I call a Romeo and Juliet scenario where there is a longtime boyfriend/girlfriend relationship and you have that age disparity and it's a singular relationship and things lead on and develop and a parent discovers it and we're in front of the Court but there are three victims here. So, I've looked at the presentence investigation, I've read that over, you don't have any prior felony background but you're not exactly immune with some involvement with the law. I've also looked at the statutes of 2929.11 and 2929.12 taking into consideration the purposes of felony sentencing which are to punish the offender and to protect the public. And what is striking to me is the fact that as you indicated to me is the fact that, as you indicated, these individuals, as verified by at least two of the mothers, were having some emotional struggles to begin with, so you had somebody that was, perhaps, more vulnerable than the average individuals at that age. I don't know that friends take advantage of that situation, that's where I kind of draw the line here between the relationship that develops between two young

**people and but for the fact of some age discrepancy you have a violation and where you have individuals that have underlying issues and they're vulnerable victims. *So that brings us to 2929.14 so any single sentence would otherwise diminish the harm and does not adequately reflect the seriousness of the conduct.* I've also looked at 2929.13 with regard to whether or not there should be a Department of Corrections sanction or a Community Control sanction and what I've decided is with regard to Count I in case number 14CR0036 I'm going to sentence you to 12 months at the Department of Correction and Rehabilitation. With regard to Count IV I'm going to sentence you to 12 months incarceration at the Department of Rehabilitation and Correction to be consecutive. With regard to case number 14CR0059 I'm going to sentence you to another 12 months consecutive to the Department of Rehabilitation and Correction.**

(Nov. 6, 2014, Sent. Tr. at 15-17) (emphasis added).

{¶14} As stated above, in order to impose consecutive sentences the trial court must find at the sentencing hearing: (1) consecutive sentences are necessary to either protect the public or punish the offender; (2) the sentences would not be disproportionate to the offense committed; and (3) one of the factors in R.C. 2929.14(C)(4)(a), (b), or (c) applies. *Peddicord*, 2013–Ohio–3398, ¶ 33; *Bonnell* at ¶ 29.

{¶15} Here, we cannot discern from the trial court's statement "[s]o that brings us to 2929.14 so any single sentence would otherwise diminish the harm and does not adequately reflect the seriousness of the conduct" or the remaining portions of the transcript of the sentencing hearing whether the trial court engaged in the correct analysis relative to imposing consecutive sentences under R.C.



2929(C)(4). In addition, because we find that the trial court failed to state the statutory findings required to impose consecutive sentences at the sentencing hearing, we do not need to address whether the findings were appropriately made in the sentencing entry. Rather, due to the fact that a trial court's failure to make the consecutive sentence findings at the sentencing hearing renders a sentence contrary to law, we vacate the trial court's sentence and remand the matter to the trial court for resentencing for the trial court to make a determination if any of the findings under R.C. 2929.14(C)(4) apply. *See Bonnell* at ¶¶ 34, 37. Therefore, the first assignment of error is sustained.

{¶16} We note that Pultz's second assignment of error involves an allegation that his trial counsel was ineffective for failing to object and/or advise him against making certain statements in response to the trial court's questioning during sentencing. However, due to our resolution of the first assignment of error, the second assignment of error is rendered moot and, therefore, the Court declines to address the issue raised.

{¶17} Based on the foregoing, we reverse the judgments of the trial court, vacate the sentences, and remand these matters to the trial court for resentencing.

***Judgments Reversed, Sentences Vacated,  
and Causes Remanded***

**ROGERS, P.J. and WILLAMOWSKI, J., concur.**  
/jlr