[Cite as *State v. Mitchell*, 2015-Ohio-1132.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
MEIGS COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 13CA13
	:	
vs.	:	
	:	DECISION AND JUDGMENT
SEAN MITCHELL,	:	ENTRY
	:	
Defendant-Appellant.	:	**Released: 03/19/15**

APPEARANCES:

Timothy Young, Ohio Public Defender, and Katherine R. Ross-Kinzie, Assistant State Public Defender, Columbus, Ohio, for Appellant.

Colleen S. Williams, Meigs County Prosecutor, and Jeremy L. Fisher, Assistant County Prosecutor, Pomeroy, Ohio, for Appellee.

McFarland, A.J.

{¶1} Sean Mitchell (Appellant) appeals the November 8, 2013 judgment entry of sentence in which he received a five-year consecutive term of imprisonment in the Meigs County Court of Common Pleas. Appellant contends his sentence is contrary to law because: (1) the trial court failed to consider his military service as a factor during sentencing as required by R.C. 2929.14 and R.C. 2929.12; and, (2) the trial court erred when it imposed a consecutive prison sentence without journalizing the statutorily required findings pursuant to R.C. 2929.14. Upon review, we

find no merit to Appellant's first assignment of error that the trial court failed to consider his military service pursuant to R.C. 2929.14 and R.C. 2929.12. We further find Appellant's sentence is not contrary to law. However, we sustain Appellant's second assignment of error in that the trial court failed to specifically incorporate the required findings for imposition of consecutive sentences in the sentencing entry. As such, we are required to remand the matter for correction of the inadvertent error. The judgment of the trial court is affirmed in part and reversed in part.

FACTS

{¶2} Appellant was indicted on or about December 10, 2009 on four counts: aggravated robbery, a felony of the first degree, in violation of R.C. 2911.01(A); robbery, a felony of the second degree, in violation of R.C. 2911.02(A)(2); theft, a felony of the fourth degree, in violation of R.C. 2913.02(A)(1); and kidnapping, a felony of the first degree, in violation of R.C. 2905.01(A)(2). The counts stemmed from events which occurred on September 1, 2009, at the Farmers Bank in Tuppers Plains, Meigs County, Ohio, when Appellant entered the bank's branch office carrying a bag in which he indicated contained a bomb. Appellant demanded money, was provided $6,250.00, and he left. Bank personnel were unable to leave due to Appellant's threats. No one was able to identify Appellant.

{¶3} Appellant left Ohio and relocated in Mississippi. Approximately two months later, he robbed a bank in Mississippi. Appellant was taken into custody shortly thereafter and during an interview with law enforcement officials in Mississippi, admitted he had robbed the Farmers Bank in Ohio. On July 12, 2010, Appellant was sentenced in Mississippi to fifteen years in the custody of the Mississippi Department of Corrections.

{¶4} Appellant was eventually brought back to Meigs County to face the Ohio charges. On August 29, 2013, he voluntarily entered guilty pleas to all four counts of the indictment, pursuant to a plea arrangement with the State of Ohio. As part of the plea agreement, the State of Ohio recommended a four year sentence in prison, to run consecutively to the Mississippi sentence. The State of Ohio also agreed to a merger of counts. The trial court deferred sentencing in order to obtain a pre-sentence investigation report.

{¶5} On September 30, 2013, Appellant was sentenced. Prior to imposing sentence, the trial court heard several victim impact statements. Appellant provided 13 letters from his supporters. He also gave testimony. Appellant testified he was 45 years old, divorced, with two teenage sons. He testified he earned a degree from Ohio University. Appellant testified he

served in the United States Navy from 1987-1992, when he was honorably discharged. He served in Desert Storm.

{¶6} Appellant further testified he enlisted in the Ohio National Guard in 2008 or 2009. Had his crimes not occurred, he was scheduled to go on regular duty in January 2010. Appellant testified he had been diagnosed with bipolar disorder prior to his enlistment in the National Guard, however, he took himself off his treatment in order to re-enter the military. Appellant also testified, as a precursor to his crimes, he had been recently divorced after 15 years of marriage.

{¶7} In sum, Appellant testified he lied about his bipolar condition and lied to his family about his military status. He testified he had no place to stay. Desperate for money, he planned the robbery in just a few short minutes. After the robbery took place, he bought a van and left Ohio the next day. He led his family to believe he was in training in Fort Benning, Georgia. When he robbed the bank in Mississippi, it was less than a thousand feet from a police department. Appellant testified he was hoping law enforcement officers would kill him. However, he surrendered and admitted his crimes in Mississippi and Ohio.

{¶8} Appellant testified his mental health is now stabilized. He testified he lives a quiet life in the Mississippi prison system, takes his

medicine, tutors, and works. He admitted he did have a substance abuse issue in 2001 and 2002.

{¶9} The trial court noted, pursuant to *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, the counts would all merge under count one, aggravated robbery, for purposes of sentencing.[1] The trial court imposed a sentence of five years in the Ohio Penitentiary, to be served consecutively to his sentence in Mississippi. As part of the sentence, Appellant was order to have no contact with the Farmers Bank employees or the bank premises. He was further ordered to make restitution to the bank, pay court costs, and continue with mental health counseling and treatment.

{¶10} This timely appeal followed.

ASSIGNMENTS OF ERROR

"I. FAILURE TO CONSIDER MILITARY SERVICE AS A FACTOR DURING SENTENCING AS REQUIRED BY R.C. 2929.14(A) and (F) RESULTS IN A SENTENCE THAT IS CONTRARY TO LAW. R.C. 2929.12(A), (F). (September 30, 2013 Transcript, p. 60)."

"II. THE TRIAL COURT ERRED WHEN IT IMPOSED MR. MITCHELL'S PRISON SENTENCE CONSECUTIVELY TO HIS MISSISSIPPI SENTENCE WITHOUT JOURNALIZING

[1] In the transcript of sentencing, p. 60, the trial court refers to aggravated robbery as the sentencing count. In the judgment entry of sentencing, at paragraph 9, the trial court states: "Counts One through Three, Aggravated Robbery, Robbery and Theft respectively, will merge into Count Four, Kidnapping, for purposes of sentencing for a total aggregate sentence of five (5) years. Neither party has raised this as an issue. Our review of the record leads us to believe this is a harmless error of the sentencing entry. The record indicates all parties were aware Appellant would be sentenced for the aggravated robbery count. (See, Sentencing transcript, p.4).

> THE STATUTORILY REQUIRED FINDINGS. R. C. 2929.14. (November 8, 2013, Judgment Entry, p. 2)."

A. STANDARD OF REVIEW FOR FELONY SENTENCES

{¶11} Pursuant to R.C. 2953.08(G)(2) an appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either "that the record does not support the sentencing court's findings" under the specified statutory provisions, or "the sentence is otherwise contrary to law." *State v. Brewer*, 4th Dist. Meigs No. 14CA1, 2014-Ohio-1903, at ¶ 37.

B. LEGAL ANALYSIS

1. Assignment of Error One

{¶12} Appellant argues that the trial court's failure to make any reference to the R.C. 2929.12(F) factor during sentencing establishes that the court failed to consider the factor as required. Appellant points out he testified about his military background at sentencing. Appellant also testified he was not undergoing treatment for his bipolar disorder at the time he committed the offenses. Appellant emphasizes that the court outlined its reasoning in detail, and there was no mention of R.C. 2929.12(F).

{¶13} R.C. 2929.12, seriousness of crime and recidivism factors, provides:

> "A) Unless otherwise required by section 2929.13 or 2929.14 of the Revised Code, a court that imposes sentence under this chapter upon an offender for a felony has the discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in 2929.11 of the Revised Code. In exercising that discretion, the court shall consider the factors set forth in division (B) and (C) of this section relating to the seriousness of the conduct, the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism, and the factors set forth in division (F) of this section pertaining to the offender's service in the armed forces of the United States and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.
>
> * * *
>
> (F) The sentencing court shall consider the offender's military service record and whether the offender has an emotional mental, or physical condition that is traceable to the offender's service in the armed forces of the United States and that was a contributing factor in the offender's commission of the offense or offenses."

{¶14} R.C. 2929.12(F) became effective on March 22, 2013. *State v. Belew*, - - N.E.3d - - -2014-Ohio-2964, 2014 WL 3360675, ¶ 21. See 2012 Am.Sub. H.B. No. 197.[2] There is very little case law addressing the

[2] In *Belew*, Justice Lanziger, dissenting, wrote: "I respectfully dissent from the court's decision to dismiss this case as having been improvidently accepted." *Id.* at ¶ 2. "I believe we should render an opinion on how posttraumatic stress disorder (PTSD) must be considered by a court when it sentences a military veteran. And just as important, we should clarify the standard that an appellate court must use in reviewing a sentence of this type." *Id.*, at ¶ 3. Justice Lanziger also held: "The judge specifically stated that she had considered R.C. 2929.19, Crim.R. 32, and the statutory factors under R.C. 2929.11 and 2929.12 before imposing ten-year consecutive prison sentences…." ¶ 17. Justice Lanziger further concluded: "[A]s long as the trial judge properly considered all mitigating factors, it was within her discretion to weight them in any manner that she saw fit and to assign such weight to each factor as she thought appropriate." *Id.*, at ¶ 18. See, *State v. Noling*, 98 Ohio St.3d 44, 2002-Ohio-7044, 781 N.E.2d 88, ¶ 130. By contrast, Justice O'Neill, also dissenting, wrote: "PTSD is not an excuse, it's an explanation." ¶32. Justice O'Neill concluded: "I would reverse the judgment of the court of appeals and remand this case to the trial court for

weight to be given the R.C. 2929.12(F) factor. In *State v. Eltringham*, 7th Dist. Columbiana No. 13CO7, 2014-Ohio-4149, Eltringham urged the appellate court to use its equitable powers to allow him to be resentenced under the new law because he believed it could reduce his sentence. The trial court had previously denied his motion for resentencing in his felony criminal case. The appellate court decided Eltringham's appeal by finding the trial court had no authority to revise the final judgment of sentence and properly dismissed his motion to be resentenced. However, in resolving the issue, the appellate court wrote:

> "Newly enacted R.C. 2929.12(F) does not require any particular outcome. It simply directs the trial court to consider a defendant's military service. The record clearly indicates the trial court did take into account Appellant's military service at sentencing." *Id.*, at ¶ 2.

{¶15} The appellate court in *Eltringham* also noted the trial court received a number of documents into evidence at sentencing, including a doctor's letter stating he had diagnosed Eltringham with PTSD, panic disorder, and anxiety state disorder. Both the prosecutor and Appellant's counsel spoke about the military service record of Appellant. *Id.*, at ¶ 9. "The trial court did take into account Appellant's military service and was

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a new sentencing hearing and decision that properly takes into consideration Belew's military-service record and his diagnosis of PTSD. Anything else is unreasonable."

thoroughly aware of the allegations that Appellant suffered from PTSD." *Id.*, at ¶ 13.

{¶16} We begin by examining the transcript of Appellant's sentencing hearing in pertinent part:

> "Thank you Mr. Mitchell. The Court has considered the principles and purposes of sentencing. I've already referred to all the documents that have been submitted to me in which I reference in making my decision as well as the statements from the victims and counsel and Mr. Mitchell which have been made today and at the time of the change of plea hearing.
>
> * * *
>
> The Court has balanced the recidivism and seriousness factors as required by Revised Code 2929.12. The Court finds that the more serious factors outweigh those of less seriousness. The mental injury, certainly suffered by the victims of the offense due to Mr. Mitchell's conduct and so eloquently described in the court today by Ms. Durst and previously by Ms. Dailey and in their victim impact statements. Mr. Reed also described the injury that has been suffered to his employees of the bank by way of psychological and emotional harm.
>
> Mr. Mitchell threatened to blow up the bank. He had a sack which he said had a bomb. There were multiple victims. The potential harm to victims and real estate if he had the bomb, he stole over six thousand dollars ($6,000.00) There are not less serious factors; therefore, the more serious factors outweigh the less serious.
>
> * * *
>
> The Court recognizes the statements of Mr. Mitchell today and he's indicated that he is remorseful.
>
> * * *

> Now the Court has certainly considered the length of the sentence and the wishes of the victims in this particular case. I've also considered the statements here from the defense and his supporters. "

{¶17} While the trial court is required to consider the R.C. 2929.12 factors, "the court is not required to 'use specific language or make specific findings on the record in order to evince the requisite consideration of the applicable seriousness and recidivism factors (of R.C. 2929.12.)' " *State v. Latimer,* 11th Dist. Portage No. 2011-P-0089, 2012-Ohio-3845, ¶ 18, quoting *State v. Webb,* 11th Dist. Lake No. 2003-L-078, 2004-Ohio-4198, ¶ 10, quoting *State v. Arnett,* 88 Ohio St.3d 28, 215, 724 N.E.2d 793 (2000). The Supreme Court of Ohio in *State v. Adams,* 37 Ohio St.3d 295, 525 N.E.2d 1361 (1988), held: "[a]silent record raises the presumption that a trial court considered the factors contained in R.C. 2929.12." *Latimer, supra,* quoting *Adams,* paragraph three of the syllabus. In *State v. Cyrus,* 63 Ohio St.3d 163 (1992), the Supreme Court of Ohio held that the burden is on the defendant to present evidence to rebut the presumption that the court considered the sentencing criteria. *Latimer, supra, Cyrus,* at ¶ 166.

{¶18} In *State v. Cave,* 2nd Dist. Clark No. 09-Ca-6, 2010-Ohio-1237, ¶ 10, the appellate court held that Cave's sentence was not clearly and convincingly contrary to law merely because the trial court failed to

specifically cite either [R.C…2929.11 and R.C. 2929.12] during the sentencing hearing. See, e.g., *State v. Hatfield*, 2nd Dist. Champaign No. 2006CA16, 2006-Ohio-7090, ¶ 9, citing *Schenley v. Kauth*, 160 Ohio St. 109, 111, 113 N.E.2d 625 (1953). The *Cave* court further observed, "even if there is no specific mention of those statutes in the record, 'it is presumed that the trial court gave proper consideration to those statutes.' " *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, at fn.4.

{¶19} The judgment entry of sentencing, in Appellant's case, states:

> "The Court has considered the record, any oral statements, any victim impact statement, any plea agreement, any victim approval, and any pre-sentence report prepared, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and balanced the seriousness and recidivism factors Oho Revised Code Section 2929.12.
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> For reasons stated on the record, and after consideration of the factors under Ohio Revised Code Section 2929.12, the Court also finds that prison is consistent with the purposes of the Ohio Revised Code Section 2929.11 and the Defendant is not amenable to an available community control sanction."

{¶20} Here, Appellant has not met his burden in demonstrating the trial court's alleged failure to consider R.C. 2929.12(F). Appellant was sentenced for aggravated robbery, a felony of the first degree. The sentence range for aggravated robbery is three to ten years. R.C. 2929.14(A)(1).

{¶21} At sentencing, defense counsel pointed out from Appellant's testimony and the pre-sentence investigation report (PSI), that Appellant had no prior contact with the Court system. He pointed out Appellant's education and military service. Counsel argued that Appellant's crimes were an "aberration" that occurred because he was ignoring his mental health condition. Counsel emphasized Appellant was genuinely remorseful and aware of his need for continued mental health treatment. Defense counsel also referenced the Mississippi sentencing entry in which Appellant was sentenced to 15 years. Counsel requested Appellant receive a concurrent sentence with credit for 1,424 days. As set forth at length above, Appellant also testified to his military service, his untreated bipolar condition at the time of the crime, and his personal and financial difficulties at the time of the crime.

{¶22} Here, the trial court was well aware of Appellant's past military service. The trial court was also aware of Appellant's bipolar condition. Simply because the trial court did not enumerate R.C. 2929.12(F) on the record, does not also mean the trial court did not consider Appellant's service.

{¶23} The trial court could have sentenced Appellant to a maximum sentence of ten years but instead, ordered a sentence of five years. This

sentence could indicate the trial court, did in fact, consider the military background and Appellant's bipolar condition in its decision to impose a sentence less than the maximum. Although this case may be distinguished from *Eltringham* in that, there, the trial court did explicitly comment on Eltringham's military background, we cannot say here, the trial court's lack of specific comment presumes a lack of consideration of the R.C. 2929.12(F) factor. For these reasons, we find the trial court did not impose a sentence which is clearly and convincingly contrary to law. As such, we overrule Appellant's first assignment of error and affirm the sentence of the trial court.

2. Assignment of Error Two

{¶24} Appellant argues that the trial court erred by ordering his prison sentence to run consecutively to the sentence imposed upon him in Mississippi, without journalizing statutorily required findings pursuant to R.C. 2929.14. Our analysis must determine, pursuant to R.C. 2953.08(G)(2), if we can find that the consecutive nature of the sentence is clearly and convincingly contrary to law.

{¶25} Under R.C. 2929.14(C)(4), a sentencing court must engage in a three-step analysis and make certain findings before imposing consecutive

sentences. *State v. Bever*, 4th Dist. Washington No. 13CA21, 2014-Ohio-600, ¶ 15; *State v. Black*, 4th Dist. Ross No. 12CA3327, 2013-Ohio-2105, ¶ 57; *State v. Clay*, 4th Dist. Lawrence No. 11CA23, 2013-Ohio-4649, ¶ 64; *State v. Howze*, 10th Dist. Franklin Nos.13AP386 and 387, 2013-Ohio-4800, ¶ 18. Specifically, the sentencing court must find that (1) "the consecutive service is necessary to protect the public from future crime or to punish the offender"; (2) "the consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public"; and (3) one 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. *State v. Bever,* 4th Dist. Washington No. 13CA21, 2014-Ohio-600, ¶16.

{¶26} "In 2003, the Ohio Supreme Court held in *State v. Comer*, 99 Ohio St.3d 463, 2013-Ohio-4165, a court may not impose consecutive

sentences unless it 'finds' three statutory factors enumerated in then 2929.14(E)(4). The statutory factors were the same as those now enumerated in the revised version of R.C. 2929.14(C)(4) following enactment of H.B. 86. The revised version of the statute again requires the trial court to 'find' the factors enumerated." *State v. Troutt*, 5th Dist. Muskingum No. CT2013-0042, 2014-Ohio-1705, ¶ 13, quoting *State v. Williams*, 5th Dist. Stark No.2013CA00189, 2013-Ohio-3448. "The Court in *Comer, supra,* read R.C. 2929.14(E)(4), as it existed then, in conjunction with then R.C. 2929.19(B), to reach its conclusion the trial court must also state its reasons for the sentence imposed. *Id.* Then R.C. 2929.19(B) stated the trial court 'shall impose a sentence and shall make a finding that gives its reasons for selecting the sentence imposed in any of the following circumstances…(c) if it imposes consecutive sentences under R.C. 2929.14.' *Id.* 2011 Am. Sub. H.B. No. 86, which became effective on September 30, 2011, revived the language provided in former R.C. 2929.14(E) and moved it to R.C. 2929.19(C)(4)." *Id.*

{¶27} We begin by referencing the transcript of the sentencing hearing which contains the trial judge's language when he imposed sentence, as follows:

> "With regard to consecutive sentences, 2929.14(C)(4) if multiple prison terms are imposed on the offender for

> convictions, if multiple offenses, the Court may require the defendant to serve the sentences consecutively if the Court finds that the consecutive service is necessary to protect the public from future crimes or to punish the offender and that consecutive sentences were not disproportionate to the seriousness of the offender's conduct and to the danger the offender possesses to the public and the Court finds any one of the following and there's three different factors in C, is the defendant's history of criminal conduct demonstrates a consecutive sentence is to protect the public from future crimes by the offender.
>
> The Court has found the seriousness factors outweigh the less serious factors and the recidivism factors outweigh the less likely factors and stated the reasons for doing so and incorporates the reasons herein.
>
> Defendant committed aggravated robbery in Meigs County at the Farms Bank in Tuppers Plains in September. He threatened multiple people and the real estate. He stole over six thousand dollars ($6,000.00). He committed a second bank robbery in Mississippi sixty days later. And the Court finds that the consecutive sentences is necessary to protect the public from future crimes and to punish the offender and that the consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. And the Court also finds that because of the two bank robberies within sixty days of one another, that consecutive sentences to protect the public from future crimes committed by the offender that consecutive sentences are necessary."

Furthermore, the judgment entry of sentence, here, states:

> **"IT IS THEREFORE ORDERED** that the Defendant be sentenced to the Ohio Department of Rehabilitation and Correction for five (5) years on each count, one through four. Counts One through Three, Aggravated Robbery, Robbery, and Theft respectively, will merge into Count Four, Kidnapping, for

> purposes of sentencing for a total aggregate sentence of five (5) years.
>
> This sentence shall run consecutive to the sentence Defendant is currently serving in Mississippi. The Court gave the reason for the imposition of consecutive sentences."

{¶28} Here, the trial court sentenced Appellant to five years in the Ohio Penitentiary to be served consecutively to that of Mississippi. When sentencing an offender, each case stands on its own unique facts. *Lister, supra,* at ¶ 13 citing *State v. Stamper,* 12th Dist. Butler No. CA2012-08-166, 2013-Ohio-5669, ¶ 15, quoting *State v. Mannarino,* 8th Dist. Cuyahoga No. 98727, 2013-Ohio-1795, ¶ 58. While the sentencing court is required to make [certain] findings, it is not required to give reasons explaining the findings. *Bever, supra,* at ¶ 17. H.B. 86 does not require the trial court to give its reasons for selecting the sentence imposed. *State v. Williams,* 5th Dist. Licking No. 11-CA-115, 2012-Ohio-3211, ¶ 47, (Hoffman, P.J., concurring). R.C. 2929.14 now clearly states the trial court may impose a consecutive sentence if it "finds" the statutorily enumerated factors. *Id.*

{¶29} Furthermore, the sentencing court is not required to recite any "magic" or "talismanic" words when imposing consecutive sentences. *Id; State v. Clay,* 4th Dist. Lawrence No. 11CA23, 2013-Ohio-4649, ¶ 64. However, it must be clear from the record that the sentencing court actually made the required findings. *Bever,* at ¶17; *Clay,* at ¶ 64. A failure to make

the findings required by R.C. 2929.14(C)(4) renders a consecutive sentence contrary to law. *Bever,* at ¶ 17; *State v. Stamper,* 12th Dist. Butler No. CA2012-08-166, 2013-Ohio-5669, ¶ 23.

{¶30} Here, a review of the record reveals the trial court engaged in the required three-step analysis under R.C. 2929.14(C)(4). The trial court clearly stated: "And the Court finds that the consecutive sentence is necessary to protect the public from future crimes and to punish the offender and that the consecutive sentences are not disproportionate to the danger the offender poses to the public." This finding clearly covers R.C. 2929.14(C)(4) (1) and R.C. 2929.14(C)(4)(2). The trial court further stated: "And the court also finds that because of the two bank robberies within sixty days of one another, that consecutive sentences to protect the public from future crimes committed by the offender that consecutive sentences are necessary." This finding seems to be a "hybrid" of R.C. 2929.14(C)(4)(3)(b): "multiple offenses committed as part of one or more courses of conduct," and R.C. 2929.14(C)(4)(3)(c): "the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender." While the trial court did not use the exact "magical" or "talismanic" words of the statute, the record supports

the finding that, nevertheless, the trial court engaged in the proper three-step analysis. Based on the above, we find the imposition of a consecutive sentence is not clearly and convincingly contrary to law.

{¶31} It is problematic, however, that the trial court incorporated its findings in the journal entry of sentencing as follows: "[t]his sentence shall run consecutive to the sentence Defendant is currently serving in Mississippi. The Court gave the reason for the imposition of consecutive sentences." This language is not sufficient and does not comport with the law as set forth by the Supreme Court of Ohio in *State v. Bonnell*, 140 Ohio St.3d 209- 2014-Ohio-3177, 16 N.E.3d 659, at the syllabus. See also *State v. Collins*, 4th Dist. Pickaway No. 13CA27, 2014-Ohio-4224, ¶ 32. In *Bonnell*, the Court held:

> "[i]n order to impose consecutive terms of imprisonment, a trial court is required to make findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings." See also *Id.* at ¶ 29. "A trial court's inadvertent failure to incorporate the statutory findings in the sentencing entry does not render the sentence contrary to law; rather, such a clerical mistake may be corrected through a nunc pro tunc entry to reflect what actually occurred in open court." *Id.* at ¶ 30.

{32} Based on the authority set forth in *Bonnell*, we find the trial court's failure to specifically incorporate its findings supporting imposition of Appellant's sentence consecutive to the Mississippi

sentence requires us to remand the matter to the trial court to correct an inadvertent error. It does not result in Appellant's sentence being contrary to law. We hereby sustain Appellant's second assignment of error and remand for proceedings consistent with this opinion.

JUDGMENT AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. Appellant and Appellee shall split costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Meigs County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. & Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Matthew W. McFarland,
Administrative Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.