

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

STATE OF OHIO,	:	
	:	Case No. 15CA6
Plaintiff-Appellee,	:	
	:	
vs.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
JAMIE DAILEY,	:	
	:	
Defendant-Appellant.	:	<b>Released: 04/12/16</b>

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APPEARANCES:

David A. Sams, West Jefferson, Ohio, for Appellant.

Keller J. Blackburn, Athens County Prosecuting Attorney and Merry M. Saunders, Assistant Prosecuting Attorney, Athens, Ohio, for Appellee.

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McFarland, J.

{¶1} Jamie Dailey appeals the judgment entry of sentence dated February 11, 2015 in the Athens County Court of Common Pleas. On appeal, Appellant asserts two assignments of error, arguing: (1) the trial court abused its discretion when it revoked Appellant’s community control and imposed a prison term; and (2) the trial court erred when it imposed consecutive prison terms. Upon review, we find no merit to Appellant’s first assignment of error. As to Appellant’s second assignment of error, we overrule it in part. However, because the trial court’s findings as to

consecutive sentencing were not incorporated into the judgment entry, we sustain the second assignment of error in part and reverse and remand this matter for further proceedings consistent with this opinion.

### FACTS

{¶2} On June 13, 2005, Jamie Dailey, Appellant, was indicted by an Athens County Grand Jury for two counts of non-support of dependents, violations of R.C. 2919.21(A)(2) and R.C. 2919.21(B), and felonies of the fifth degree. The record also indicates that previously, in February 1999, Appellant had been charged with four counts of felony non-support.<sup>1</sup> The record indicates Appellant failed to appear for a change of plea hearing in the 1999 case in 2001. However, on April 2, 2007, Appellant was arraigned on the 2005 counts.

{¶3} On December 18, 2007, Appellant entered into a plea agreement with the State of Ohio. He pled guilty to one count of non-support contained in the 1999 case and one count of non-support in the 2005 case. In exchange for his pleas, the State of Ohio would dismiss the remaining counts and Appellant would be allowed to enter into a diversion program.<sup>2</sup> On that

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<sup>1</sup> The 1999 case was assigned Athens County Common Pleas Court case number 99CR0036. The 2005 case was assigned case number 05CR180.

<sup>2</sup> The transcript of the December 18, 2007 change of plea hearing indicates that Appellant pled guilty to one count in each case, with the remaining counts to be dismissed. The trial judge noted this twice. The record does not contain an entry demonstrating that the cases were consolidated. The judgment entry from which Appellant takes appeal of his revocation carries only the 2005 case number. However, the transcript of the January 30, 2015 revocation hearing reveals there was some discussion of the 1999 case.

date, Appellant was advised the maximum penalty for each count was a 12-month prison sentence and/or a \$2,500.00 fine. He was further advised if he violated the terms of the diversion program, he could be sentenced to 5 years of community control, and further, if those terms were violated, it was possible that he could be ordered to serve a consecutive sentence. An entry journalizing the above agreement was filed on December 19, 2007.

{¶4} On April 8, 2008, the prosecutor filed a notice of termination from the diversion program and motion to accept defendant's guilty plea. The prosecutor's pleading noted three violations, including failing to make contact with the program. Appellant failed to appear for a hearing on the motion on May 28, 2009, so the trial court issued a warrant for his arrest.

{¶5} Appellant got back into contact with the court in March 2012. On June 5, 2012, Appellant appeared before the court, stipulated to the violations, and was terminated from diversion. Appellant was sentenced to 5 years of community control with a 12 month underlying sentence on each count.

{¶6} The record subsequently indicates in 2012, Appellant was indicted and convicted of sexual battery in Meigs County, Ohio. He received a 3-year sentence. The State of Ohio filed a notice of violation of community control in April 2013, however, it was later dismissed.

{¶7} On September 24, 2014, the State filed another notice of violation of community control in the 2005 case which indicated that Appellant had violated the terms by: (1) possessing marijuana and drug paraphernalia in his home; (2) refusing to submit to a drug screen; and, (3) failing to pay child support to the custodial parent and arrearages to the State of Ohio. He only owed \$3.03 to the custodial parent and \$123.10 to the State. On January 30, 2015, Appellant admitted to the three violations contained within the notice and proceeded to a “second stage” hearing. The parties agreed that Appellant’s underlying sentence of 12 months in the 2005 case would be imposed. The parties disagreed, however, as to whether Appellant would serve his underlying sentence concurrent or consecutive to the sentence he received upon his Meigs County conviction.

{¶8} After hearing the testimony and arguments of the parties, the trial court revoked Appellant’s community control and ordered him to serve the 12-month sentence consecutive to his sentence for the Meigs County conviction.<sup>3</sup> The trial court also indicated it would give consideration to a grant of judicial release after Appellant had served 60 days of his Athens County sentence.

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<sup>3</sup> Again, the transcript reveals the 1999 case was mentioned.

{¶9} This timely appeal followed. Where relevant, additional facts will be related below.

## ASSIGNMENTS OF ERROR

“I. THE TRIAL COURT ERRED WHEN REVOKING THE DEFENDANT-APPELLANT’S COMMUNITY CONTROL AND IMPOSING A PRISON TERM.”

### A. STANDARD OF REVIEW

{¶10} The decision whether to revoke probation is within the trial court’s discretion. *State v. Beeler*, 4th Dist. Ross No. 14CA3454, 2015-Ohio-668, ¶ 6. *State v. Johnson*, 7th Dist. Mahoning No. 09-MA-94, 2010-Ohio-2533, ¶ 10; *State v. Ritenour*, 5th Dist. Tuscarawas No. 2006AP-0002, 2006-Ohio-4744, at ¶ 37. Thus, a reviewing court will not reverse a trial court's decision absent an abuse of discretion. *Johnson, supra; State v. Dinger*, 7th Dist. Carroll No. 04CA814, 2005-Ohio-6942, at ¶ 13. Abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is arbitrary, unreasonable, or unconscionable. *Johnson, supra; State v. Maurer*, 15 Ohio St.3d 239, 253, 473 N.E.2d 768 (1984). In determining whether there was a probation violation, the trial court need not find the probation violation established beyond a reasonable doubt. *Johnson, supra*, at ¶ 11; *State v. Wallace*, 7th Dist. Mahoning No. 05-MA-172, 2007-Ohio-3184, at ¶ 16.

{¶11} As this Court has noted, a “manifest weight” standard of review is used to assess the evidence adduced at a probation revocation hearing. *Beeler, supra*, ¶ 7. *State v. Baker*, 4th Dist. Scioto No. 09CA3331, 2010-Ohio-5564, ¶ 11. See *State v. Belcher*, 4th Dist. Lawrence No. 06CA32, 2007-Ohio-4256, at ¶ 12; *State v. Wolfson*, 4th Dist. Lawrence No. 03CA25, 2004-Ohio-2750, at ¶ 7. In other words, a judgment will not be reversed if some competent, credible evidence supports the trial court's findings. *Baker, supra*. See *Bryan-Wollman v. Domonko*, 115 Ohio St.3d 291, 2008-Ohio-4918, 874 N.E.2d 1198, at ¶ 3; *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, at ¶ 21; *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), at the syllabus. We further point out that this standard of review is highly deferential and even “some” evidence is sufficient to support a trial court's judgment and prevent a reversal. *Baker, supra*. See *Barkley v. Barkley*, 119 Ohio App.3d 155, 159, 694 N.E.2d 989 (1997); *Drydek v. Drydek*, 4th Dist. Washington No. 09CA29, 2010-Ohio-2329, at ¶ 16.

## B. LEGAL ANALYSIS

{¶12} Appellant argues the trial court abused its discretion in that the terms of community control must be reasonably related to the ultimate goals of community control. Appellant contends that his failure to provide support

was a failure being rectified by the fact that Appellant had paid down his arrearages. Appellant argues that the revocation will cause future arrearages to accumulate. Appellant argues that the notice of violation made no mention of the 2011 Meigs County case and that the stated reasons were possession of drug paraphernalia and refusing a drug test. Appellant concludes that revocation is an abuse of discretion in light of the purposes of community control, the fact Appellant had paid down his arrearages to the point that only \$3.03 remained, and the “relative pettiness” of the violations at issue did not justify a prison term.

{¶13} In response, Appellee State of Ohio first argues that Appellant waived his right to raise this issue when he agreed to the revocation of his underlying prison sentence and proceeded to a second stage hearing. Appellee also points out Appellant’s sentence is lawful. Appellee maintains the trial court did not abuse its discretion.

{¶14} The sentence from which Appellant takes appeal is as follows:

“\* \* \* Defendant was afforded all rights pursuant to Crim.R. 32. Defendant stipulated to violating the terms and conditions of community control as stated in the Notice of Violation filed September 24, 2014, and the Court found probable cause for the same. Defendant was previously convicted on Case No. 05CR0180 of Count One, Non-Support of Dependents, in violation of Ohio Revised Code Section 29919.21(A)(2), a felony of the fifth degree.

The Court considered the record, oral statements, any victim impact statements, Plea Agreements, as well as the principles and purposes of sentencing under R.C. 2929.11, and has balanced the seriousness and recidivism factors under R.C. 2929.12. The Court has considered the factors under R.C. 2929.13.

The Court terminated Defendant's community control and sentences Defendant to serve twelve (12) months in the State Penal System. This sentence shall run consecutive to his sentence for Meigs County."

{¶15} For the reasons which follow, we find the trial court did not abuse its discretion by revoking Appellant's community control.

{¶16} Appellant's revocation hearing took place on January 30, 2015. The hearing transcript reveals the prosecutor informed the trial court there was a partial agreement between the parties: Appellant would admit to the three violations in the notice and proceed to the second stage of the revocation hearing. The parties could not agree to whether the underlying sentence should be concurrent or consecutive to the Meigs County case. Appellant's counsel corroborated these statements. The transcript reveals the trial court asked Appellant if he desired to admit to the violations, if he had a chance to discuss the matter with counsel, and if his decision was voluntary. Appellant acknowledged the foregoing, as well as answering affirmatively that he understood that they would proceed directly to a

hearing to decide the punishment, which could be an order continuing his supervision, jail time, or imposition of the underlying prison sentence.

{¶17} At this point, the second stage hearing took place. Appellee called to the stand Denise Carter-Brooks, Appellant's parole officer. She testified Appellant was essentially compliant in the beginning of her supervision. She testified Appellant had moved to another residence and she and another officer went to his new home to do a home visit. Appellant took a long time to answer the door. He allowed them entry. Ms. Carter-Brooks noticed empty beer bottles. Appellant advised that his daughter had been over and she and her friends had drunk the beer. Appellant did not give Ms. Carter-Brooks a clear answer of whether or not he drank any of the beer.

{¶18} Ms. Carter-Brooks testified she questioned Appellant about his daughter being there in his home. Appellant admitted he had not taken the required steps to have contact with his daughter. The trial court clarified that Ms. Carter-Brooks was referencing Appellant's Meigs County conviction for sexual battery, of which his daughter was the victim. Ms. Carter-Brooks testified when she advised Appellant the situation was not appropriate, Appellant became angry.

{¶19} Ms. Carter-Brooks then asked Appellant's daughter for permission to search her room. In the room was a marijuana pipe and loose

marijuana in a baggie. Appellant's daughter became angry when Ms. Carter-Brooks confiscated the paraphernalia.<sup>4</sup> The daughter advised she had been staying there a month or so. Ms. Carter-Brooks confiscated the evidence and advised Appellant to report to her the next day.

{¶20} Ms. Carter-Brooks testified when Appellant reported, she asked him if would take a drug test. Appellant refused and yelled "I'm not taking a drug test and you can't make me." Appellant was ordered to sit down while Ms. Carter-Brooks conferred with her supervisor. Appellant tried to leave. When Ms. Carter-Brooks and the supervisor arrested him, he began screaming at them, calling them "pigs, thugs, Nazi fascist pigs." Ms. Carter-Brooks subsequently filed a notice of violation in both the Athens and Meigs County cases. She advised that Meigs County court revoked his supervision and sentenced him to his underlying prison term of three years. Ms. Carter-Brooks recommended one year in addition to the Meigs County sentence.

{¶21} On cross-examination, Ms. Brooks admitted Appellant had not been charged with a drinking violation, and that she did not find drug paraphernalia or drugs on Appellant's person or in his room. However, she also testified she did not search his body or his room.

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<sup>4</sup> In Appellant's brief, he urges the trial court "discounted" the possession of drug paraphernalia because he cohabitated with his sister.

{¶22} In closing, the prosecutor pointed out to the trial court that Appellant had originally been on diversion but had failed to comply with the terms of that supervision. Then he was placed on community control and again failed to comply with the conditions and terms of community control. The prosecutor also pointed out that due to the sexual battery conviction, Appellant could have had additional violations added to the notice.

{¶23} We find the trial court did not abuse its discretion in revoking Appellant's community control. The record contains evidence necessary to support the trial court's decision. First, Appellant admitted to the violations. The record reveals Appellant stated he understood what was taking place and that he would proceed to sentencing. The trial court also heard competent, credible evidence provided by Ms. Carter-Brooks that Appellant failed to abide by the terms and conditions of community control.

{¶24} Further, the trial court's entry reflects that it considered the record, the principles and purposes of sentencing under R.C. 2929.11, and that it balanced the seriousness and recidivism factors under R.C. 2929.12. The trial court also considered the R.C. 2929.13 factors. The record demonstrates Appellant had a history of failing to appear at court and maintain contact with the diversion and community control coordinators.

{¶25} Appellant suggests the trial court may have taken into consideration that beer was found, although Appellant was not charged with that as a violation. And, Ms. Carter-Brooks also testified as to the Meigs County case, which was not favorable information but had not been alleged in the State's motion to revoke. However, we find no reason to believe that this information affected the trial court's judgment or caused an abuse of discretion. A mere reference to a defendant's unadjudicated conduct by the trial court, without an imposition of sentence on the basis of that conduct, does not give rise to an error. *State v. Montgomery*, 3rd Dist. Crawford Nos. 3-08-10, 3-08-11, 2008-Ohio-6182, ¶ 13, citing *State v. Park*, 3rd Dist. Crawford No. 3-06-14, 2007-Ohio-1084, ¶ 7. Here, the trial court noted "I agree with you Mr. Townley [defense counsel] the other stuff is background information as to his conduct and activity. We are here on two specific violations."

{¶26} In imposing sentence, while the trial court noted Appellant had not abided by the rules of community control, the court also referenced and appreciated the fact Appellant had paid down virtually all the child support obligations. The trial court further advised Appellant he would consider judicial release after Appellant served 60 days. The trial court also observed the parties were dealing with a 2005 case.

{¶27} While Appellant seeks to minimize the nature of the violations, he agreed to resolve his felony non-support convictions by agreeing to the terms and conditions of diversion and later agreeing to the terms and conditions of community control. Appellant also agreed to the revocation. However, he repeatedly failed to abide by the programs' rules, which has likely been a key factor as to why in 2016 he is still wrestling with a 2005 felony five case.

{¶28} We find competent and credible evidence supports the trial court's decision. As such, the trial court did not err. Appellant's first assignment of error is hereby overruled.

**"II. THE TRIAL COURT ERRED WHEN IMPOSING  
CONSECUTIVE PRISON TERMS."**

**A. STANDARD OF REVIEW**

{¶29} In *State v. Brewer*, 2014-Ohio-1903, 11 N.E.3d 317, we recently held that when reviewing felony sentences, we apply the standard of review set forth in R.C. 2953.08(G)(2). *State v. Butcher*, 4th Dist. Meigs No. 14CA7, 2015-Ohio-4249, ¶ 12. *State v. Pulliam*, 4th Dist. Scioto No. 14CA3609, 2015-Ohio-759, ¶ 5; *Brewer* at ¶ 33 ("we join the growing number of appellate districts that have abandoned the *Kalish* plurality's two step abuse-of-discretion standard of review; when the General Assembly

reenacted R.C. 2953.08(G)(2), it expressly stated ‘[t]he appellate court's standard of review is not whether the sentencing court abused its discretion’ ”). See also *State v. Graham*, 4th Dist. Highland No. 13CA11, 2014-Ohio-3149, ¶ 31. R.C. 2953.08(G)(2) specifies that 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.”

## B. LEGAL ANALYSIS

{¶30} Appellant points out community control was originally imposed in 2005. Appellant was then convicted of a felony in Meigs County in 2012. Appellant argues he was revoked in 2015 because of misdemeanor possession of paraphernalia, refusing to drug test, and failure to pay minimal arrearage. Appellant argues the requirements for sentencing him to a consecutive sentence have not been met and are not supported by the record. Appellee asserts that by agreeing to the revocation, Appellant waived his right to argue with regard to the sentence imposed and further, that the trial court did in fact comply with R.C. 2929.14(C)(4).

{¶31} We first disagree that Appellant has waived his right to argue the sentence imposed. A waiver is ordinarily an “intentional relinquishment

or abandonment of a known right or privilege.” *State v. Adams*, 43 Ohio St.3d 67, 69, 538 N.E.2d 1025 (Internal citations omitted.) In the case sub judice, Appellant admitted the violations contained in the notice and that an underlying sentence of 12 months would be imposed. He waived his right to a hearing requiring the State to prove the violations alleged. He did not agree as to the consecutive nature of the sentence and his counsel made that clear on the record. As such, we proceed to consider Appellant’s argument.

{¶32} R.C. 2929.14(C)(4) sets forth certain findings that a trial court must make prior to imposing consecutive sentences. *State v. Pulliam*, 4th Dist. Scioto No. 14CA3609, 2015-Ohio-759, ¶ 6; citing *State v. Black*, 4th Dist. Ross No. 12CA3327, 2013-Ohio-2105, ¶¶ 56-57. That is, under Ohio law, unless the sentencing court makes the required findings set forth in R.C. 2929.14(C)(4), there is a presumption that sentences are to run concurrently. *State v. Bever*, 4th Dist. Washington No. 13CA21, 2014-Ohio-600, ¶ 15; citing *Black* at ¶ 56; R.C. 2929.41(A). 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. *Bever* at ¶ 16; *Black*, at ¶ 57; *State v. Clay*, 4th Dist. Lawrence No. 11CA23, 2013-Ohio-4649, ¶ 64; *State v. Howze*, 10th Dist. Franklin Nos. 13AP-386 & 13AP-387, 2013-Ohio-4800, ¶ 18. Specifically, the sentencing court must find that (1) “the

consecutive sentence is necessary to protect the public from future crime or to punish the offender”; (2) “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.” *Bever, supra*, at ¶ 16; R.C. 2929.14(C)(4).

{¶33} While the sentencing court is required to make these findings, it is not required to give reasons explaining the findings. *Pulliam, supra*, ¶ 7 at *Bever, supra*, at ¶ 16; *Howze* at ¶ 18; *State v. Stamper*, 12th Dist. Butler No. CA2012-08-166, 2013-Ohio-5669, ¶ 23. R.C. 2929.14 clearly states the trial court may impose a consecutive sentence if it “finds the statutorily enumerated factors.” *State v. Williams*, 5th Dist. Licking No. 11-CA-115, 2012-Ohio-3211, ¶ 47. Furthermore, the sentencing court is not required to

recite any “magic” or “talismanic words” when imposing consecutive sentences. *Bever, supra*, at ¶ 17; *Clay* at ¶ 64; *Howze* at ¶ 18; *Stamper* at ¶ 23. However, it must be clear from the record that the sentencing court actually made the required statutory findings. *Bever* at ¶ 17; *Clay* at ¶ 64; *Howze* at ¶ 18; *Stamper* at ¶ 23. A failure to make the findings required by R.C. 2929.14(C)(4) renders a consecutive sentence contrary to law. *Bever* at ¶ 17; *Stamper* at ¶ 23; *State v. Nia*, 8th Dist. Cuyahoga No. 99387, 2013-Ohio-5424, ¶ 22. The findings required by the statute must be separate and distinct findings; in addition to any findings relating to the purposes and goals of criminal sentencing. *Bever* at ¶ 17; *Nia* at ¶ 22.

{¶34} The January 30, 2015 hearing transcript reflects the trial court made the consecutive sentence findings pursuant to R.C.

2929.14(C)(4)(1)(c). The trial court stated in open court as follows:

“So the Court will impose a twelve-month sentence. Consecutively to what Mr., what Mr. Dailey is currently serving in Meigs County. The Court finds that consecutive sentences are necessary to protect the public from future crime and to punish him. That consecutive sentences are not disproportionate to the seriousness of his conduct and to the danger he poses to the public. And that at least two of the offenses, at least his criminal history demonstrates consecutive sentences are necessary to protect the public from future crimes by him.”

However, the court’s entry, as to the third finding, differs, stating, pursuant to R.C. 2929.14(C)(4)(1)(b):

“The Court also finds that the harm caused by the offenses was so great that no single prison term for any of the offenses committed adequately reflects the seriousness of Defendant’s conduct.”

Because a court speaks through its journal, *State v. Brooke*, 113 Ohio St.3d 199, 2007-Ohio-1533, 863 N.E.2d 1024, ¶ 47, the court should also incorporate its statutory findings into the sentencing entry. *Bonnell, supra*. 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. *Id.*

{¶35} In the case sub judice, the trial court stated required findings in open court pursuant to the R.C. 2929.14(C)(4)(1)(c) language: “[The] criminal history demonstrates consecutive sentences are necessary to protect the public from future crimes.” Having reviewed the record, we find the trial court’s findings are supported by the record. Even though Appellant argues the community control violations he admitted are petty and the amount owed is nominal, Appellant does have a criminal history and a record of failing to maintain contact with the court.

{¶36} A sentence is not clearly and convincingly contrary to law “where the trial court considers the purposes and principles of sentencing under R.C. 2929.11 as well as the seriousness and recidivism factors listed in

R.C. 2929.12, properly applies postrelease control, and sentences a defendant within the permissible statutory range.” *State v. Ziska*, 8th Dist. Cuyahoga No. 102798, 2016-Ohio-390, ¶ 29, quoting *State v. A.H.*, 8th Dist. Cuyahoga No. 98622, 2013-Ohio-2525, ¶ 10, citing *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 18. Here, the court noted that it considered all of the required factors under R.C. 2929.11, 2929.12, and 2929.13. Appellant’s sentence is within the statutory guideline. As such, Appellant’s sentence is not contrary to law. For the foregoing reasons, we find no merit to Appellant’s argument that his sentence is not supported by the record. Appellant’s second assignment of error is overruled in part.

{¶37} However, the above findings, pursuant to R.C. 2929.14(C)(4)(1)(c), were not incorporated into the journal entry. The trial court actually incorporated findings in the journal entry pursuant to the language of R.C. 2929.14(C)(4)(1)(b): “[The] harm caused by the offenses was so great that no single prison term for any of the offenses committed adequately reflects the seriousness of Defendant’s conduct.” In *Bonnell*, the Supreme Court of Ohio held:

“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.

{¶38} Therefore, we sustain the second assignment of error in part.

We reverse and remand to the trial court for the limited purpose of incorporating, nunc pro tunc, the consecutive sentence findings made at sentencing into the court's entry.

**JUDGMENT AFFIRMED IN  
PART, REVERSED IN PART,  
AND REMANDED 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 the 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 Athens 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.

Hoover, J.: Concurs in Judgment and Opinion as to Assignment of Error II; Concurs in Judgment Only as to Assignment of Error I.  
Harsha, J.: Concurs in Judgment Only.

For the Court,

BY: \_\_\_\_\_  
Matthew W. McFarland, 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.**