

[Cite as *State v. Howard*, 2004-Ohio-513.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 82995

STATE OF OHIO,	:	
	:	
Plaintiff-appellee	:	JOURNAL ENTRY
	:	
v.	:	AND
	:	
ANTOINE HOWARD,	:	OPINION
	:	
Defendant-appellant	:	
	:	

DATE OF ANNOUNCEMENT OF DECISION:	<u>FEBRUARY 5, 2004</u>
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CHARACTER OF PROCEEDING:	Criminal appeal from Common Pleas Court, Case No. CR-385419.
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JUDGMENT:	SENTENCE VACATED AND CASE REMANDED FOR RESENTENCING.
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DATE OF JOURNALIZATION:

APPEARANCES:

For Plaintiff-appellee:	William D. Mason Cuyahoga County Prosecutor
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For Defendant-appellant: Stephen L. Miles
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TIMOTHY E. McMONAGLE, J.

{¶1} Defendant-appellant, Antoine Howard, appeals the consecutive sentences imposed by the Cuyahoga County Common Pleas court upon his multiple convictions for kidnaping and rape. For the reasons that follow, we vacate appellant's sentence and remand for resentencing.

{¶2} The record reflects that an eight-count indictment was returned against appellant charging him with (1) two counts of kidnaping, in violation of R.C. 2905.01; (2) two counts of attempted rape, in violation of R.C. 2923.02 and 2907.02; (3) three counts of rape, in violation of R.C. 2907.02; and (4) aggravated robbery, in violation of R.C. 2911.01. Several of these charges contained multiple specifications for firearms and sexually related conduct. Appellant eventually pleaded guilty to two counts of kidnaping and one count of rape, with one firearm specification. The

trial court subsequently sentenced appellant to consecutive eight-year terms of imprisonment for each of the three offenses. Combined with the mandatory three-year sentence for the firearm specification, appellant was sentenced to serve a total of 27 years in prison.

{¶3} Appellant is now before this court on a delayed appeal and challenges the imposition of consecutive sentences.

{¶4} In general, a reviewing court will not reverse a sentence unless that court finds, by clear and convincing evidence, that the sentence is unsupported by the record or is contrary to law. See R.C. 2953.08(G). In this case, appellant pleaded guilty to two counts of kidnaping, which are first degree felonies pursuant to R.C. 2905.01(C), and rape, which is a first degree felony pursuant to R.C. 2907.02(B). If prison is not inconsistent with the purposes and principles of R.C. Chapter 2929, a definite term of three, four, five, six, seven, eight, nine or ten years is required for a first degree felony under R.C. 2929.14(A)(1).

{¶5} The overriding purpose of felony sentencing is to protect the public from future crime by the offender and

others and to punish the offender. Toward that end, R.C. 2929.11(A) provides:

{¶6} "To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both."

{¶7} R.C. 2929.14 authorizes the imposition of consecutive sentences only when the trial court concludes that the sentence is (1) necessary to protect the public from future crime or to punish the offender; (2) not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public; and (3) the court finds one of the following: (a) the crimes were committed while awaiting trial or sentencing, under sanction or under post-release control; (b) the harm caused by multiple offenses was so great or unusual that a single prison term would not adequately reflect the seriousness of the offense; or (c) the offender's criminal history demonstrates that

consecutive sentences are necessary to protect the public from future crime. R.C. 2929.14(E)(4).

{¶8} Imposing consecutive prison terms for multiple convictions, therefore, is appropriate upon making certain findings as enumerated in this statute. When the trial court does so, however, it must state these findings, and its reasons for those findings, on the record. See R.C. 2929.19(B)(2)(c); see, also, *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, at ¶20. "While consecutive sentences are permissible under the law, a trial court must clearly align each rationale with the specific finding to support its decision to impose consecutive sentences." *Id.* at ¶21. Failure of a trial court to do so, constitutes reversible error. *Id.* at ¶23.

{¶9} Addressing appellant at the sentencing hearing, the trial court stated:

{¶10} "[W]hen I read your presentence investigation report, it struck me that, at 22 years old, you have as extensive a record as you do: Five juvenile convictions, three municipal convictions, and juvenile convictions for

things that are much more than delinquency, such as theft, robbery, menacing, receiving stolen property. One case included disorderly construct (sic), traffic offenses and drug abuse.

{¶11} "Additionally, it's this Court's understanding that this crime was committed while you were on bond from the arraignment room on one of the cases which was dismissed here.

It's very troubling to me that you have had such disrespect for the law in your short life.

{¶12} "I hope what has been said today by both families that you have victimized, not just the [victim's] family but your family and all of those people who have spoken today, will carry with them the action that you decided to take on that day.

{¶13} "In addition to having to sentence you today, I also hope you appreciate the fact that you have sentenced each one of them to live with what you have done for the rest of their lives. Clearly, I do not think that that warrants a minimum sentence.

{¶14} "Given the fact that you abducted these girls at gunpoint, you made a young child watch this act, you frightened them both, you terrorized them both and you inflicted serious harm on both of them; therefore, minimum terms for any of these offenses would not only demean the serious nature of the offense but also will not adequately protect the public."

{¶15} The court thereafter sentenced appellant to consecutive eight-year terms of imprisonment on each of the three offenses, in addition to the mandatory three-year sentence on the firearm specification, for a total of 27 years imprisonment. After advising appellant that he would be subject to post-release control, the court continued:

{¶16} "The Court notes on consecutive terms that the harm caused was great and unusual; your criminal history requires consecutive sentences. Consecutive sentences are necessary to fulfill the purposes of Ohio Revised Code Section 2929.11, and consecutive sentences are not disproportionate to the seriousness of your conduct, and the danger to the public also

makes it necessary to fulfill the purposes of Ohio Revised Code Section 2929.11."

{¶17} As can be surmised from the excerpt above, the trial court merely mimicked the statutory language contained in R.C. 2929.14(E)(4) without elaborating as to its reasons for any one finding. See *State v. Johnson*, Cuyahoga App. Nos. 81040, 81041, and 81042, 2003-Ohio-288, at ¶14. We note, however, that the trial court did undertake a thorough analysis of those factors necessary to support a departure from the minimum sentences. In that regard, the trial court discussed appellant's past criminal history, the seriousness of the harm caused and the need to adequately protect the public.

{¶18} Yet, nowhere in the court's analysis is there any discussion of whether consecutive sentences were proportionate to the seriousness of appellant's conduct. Moreover, the Ohio Supreme Court's recent decision in *State v. Comer*, 2003-Ohio-4165, mandates more than a perfunctory listing of a trial court's findings. On the contrary, the court is directed to "clearly align each rationale with the specific finding"

sufficient to support the imposition of consecutive sentences.

Id. at ¶23. This the trial court did not do.

{¶19} We, therefore, vacate appellant's sentence and remand for resentencing.

{¶20} This cause is remanded for further proceedings consistent with the opinion herein.

PATRICIA A. BLACKMON, P.J., and COLLEEN CONWAY COONEY, J.,
concur.

It is, therefore, ordered that appellant recover from appellee costs herein.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

— TIMOTHY E. McMONAGLE
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).