

[Cite as *State v. Armstrong*, 2015-Ohio-1019.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101396

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**ANTONIO ARMSTRONG**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case Nos. CR-10-541687-A, CR-13-570974-A and CR-13-575841-B

**BEFORE:** E.A. Gallagher, J., Keough, P.J., and Stewart, J.

**RELEASED AND JOURNALIZED:** March 19, 2015

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EILEEN A. GALLAGHER, J.:

{¶1} Defendant-appellant Antonio Armstrong appeals the trial court's imposition of consecutive sentences in three cases in the Cuyahoga County Court of Common Pleas. For the following reasons, we affirm.

{¶2} On January 13, 2011, Armstrong pled guilty to failure to comply in case number CR-10-541687. He was sentenced on March 3, 2011, to 18 months of community control sanctions. The record reflects that Armstrong initially complied with his community control sanctions but eventually stopped reporting and a *capias* was issued for his arrest.

{¶3} In 2013, Armstrong was indicted in CR-13-570974 for failure to comply, identity fraud, tampering with records and falsification and in CR-13-575841 for two counts of trafficking and two counts of drug possession. Armstrong pled guilty to failure to comply, identity fraud and tampering with records in CR-13-570974 and two counts of drug possession in CR-13-575841.

{¶4} On April 22, 2014, the trial court conducted a joint community control sanctions violation hearing in CR-10-541687 and sentencing hearings in CR-13-570974 and CR-13-575841. In CR-10-541687 the trial court terminated Armstrong's community control and imposed a two year prison term. In CR-13-570974 the trial court imposed prison terms of two years for failure to comply, and one year for each count of identity fraud and tampering with records. The court ordered the one-year prison terms to be served concurrently to each other but consecutive to the two-year prison term for failure to comply. The court ordered the aggregate three-year prison term to be served consecutive to the two-year sentence imposed in CR-10-541687. In CR-13-575841 the trial court imposed prison terms of 18 months for both counts of drug possession and ordered the terms to be served concurrently to each other but consecutive to the one-year sentences in CR-13-570974 and consecutive to the two-year sentence

in CR-10-541687. Armstrong's aggregate prison sentence was five years.

{¶5} Armstrong now appeals from the sentencing entries in all three cases and his sole assignment of error states:

The trial court failed to make the statutorily-required findings necessary to impose consecutive prison sentences.

{¶6} When reviewing a felony sentence, we follow the standard of review set forth in R.C. 2953.08(G)(2), which provides in relevant part:

The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court. The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.  
*Id.*

{¶7} 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. 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.

{¶8} Pursuant to R.C. 2929.14(C)(4) a court may require an offender to serve multiple prison terms consecutively for convictions on multiple offenses. Consecutive sentences can be imposed if the court finds that (1) a consecutive sentence is necessary to protect the public from

future crime or to punish the offender and (2) that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. In addition to these two factors, the court must find 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.

*Id.*

{¶9} A trial court is not “required to give a talismanic incantation of the words in the statute” to satisfy its obligation. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37. “[A] word-for-word recitation of the language of the statute is not required, 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 sentencing should be upheld.” *Id.* at ¶ 29. A trial court satisfies this statutory requirement when the record reflects that the court has engaged in the required analysis and has selected the appropriate statutory criteria. *State v. Evans*, 8th Dist. Cuyahoga No. 100151, 2014-Ohio-3584, ¶ 30.

{¶10} In the present case the trial court made the required findings on the record at sentencing and in all three sentencing entries. Armstrong argues that the record does not support consecutive sentences because he did not cause physical harm as a result of his conduct in these cases or in his prior criminal history. We disagree. The facts of Armstrong's two failure to comply convictions were set forth in presentence investigation reports and discussed at

sentencing by the state. In the latter, and more serious failure to comply incident, appellant endangered police with his erratic attempt to flee in a motor vehicle. Appellant led police on a twenty minute, five and one-half mile motor vehicle chase that included him driving at a high rate of speed, ignoring at least two stop signs and driving on the front lawns of a residential neighborhood with pedestrians present. Appellant's conduct supports the trial court's finding that a consecutive sentence is necessary to protect the public from future crime and that consecutive sentences are not disproportionate to the seriousness of Armstrong's conduct and the danger he poses to the public.

{¶11} Furthermore, there is no dispute that appellant committed the above offenses while under community control sanctions as stated by the trial court. Additionally, Armstrong's presentence investigation report evidences a significant record of felony offenses dating back to 2003 including trafficking in drugs, drug possession, possession of criminal tools and felonious assault as well as numerous misdemeanor offenses. Appellant himself attributed his offenses to the fact that he was less concerned with going to jail than he was waking up in the morning without having his drug of choice.

{¶12} Finally, we note that both of Armstrong's failure to comply offenses were third-degree felonies pursuant to R.C. 2921.331(C)(5)(a)(ii) and he was statutorily obligated to serve the corresponding prison terms consecutively to any other prison terms pursuant to R.C. 2921.331(E).

{¶13} On this record, we find no error in the trial court's imposition of consecutive sentences.

{¶14} Armstrong's sole assignment of error is overruled.

The judgment of the trial court is affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

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EILEEN A. GALLAGHER, JUDGE

KATHLEEN ANN KEOUGH, P.J., and  
MELODY J. STEWART, J., CONCUR