

[Cite as *State v. Grenon*, 2015-Ohio-1027.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 101670**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**FRANCIS GRENON**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED AND REMANDED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-14-581777-A

**BEFORE:** McCormack, J., Celebrezze, A.J., and Blackmon, J.

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

**ATTORNEY FOR APPELLANT**

Ruth Fischbein-Cohen  
3552 Severn Rd.  
#613  
Cleveland, OH 44118

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor

By: John F. Hirschauer  
Assistant County Prosecutor  
9th Floor, Justice Center  
1200 Ontario Street  
Cleveland, OH 44113

TIM McCORMACK, J.:

{¶1} Defendant-appellant, Francis Grenon, appeals from his sentence of June 16, 2014. For the following reasons, we affirm Grenon’s sentence but remand for the limited purpose of incorporating the consecutive sentence findings made at sentencing into the court’s entry.

### **Procedural History and Factual Background**

{¶2} On February 21, 2014, Grenon was charged in Count 1 with harassment by inmate, in violation of R.C. 2921.38(C), and in Count 2, driving while under the influence, in violation of R.C. 4511.19(A)(1)(a). On May 16, 2014, Grenon withdrew his previously entered plea of not guilty and pleaded guilty to an amended count of attempted harassment by inmate and driving while under the influence.

{¶3} On June 16, 2014, the trial court sentenced Grenon to six months in prison on Count 1, attempted harassment by an inmate, and 18 months in prison on Count 2, driving while under the influence. The court ordered the sentences to run consecutively, for an aggregate prison term of 24 months. The trial court also imposed a fine of \$5,000, ordered Grenon to participate in a mandatory drug and alcohol program, and suspended his driver’s license for five years, subject to restoration after three years, with restricted license plates and interlock device. Finally, the court imposed court costs, stating that Grenon may work off the payment of costs through community work service, if necessary.

{¶4} On July 15, 2014, Grenon filed this appeal, claiming that the trial court erred when it imposed consecutive sentences.

### **Law and Analysis**

{¶5} In his sole assignment of error, Grenon claims that the trial court erred when it imposed consecutive sentences. Grenon essentially argues that the court “did not completely adhere to” R.C. 2929.14(C)(4) when it did not state its reasons why the sentence is appropriate.

Grenon also claims that the trial court erred by failing to incorporate its consecutive sentence findings into the sentencing entry.

{¶6} R.C. 2929.14(C)(4) states:

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.

{¶7} The presumption in Ohio is that sentencing is to run concurrent, unless the trial court makes the R.C. 2929.14(C)(4) findings for consecutive sentences. *State v. Evans*, 8th Dist. Cuyahoga No. 100151, 2014-Ohio-3584, ¶ 25, citing *State v. Wells*, 8th Dist. Cuyahoga No. 98428, 2013-Ohio-1179, ¶ 11; R.C. 2929.41(A).

{¶8} Compliance with R.C. 2929.14(C)(4) requires the trial court to make the statutory findings at the sentencing hearing, "and by doing so it affords notice to the offender and to defense counsel." *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29. "Findings," for these purposes, means that "the [trial] court must note that it engaged in the

analysis’ and that it ‘has considered the statutory criteria and specific[d] which of the given bases warrants its decision.’” *Id.* at ¶ 26, quoting *State v. Edmonson*, 86 Ohio St.3d 324, 326, 715 N.E.2d 131 (1999). A trial court is not, however, required to state its reasons to support its findings, “provided that the necessary findings can be found in the record and are incorporated in the sentencing entry.” *Id.* at ¶ 37.

{¶9} The failure to make consecutive sentence findings is contrary to law. *See State v. Jones*, 93 Ohio St.3d 391, 399, 754 N.E.2d 1252 (2001).

{¶10} Here, prior to sentencing, the court stated that it reviewed the presentence investigation report and it heard statements from Grenon, defense counsel, and the state. The record revealed that on January 13, 2014, Grenon was detained for operating a vehicle while intoxicated. While Grenon was being detained, he became combative and continuously threatened a police officer, stating that he had Hepatitis C and he was going to spit in his face. Grenon did, in fact, spit in the officer’s face, which necessitated a spit shield and mask.

{¶11} The trial court then noted Grenon’s extensive criminal history, beginning with a juvenile record and converting to an adult record in 1992. The court stated that in Grenon’s first felony case, he was a probation violator, and in 1995, his third prison term occurred after a probation violation. The court noted Grenon’s history of receiving stolen property, stating, “I don’t understand exactly why that would be a continuing problem.” The court further stated that his criminal history included multiple prison terms, many of which had been served concurrently or consecutively with other cases. It noted “an obvious overtone of alcohol abuse throughout the criminal record” as demonstrated by Grenon’s six charges of DUI or OVI.

{¶12} Finally, the court stated that it must consider the probation report in another recent matter from the Mentor probation department, in which the probation officer reported that

Grenon had not been compliant with the court's terms of supervision. The court stated that it "can understand that some of it could be because you've been incarcerated in our county jail and, therefore, can't report, [b]ut that underscores the fact that while you were on supervision in another court then this case arose. That is also an OVI or DUI related case." Once again, the court noted Grenon's extensive criminal history and stated that Grenon has had "ample opportunity to address" the 20 years of "mitigating factors."

{¶13} The court then imposed a six-month prison term on Count 1 and an 18-month prison term on Count 2, ordering them to be run consecutively, finding as follows:

I do have to consider one more thing and that is the fact that these sentences are going to be imposed consecutive to one another, and that is because I specifically find that it's necessary in order to protect the public from future crimes and that is because of the long criminal record. Consecutive sentences would not be disproportionate to the seriousness of the conduct and the danger the offender poses to the public.

Obviously, if you're drinking and you don't even have a memory of what you're doing, that's a danger to the public, and obviously, driving while under the influence is also — I mean, it's lucky there weren't some more serious charges somewhere in the past because people that drink and drive usually run into other people.

Also, I can find that the offense was committed while [Grenon] was under supervision. There is an active warrant in Mentor Municipal Court, case no. TR-1300295. And also again the history of criminal conduct does demonstrate that consecutive sentences are necessary to protect the public from future crime.

{¶14} In light of the foregoing, we find that the trial court satisfied the requirements of R.C. 2929.14(C)(4), and the record supports its findings. Grenon's consecutive sentence is therefore not contrary to law.

{¶15} However, the trial court must incorporate the findings to impose consecutive sentences into its sentencing entry. *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, at ¶ 29. The failure to include the findings is a “clerical mistake” and does not render the sentence contrary to law. *Id.* at ¶ 30, citing *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 15. The omission may therefore be corrected through a nunc pro tunc entry “to reflect what actually occurred in open court.” *Id.*

{¶16} The trial court’s sentencing entry in this case does not include the consecutive sentence findings. Therefore, in accordance with *Bonnell*, we remand to the trial court for the limited purpose of incorporating the consecutive sentence findings made at sentencing into the court’s entry.

{¶17} Judgment affirmed, and case remanded for the limited purpose of incorporating the consecutive sentence findings made at sentencing into the court’s entry.

It is ordered that appellee recover of appellant 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. The defendant’s conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

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TIM McCORMACK, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and  
PATRICIA ANN BLACKMON, J., CONCUR