

[Cite as *State v. Rasul*, 2015-Ohio-1151.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 101625**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**ANTIQ S. RASUL**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-13-579154-A

**BEFORE:** McCormack, J., Jones, P.J., and E.A. Gallagher, J.

**RELEASED AND JOURNALIZED:** March 26, 2015

**ATTORNEYS FOR APPELLANT**

Robert L. Tobik  
Cuyahoga County Public Defender

By: Jeffrey Gamso  
Assistant Public Defender  
310 Lakeside Ave., Ste. 200  
Cleveland, OH 44113

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor

By: Kevin R. Filiatraut  
Assistant County Prosecutor  
8th Floor, Justice Center  
1200 Ontario Street  
Cleveland, OH 44113

TIM McCORMACK, J.:

{¶1} Defendant-appellant, Antiq Rasul, appeals from his consecutive sentences imposed by the Cuyahoga County Court of Common Pleas for his conviction of aggravated burglary, kidnapping, and rape. After a careful review of the record and applicable law, we affirm the trial court's sentence.

### **Substantive Facts and Procedural History**

{¶2} Rasul was indicted for aggravated burglary, kidnapping, three counts of rape, and having weapons while under disability. Except for the weapons count, the other five counts were accompanied with a (1) three-year firearm specification, (2) notice of prior conviction, and (3) repeat violent offender specification for a prior conviction of felonious assault. Rasul waived a jury trial and was tried to the bench.

{¶3} At the bench trial, the victim A.J.'s testimony reflects that she met Rasul two months before the incident. The two engaged in consensual sexual activity on the day they met.

Several weeks later, he came to her house, but she told him to return later because she was putting her daughter to bed at the time. The third time she had contact with Rasul was the day before the incident. She called him to seek help for paying an electricity bill. He indicated that he would come over; she expected him to show up sometime in the evening. She fell asleep while waiting for him. She awoke at 4:00 a.m. by Rasul's banging on the windows and door. He was holding a couple of beers in his hand.

{¶4} While he was outside, A.J. told Rasul that her family managed to help her with the electricity bill and that she did not want anyone in the house at that hour. Rasul said he wanted

her and her daughter to move in with him. A.J. rebuffed the idea. She then went to use the bathroom, telling Rasul to stay outside where he was.

{¶5} When she came out of the bathroom, Rasul had entered the house. He went into her bedroom and wanted to lie down on the bed. A.J. would not allow it. Rasul told her to look at him. When she refused, Rasul slapped her and warned her he had a pistol on the side of the house. Rasul then forced her to remove her clothes and raped her vaginally. After that, he ordered A.J. to roll over and raped her anally. He then ordered her to give him a “blow job.” Afterwards, A.J. told Rasul she needed to get some sleep. While lying on the bed, she shook uncontrollably. Rasul decided they should “go at it” again since he was not getting any sleep. He again raped her vaginally, anally, and forced her to perform oral sex on him. He told A.J. again she should come live with him. Before he left, he took her PlayStation video game system.

{¶6} After Rasul left, A.J. immediately went to her friend’s house down the street. She called the police on the way there. (The 911 call was played at the trial.) The police arrived, and EMS transported her to MetroHealth Hospital, where a sexual assault kit was collected. Rasul’s DNA matched the sample collected from the victim. These crimes were committed while Rasul was on community control in a prior burglary case.

{¶7} Rasul testified on his own behalf. He initially denied any sexual contact with the victim, but later admitted he had vaginal intercourse with her on the day of the incident. He denied engaging in anal sex with her despite the presence of his DNA in the victim’s anal swabs.

{¶8} The trial court found Rasul guilty of all counts charged except for the having weapons while under disability count. The court also found him guilty of all accompanying

specifications. The court imposed five years for Count 3 (vaginal rape), five years for Count 4 (rape by fellatio), and five years for Count 5 (anal rape), to be served consecutively. The court also imposed a concurrent term of three years for Count 1 (aggravated burglary). The trial court in addition sentenced him to a consecutive 18-month term for the community control sanctions violation. Rasul's term of incarcerations totaled 16 and a half years.

### **Consecutive Sentences**

{¶9} On appeal, Rasul raises two assignments of error. Both alleged errors concern his consecutive sentences. We address them together. The two assignments of error state:

1. The trial court committed error when it did not make separate findings to support the imposition of sentences in this case consecutive to the sentence imposed for the community control violation.
2. The trial court committed error when it made a finding neither that the consecutive sentences in this case were necessary to protect the public from future crimes nor that they were necessary to punish the offender.

{¶10} H.B. 86 revived a presumption of concurrent sentences; consecutive sentences can be imposed only if the trial court makes the required findings pursuant to R.C. 2929.14(C)(4). *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 20-22. 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.

{¶11} When reviewing a claim of improper imposition of consecutive sentences, we are also guided by R. C. 2953.08(G)(2)(a). That statute directs the appellate court to review the record, including the findings underlying the sentence, and to modify or vacate the sentence if the appellate court “clearly and convincingly” finds that the record does not support the findings. *Bonnell* at ¶ 28.

{¶12} Compliance with R.C. 2929.14(C)(4) requires the trial court to make the statutory findings as part of the sentencing hearing. 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.* at ¶ 29. The court in *Bonnell* emphasized that the trial court is not required to give a “talismanic incantation” of the words of the statute, provided the necessary findings can be found in the record. *Id.* at ¶ 37.

{¶13} Applying the analysis, the court in *Bonnell* concluded that the record in that case did not support a conclusion that the trial court made all of the findings required by R.C. 2929.14(C)(4), because the reviewing court “cannot glean from the record that the trial court found consecutive sentences were not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public.” *Id.* at ¶ 36.

{¶14} In the instant case, the trial court did exactly what R.C. 2929.14(C) and *Bonnell* required. Before the trial court imposed consecutive sentence, the court stated the following:

The Court finds that a consecutive sentence is necessary to protect the public from future crimes or to punish the offender and that consecutive sentences are not disproportionate with the seriousness of the offender's conduct and to the danger the offender poses to the public, and the offender committed one or more of the multiple offenses while the offender was on community control. Furthermore, at least two of the multiple offenses were committed as part of one of a course of conduct and the harm caused by two or more of the multiple offenses 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 reflect the seriousness of the offender's conduct and, thirdly, the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶15} Rasul claims the trial court's findings were not adequate because it did not make specific or separate reference to the offense of community control violation. The claim lacks merit. The statute states that findings are required "[i]f multiple prison terms are imposed on an offender for convictions of multiple offenses." There is no requirement that the trial court refers to specific counts when stating the findings.

{¶16} Rasul also argues that the trial court, by "parroting" the statutory language verbatim ("a consecutive sentence is necessary to protect the public from future crimes *or* to punish the offender") and using the disjunctive word "or," actually made *neither* finding. We disagree. The trial court here made the finding that the consecutive sentence is necessary *either* to protect the public from future crimes *or* to punish the offender. Although it could have been more precise, such exact precision is not required by the statute.

{¶17} We are clearly able to discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, we conclude the trial court satisfied its statutory duty. For these reasons, we affirm the sentence of the trial court.

{¶18} Judgment affirmed.

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

LARRY A. JONES, SR., P.J., and  
EILEEN A. GALLAGHER, J., CONCUR