

[Cite as *State v. Ogletree*, 2015-Ohio-1286.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 100960

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**STEPHON OGLETREE**

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 Nos. CR-13-576505-A and CR-13-576533-A

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

**RELEASED AND JOURNALIZED:** April 2, 2015

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EILEEN A. GALLAGHER, J.:

{¶1} Defendant-appellant Stephon Ogletree appeals the trial court's imposition of consecutive sentences in two cases in the Cuyahoga County Court of Common Pleas. For the following reasons, we affirm, in part, but remand for correction of the journal entry.

{¶2} On November 18, 2013, Ogletree pled guilty to 13 counts of burglary, six counts of attempted burglary, one count of vandalism, one count of attempted petty theft and one count of breaking and entering in Cuyahoga C.P. No. CR-13-576505. On the same date, Ogletree pled guilty to two counts of burglary in Cuyahoga C.P. No. CR-13-576533.

{¶3} On January 16, 2014, the trial court conducted a sentencing hearing. In CR-13-576505, the trial court merged as allied offenses one count of attempted burglary and the vandalism charge into related counts of burglary. The state elected for Ogletree to be sentenced under the burglary charge in both instances. The trial court imposed prison terms of eight years for each count of burglary, two years for each count of attempted burglary, one year for breaking and entering and 90 days for attempted petty theft charge. All prison terms were ordered to run concurrent to each other but consecutive to the sentence imposed in CR-13-576533 in which the trial court imposed concurrent prison terms of two years for the two counts of burglary but ordered the sentences to be served consecutive to the sentence in CR-13-576505. Ogletree's cumulative prison term was ten years.

{¶4} Ogletree filed this appeal on February 3, 2014. His appellate counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), seeking to withdraw on the basis that the appeal was frivolous and without merit. This court conducted an independent examination pursuant to *Anders* and Loc.App.R. 16(C) and found an issue of arguable merit as to whether Ogletree was properly sentenced pursuant to R.C. 2929.14(C)(4) and *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659. We granted Ogletree’s original appellate counsel’s motion to withdraw and appointed new counsel to pursue the appeal on his behalf. Ogletree’s new appellate counsel filed a brief asserting the following assignment of error:

The trial court did not take into account the necessary factors in 2929.14C(4)(a-c) in imposing a consecutive sentence.<sup>1</sup>

{¶5} 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

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<sup>1</sup> The trial court erred and/or lacked sufficient justification to impose consecutive sentences.

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.*

{¶6} 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.

{¶7} R.C. 2929.14(C)(4) authorizes the court to 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.*

{¶8} 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.

{¶9} Ogletree argues that the trial court failed to make one of the findings in R.C. 2929.14(C)(4) to support consecutive sentences. We find no merit to this argument. The record reflects that in addition to making the other findings required by R.C. 2929.14(C)(4), the trial court found:

[T]here were multiple offenses that were part of a course of conduct and the harm caused by the two or more multiple offenses committed was so great or unusual that no single prison term for any of the offenses committed would adequately reflect the seriousness of your conduct.

{¶10} Therefore, the trial court made the required finding pursuant to R.C. 2929.14(C)(4)(b). Furthermore, the record supports the trial court's consecutive sentence findings. The trial court noted that Ogletree engaged in a spree of burglaries that involved 20 separate victims. Several victims appeared at sentencing and detailed the psychological harm caused to their families by Ogletree's intrusion into their homes. Ogletree himself addressed the trial court and admitted that he defecated on the enclosed porch of one of the burglarized homes.

{¶11} Although we find no error with the findings that the trial court made at sentencing to support consecutive sentences, we sua sponte note that the trial court failed to incorporate its R.C. 2929.14(C)(4) consecutive sentence findings into its sentencing entries as required by *Bonnell*:

A trial court's inadvertent failure to incorporate the statutory findings in the sentencing entry after properly making those findings at the sentencing hearing does not render the sentence contrary to law; rather, such a clerical mistake may be corrected by the court through a nunc pro tunc entry to reflect what actually occurred in open court.

*Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, at ¶ 30.

{¶12} Consequently, Ogletree's assignment of error is overruled in part and sustained in part.

{¶13} Judgment affirmed. We remand this case for the trial court to issue nunc pro tunc entries to correct the clerical errors in the sentencing entries to bring the entries into compliance with the requirements of *Bonnell* by incorporating its consecutive sentencing findings into the entries.

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. Case remanded to the trial court for correction of the journal entry.

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

LARRY A. JONES, SR., P.J., and  
TIM McCORMACK, J., CONCUR