

[Cite as *State v. Jackson*, 2015-Ohio-1947.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 101290

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JAMES JACKSON**

DEFENDANT-APPELLANT

---

**JUDGMENT:**  
AFFIRMED

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case Nos. CR-13-571674-A, CR-13-572101-A,  
CR-13-574535-B and CR-13-579432-A

**BEFORE:** E.T. Gallagher, P.J., Stewart, J., and Boyle, J.

**RELEASED AND JOURNALIZED:** May 21, 2015

**ATTORNEY FOR APPELLANT**

Ruth R. Fischbein-Cohen  
3552 Severn Road, #613  
Cleveland, Ohio 44118

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor

BY: Shannon M. Musson  
Assistant Prosecuting Attorney  
The Justice Center, 9th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

Eben McNair  
Assistant Prosecuting Attorney  
Juvenile Justice Unit  
Juvenile Justice Center  
9300 Quincy Avenue  
Cleveland, Ohio 44106

EILEEN T. GALLAGHER, P.J.:

{¶1} Defendant-appellant, James Jackson (“Jackson”), appeals his consecutive sentence and assigns the following single assignment of error:

1. The consecutive sentence was contrary to law.

{¶2} We find no merit to the appeal and affirm.

### **I. Facts and Procedural History**

{¶3} In October 2013, Jackson pleaded guilty to multiple offenses in three separate cases. In Cuyahoga C.P. No. CR-13-571674-A, Jackson pleaded guilty to one count each of having a weapon while under disability and carrying a concealed weapon. In Cuyahoga C.P. No. CR-13-572101-A, Jackson pleaded guilty to one count of child endangering, a third-degree felony. In Cuyahoga C.P. No. CR-13-574535-B, Jackson pleaded guilty to one count each of burglary and theft.

{¶4} During the plea hearing, the court, on motion, released Jackson on bond pending sentencing. However, at the conclusion of the hearing, the court warned:

COURT: Mr. Jackson, you can ask the deputies on your way down, you can ask your lawyer, you can ask people you know who have been in front of my court, people who screw with me while on court supervised release, people who don’t show up for sentencing, or God forbid, people who pick up new cases while on bond to me suffer severe penalties. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

{¶5} Within two weeks of his release, Jackson was charged with a new case in Cuyahoga C.P. No. CR-13-579432-A. In this new case, Jackson was charged with aggravated burglary, burglary, abduction, domestic violence, child endangering, assault,

disrupting public services, and petty theft. The burglary charges included notice of prior conviction and repeat violent offender specifications. Jackson subsequently pleaded guilty to burglary, assault, and disrupting public service.

{¶6} The court sentenced Jackson on all four cases at one sentencing hearing. The prosecutor played recordings of telephone calls Jackson made to various people while he was in jail awaiting his sentence. In the recordings, Jackson tells his friends how he manipulated the judge to get a lighter sentence. In one phone call, he states: “I would have told him that if he wanted to hear — that’s the first thing that came to my head, PCP — I would have told him heroin. Bout to go to half way house and chill, not do too much, just fall back.” In a conversation with his brother, Jackson explains that he faked a drug problem in order to win the judge’s mercy: “I told them I’m an alcoholic and shit. I told them I be having withdrawals and shit.” Jackson also explained to his friends that the judge was amenable, stating: “my judge said I’m on your side, I’m in your defense,\* \* \* he whispered CBCF. I’m like, oh, yeah, it’s goin.’”

{¶7} Following arguments from both the prosecutor and defense counsel, the court sentenced Jackson to 15 months for having a weapon while under disability, 36 months for child endangering, and 36 months for burglary in CR-13-571674-A, CR-13-572101-A, and CR-13-574535-B. The court ordered these sentences to be served concurrently.

{¶8} In CR-13-579432-A, the court sentenced Jackson to 36 months for burglary, 17 months for disrupting public service, and six months for assault. The court ordered

these sentences to run consecutively to one another and to the sentences Jackson received in CR-13-571674-A, CR-13-572101-A, and CR-13-574535-B. Jackson now appeals his consecutive sentence.

## II. Law and Analysis

{¶9} In his sole assignment of error, Jackson argues the consecutive sentences he received are contrary to law. He contends the court failed to make the findings required by R.C. 2929.14(C)(4) for the imposition of consecutive sentences.

{¶10} R.C. 2953.08(G)(2) states that when reviewing felony sentences, “[t]he appellate court’s standard for review is not whether the sentencing court abused its discretion.” R.C. 2953.08(G)(2) provides that an appellate court may reverse, vacate, or modify a consecutive sentence if (1) the sentence is “otherwise contrary to law” or (2) the appellate court, upon its review, clearly and convincingly finds that the record does not support the sentencing court’s findings under R.C. 2929.14(C)(4). R.C. 2953.08(G)(2).

{¶11} There is a presumption in Ohio that prison sentences should be served concurrently, unless the trial court makes the findings outlined in R.C. 2929.14(C)(4) to justify the imposition of consecutive sentences. R.C. 2929.41(A). R.C. 2929.14(C)(4) requires the court to find that (1) consecutive sentences are necessary to protect the public from future crime or to punish the offender, (2) consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public, and (3) at least one of the three findings set forth in R.C. 2929.14(C)(4)(a)-(c) applies. As relevant here, R.C. 2929.14(C)(4)(a) provides as a

finding that the court consider whether “[t]he offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing.”

{¶12} “[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.” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29. The failure to make the findings, however, is “contrary to law.” *Id.* at ¶ 37.

{¶13} At the sentencing hearing, the trial court considered, on the record, the fact that Jackson, who was 24 years old, was adjudicated delinquent as a minor, violated his probation, and failed to appear at a probation violation hearing in juvenile court. Jackson also pleaded guilty to robbery and grand theft in the common pleas court one year after being adjudicated delinquent. As a result of his adult convictions, which were second- and fourth-degree felonies, Jackson served a two-year prison term before committing the offenses giving rise to the four cases that were before the trial court. The court stated that Jackson showed an “absolute lack of remorse,” and made the following additional findings:

With regard to Case Number 579432, the Court does find that this defendant committed all of these acts here within a very short period of time. These are violent offenses, injury was a result. The Court finds that consecutive sentences are necessary to protect and punish and a consecutive sentence would not be disproportionate.

\* \* \*

[T]he defendant's criminal history shows that consecutive terms are needed to protect the public. This defendant picked up this case while awaiting sentencing. The phone calls that I heard essentially mocking the justice system tells me that this defendant has no respect for the justice system and that he is a danger to the public.

{¶14} The record shows that the court imposed consecutive sentences to protect the public and to punish Jackson, whom the court believed did not understand the seriousness of his conduct. The record also shows that the court found that consecutive sentences were not disproportionate to the seriousness of Jackson's conduct, and that Jackson committed multiple offenses while awaiting sentencing. Therefore, the trial court complied with all the requirements of R.C. 2929.14(C), and Jackson's consecutive sentences are not contrary to law.

{¶15} The sole assignment of error is overruled.

{¶16} Judgment affirmed.

It is ordered that appellee recover from 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.

EILEEN T. GALLAGHER, PRESIDING JUDGE

MELODY J. STEWART, J., and  
MARY J. BOYLE, J., CONCUR