

[Cite as *State v. Turner*, 2015-Ohio-683.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101355

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**MARK TURNER**

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-13-577314-B

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

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

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MARY J. BOYLE, J.:

{¶1} Defendant-appellant, Mark Turner, appeals his sentence, raising the following two assignments of error:

I. The trial court imposed consecutive sentences on Mr. Turner without making the findings mandated by R.C. 2929.14(C).

II. The trial court committed error when it failed to state the findings necessary for imposition of consecutive sentences in the journal entry.

{¶2} We affirm the sentence but remand to the trial court for the limited purpose of incorporating the consecutive sentence findings made at sentencing into the court's entry through a nunc pro tunc entry.

#### Procedural History and Facts

{¶3} Turner was indicted on two counts of aggravated murder, aggravated robbery, felonious assault, kidnapping, and a single count of murder. The charges arose from the robbery and stabbing of the victim, who died in the hospital after three months of treatment. Turner ultimately reached a plea agreement with the state and pleaded guilty to an amended charge of involuntary manslaughter and a single count of aggravated robbery.

{¶4} Prior to the sentencing hearing, the state filed a sentencing memorandum, urging the trial court to impose the maximum possible sentence for the offenses. The state argued that Turner committed the worst form of involuntary manslaughter offense because the stabbing was unprovoked and because the victim suffered "unimaginable pain" during the three months leading up to his death due to the stabs wounds inflicted.

{¶5} On April 9, 2014, the trial court held the sentencing hearing. Prior to sentencing Turner, the trial court considered the presentence investigation report and heard from the victim's relatives, who urged the trial court to impose the maximum sentence possible. The relatives spoke of the victim's generosity and goodness and expressed their hatred for Turner.

{¶6} The trial court ultimately sentenced Turner to a maximum of 11 years on each count to run consecutively, for a total of 22 years in prison.

#### Consecutive Sentences

{¶7} In his first assignment of error, Turner argues that the trial court erred when it sentenced him consecutively on the involuntary manslaughter and aggravated robbery counts. We disagree.

{¶8} When reviewing the imposition of consecutive sentences,

R.C. 2953.08(G)(2)(a) directs the appellate court “to review the record, including the findings underlying the sentence” and to modify or vacate the sentence “if it clearly and convincingly finds \* \* \* [t]hat the record does not support the sentencing court’s findings under [R.C. 2929.14(C)(4)].”

*State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, quoting R.C. 2953.08(G)(2)(a).

{¶9} R.C. 2929.14(C)(4) requires trial courts to engage in a three-step analysis when imposing consecutive sentences. First, the trial court must find that “consecutive service is necessary to protect the public from future crime or to punish the offender.” *Id.* Next, the trial court must find that “consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public.” *Id.* Finally, the trial court must find that at least one of the following applies: (1) the offender committed one or more of the multiple offenses while awaiting trial or sentencing, while under a sanction imposed under R.C. 2929.16, 2929.17, or 2929.18, or while under postrelease control for a prior offense; (2) 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 offenses 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; or (3) the offender’s history of criminal

conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. *Id.*

{¶10} Turner concedes that the trial court made the first two required findings but argues that the court failed to make the third. The thrust of Turner's argument, however, is that the trial court did not use the exact language of the statute in making the third finding. But the Ohio Supreme Court has expressly rejected such a rigid approach. *Bonnell* made clear that "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. And here the trial court engaged in the correct analysis and made all the required findings. Specifically, the trial court stated the following prior to imposing consecutive sentences:

Mr. Turner, I've already stated on the record your long involvement with the criminal justice system and the facts that you're under the jurisdiction of the federal prison system to this day for a robbery.

You have obviously committed an offense beyond just the killing of another human being, which is as serious as you can get, that affected a community and this very interested and concerned family.

I'm going to impose a maximum sentence for count 1, involuntary manslaughter. The sentence is 11 years. I think that's appropriate under the circumstances. You went there to rob this, by all accounts, gentle and considerate human being. I think any lesser sentence for that would demean the seriousness of your behavior and would be inefficient punishment.

For count 3, the aggravated robbery, I'm going to impose a similar maximum of 11 years. You went there with a knife, with a weapon. This is not unplanned, inadvertent conduct. One wields a weapon in order to be able to use it. This man resisted. He was unwilling to be a victim. He died for it.

Consecutive sentences are appropriate given your history, your past conduct. These are necessary to protect the public from future crime. You will

undoubtedly continue to victimize others. I don't believe that this sentence is disproportionate to your conduct or the danger you pose to the public.

I also find you were under sanctions at the time. Again, you were under federal jurisdiction. These offenses were also committed as part of a course of conduct. A human being died. There is no greater harm that really can be done to the community than to lose a life in a senseless act.

I also make note of the fact that this was no wealthy human being. This was just a working man who had no great wealth, no man of privilege.

Finally, the history of criminal conduct supports that this is a necessary sentence. Even in two of the receiving-stolen-property cases that I reviewed for the purposes of sentencing, you fled from police, suggesting that you put others in harm's way. After all, police will pursue.

{¶11} Contrary to Turner's argument on appeal, we find that the trial court's analysis and findings clearly satisfy the third finding under R.C. 2929.14(C)(4). Indeed, although only required to find that one of the three factors contained in R.C. 2929.14(C)(4)(a)-(c) apply, the trial court clearly found that at least two apply, namely, (b) and (c).

{¶12} The first assignment of error is overruled.

#### Journal Entry

{¶13} In his second assignment of error, Turner argues that the trial court failed to incorporate any findings in support of the imposition of consecutive sentences in the journal entry as required under *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659. The state concedes this argument.

{¶14} In *Bonnell*, the Ohio Supreme Court recently recognized that a trial court must also incorporate its statutory findings for consecutive sentences into the sentencing entry. *Id.* at ¶ 29. The court further recognized, however, that "[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[.]” *Id.* Instead, “such a clerical mistake may be corrected by the court through a nunc pro tunc entry to reflect what actually occurred in open court.” *Id.*

{¶15} The record reveals that the trial court failed to incorporate in the journal entry the statutory findings supporting consecutive sentences that it made at sentencing. Thus, in light of *Bonnell*, this matter is remanded to the trial court for the court to issue a new sentencing journal entry, nunc pro tunc, to incorporate its findings. The second assignment of error is sustained.

{¶16} Judgment affirmed and case remanded to the lower court for further proceedings consistent with this opinion.

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. 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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MARY J. BOYLE, JUDGE

TIM McCORMACK, P.J., and  
EILEEN T. GALLAGHER, J., CONCUR

