

[Cite as *State v. Floyd*, 2015-Ohio-763.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 101301**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JON FLOYD**

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-13-579865-A

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

**RELEASED AND JOURNALIZED:** March 5, 2015

**ATTORNEY FOR APPELLANT**

Kevin M. Cafferkey  
1370 Ontario Avenue  
2000 Standard Building  
Cleveland, Ohio 44113

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor

BY: Andrew Rogalski  
Assistant Prosecuting Attorney  
The Justice Center, 9th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, Jon Floyd (“Floyd”), appeals his sentence and assigns the following errors for our review:

1. The sentencing court committed reversible error when it imposed consecutive sentences contrary to law.
2. The sentencing court committed reversible error when it failed to consider and/or make the psychiatric report that it ordered at the sentencing hearing.

{¶2} Finding no merit to the appeal, we affirm Floyd’s sentence, but remand to the trial court to issue a nunc pro tunc entry to incorporate the findings made at the sentencing hearing into the journal entry.

## **I. Factual and Procedural History**

{¶3} In November 2013, Floyd was indicted on five charges. On March 14, 2014, Floyd pled guilty to an amended indictment, containing three counts: one count of felonious assault with a prior conviction specification, one count of attempted felonious assault with a one-year firearm specification, and one count of having a weapon while under disability.

{¶4} On April 15, 2014, Floyd was sentenced to six years for felonious assault. He was sentenced to 36 months for attempted felonious assault, plus a one-year firearm specification, to run consecutive to each other but concurrent to the six-year term. He was sentenced to a one-year term for having a weapon while under disability, which was ordered to run consecutively to the six-year term, for an aggregate seven year prison term.

## **II. Law and Analysis**

### **A. Consecutive Sentences**

{¶5} In his first assignment of error, Floyd argues the trial court erred in imposing consecutive sentences.

{¶6} R.C. 2929.14(C)(4) requires a sentencing judge to make three statutory findings before imposing consecutive sentences and incorporate those findings in the journal entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio- 3177, 16 N.E.3d 659, ¶ 29. First, the trial court must find that “consecutive service is necessary to protect the public from future crime or to punish the offender.” R.C. 2929.14(C)(4). Second, 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.*

{¶7} Finally, the trial court must find that at least one of the following applies:

(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 postrelease 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.

R.C. 2929.14(C)(4). “[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.* The failure to make the findings, however, is “contrary to law.” *Bonnell* at ¶ 37.

{¶8} In this case, the trial court supported its decision to impose consecutive sentences by making the following findings in open court and on the record:

On the issue of consecutive sentences, the court finds that the defendant was under sanction, post-release control when a crime was committed, that the harm is so great or unusual that a single offense would not affect the seriousness of the conduct.

Now, I believe it is necessary to protect the public and punish the offender, while being not disproportionate. Having a weapon under disability, that's something that should not happen. Related directly to the second charge here, that would not have happened. Had you not had that gun, the second count, Count 2, that would not have happened. So that will be imposed to run consecutive to the other two counts.

(Tr. 54.) The state points out that although the transcript of the sentencing hearing states “would not adequately *affect* the seriousness of the conduct,” the trial court actually meant that it would not adequately *reflect* the seriousness of the conduct.

{¶9} We find that the trial court's statements satisfied the requirements of R.C. 2929.14(C)(4). First, the trial court found that consecutive sentences are necessary to protect the public *and* to punish the offender, whereas the court need only find one or the other. Next, the trial court stated that it found consecutive sentences are not disproportionate. Finally, the trial court found that Floyd committed the offenses while under sanction.

{¶10} Floyd argues the trial court's statement that consecutive sentences are not disproportionate fails to satisfy R.C. 2929.14(C)(4) because the trial court failed to recite the statement in full; “consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public.” However, pursuant to *Bonnell*, the trial court was not required to make a word-for-word recitation of the language of the statute. We can discern from the transcript that the trial court engaged in the correct analysis and that the record supports the findings. *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, at ¶ 29; *see also State v. Lunder*, 8th Dist. Cuyahoga No. 101223, 2014-Ohio-5341, ¶ 17.

{¶11} Accordingly, the first assignment of error is overruled.

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

{¶13} 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.

#### **B. Psychiatric Report**

{¶14} In his second assignment of error, Floyd argues the trial court erred in failing to consider the psychiatric report during sentencing.

{¶15} In the court’s journal entry dated March 14, 2014, the court referred Floyd to the court psychiatric clinic for an evaluation before sentencing, pursuant to R.C. 2947.06(B). Floyd argues that pursuant to R.C. 2947.06(B), “[t]he psychologist’s or psychiatrist’s reports shall be made in writing, in open court, and in the presence of the defendant[.]” Floyd contends that the court’s failure to mention the report on the record and in open court during the sentencing hearing results in reversible error.

{¶16} At the sentencing hearing, the trial court stated that it “had the opportunity to review the entire case file[.]” (Tr. 43.) The trial court also gave both defense counsel and Floyd an opportunity to address the court prior to sentencing. Defense counsel referred to the report, stating:

However, as Your Honor is aware, my client is in the psychiatric clinic. There was a mitigation report done by them. His psychological condition definitely impacts him. It has a serious impact on his life consistently. We would ask you to take that into consideration as you consider sentencing.

(Tr. 49-50.) Defense counsel made no objection during the sentencing hearing to the court's failure to mention the report specifically.

{¶17} Furthermore, Floyd fails to cite to any case law or statute to support his contention that failing to mention the psychiatric report at the sentencing hearing constitutes reversible error.

Floyd concedes in his brief that the trial court's initial request for a psychiatric report was discretionary. Thus, we find no error in the court's failure to mention the psychiatric report during sentencing.

{¶18} Accordingly, the second assignment of error is overruled.

### **III. Conclusion**

{¶19} The trial court made the requisite findings necessary for imposing consecutive sentences under R.C. 2929.14(C)(4). Further, the trial court's failure to mention the psychiatric report during the sentencing hearing does not constitute reversible error.

{¶20} Judgment affirmed. However, this case is remanded to the trial court to incorporate its findings for consecutive sentences into the journal entry.

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, JUDGE

TIM McCORMACK, P.J., and  
MARY J. BOYLE, J., CONCUR