

[Cite as *State v. Zimmerman*, 2016-Ohio-3067.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103639

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**KENNETH L. ZIMMERMAN**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case Nos. CR-14-590212-A, CR-14-590511-A, and  
CR-15-597377-A

**BEFORE:** E.A. Gallagher, J., Jones, A.J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** May 19, 2016

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EILEEN A. GALLAGHER, J.:

{¶1} Defendant-appellant Kenneth Zimmerman appeals his consecutive sentences in the Cuyahoga County Court of Common Pleas. For the following reasons, we affirm.

### **Facts and Procedural Background**

{¶2} Zimmerman pled guilty to grand theft in CR-14-590212 and burglary in CR-14-590511. The trial court imposed one year of community control sanctions in both cases. While on community control, Zimmerman was charged with disseminating matter harmful to juveniles in CR-15-597377. Zimmerman entered a guilty plea to that charge and was found to be in violation of community control in both CR-14-590212 and CR-14-590511. The trial court terminated Zimmerman’s community control sanctions and imposed 18-month prison terms for the grand theft and burglary charges in CR-14-590212 and CR-14-590511. The court also imposed a prison term of 12 months in CR-15-597377 and ordered the three prison terms to be served consecutive to each other for a cumulative prison sentence of 48 months.

### **Law and Analysis**

#### **I. Consecutive Sentences**

{¶3} Zimmerman argues in his sole assignment of error that the trial court erred in imposing consecutive sentences. R.C. 2929.14(C)(4) requires a trial court to engage in a three-step analysis before it imposes consecutive sentences. First, the court must find that “consecutive service is necessary to protect the public from future crime or to punish the

offender.” *Id.* 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.* Third, 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 awaiting trial or sentencing, while under a sanction, or while 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 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]

(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.*

{¶4} Zimmerman concedes that the trial court made the necessary findings pursuant to R.C. 2929.14(C)(4) in ordering consecutive sentences. Zimmerman’s sole argument on appeal is that the record does not support the findings.

{¶5} R.C. 2953.08(G)(2) makes it clear that if the court has properly made the required findings in order to impose consecutive sentences, we must affirm those sentences unless we “clearly and convincingly” find “[t]hat the record does not support the court’s findings[.]” *Id.*; *State v. Carson*, 8th Dist. Cuyahoga No. 102424, 2015-Ohio-4183, ¶ 2. In *State v. Venes*, 2013-Ohio-1891, 992 N.E.2d 453 (8th Dist.), we noted:

It is also important to understand that the clear and convincing standard used by R.C. 2953.08(G)(2) is written in the negative. It does not say that the trial judge must have clear and convincing evidence to support its findings. Instead, it is the court of appeals that must clearly and convincingly find that the record does not support the court's findings. In other words, the restriction is on the appellate court, not the trial judge. This is an extremely deferential standard of review.

*Id.* at ¶ 20.

{¶6} We find that the record supports the trial court's consecutive findings. In CR-15-597377 Zimmerman's disseminating matter harmful to juveniles conviction stemmed from his harassment of a minor working at Burger King and showing her a pornographic website titled "18 and abused" on his Kindle. The trial court noted that Zimmerman has an extensive criminal history dating back to 1980 that included convictions for theft, receiving stolen property, operating a vehicle while intoxicated, theft of a motor vehicle, forgery, public indecency, indecent exposure, grand theft motor vehicle, escape, burglary, misuse of credit cards and unauthorized use of a motor vehicle.

The trial court also noted that Zimmerman had committed the disseminating matter harmful to juveniles offense while he was under community control sanctions in CR-14-590212 and CR-14-590511 and that Zimmerman had a record of repeatedly violating probation opportunities. The trial court concluded that consecutive prison sentences were the only way to keep the community safe from Zimmerman's criminal

activity. We find no error in this judgment or the trial court's imposition of consecutive sentences.

{¶7} Zimmerman's sole assignment of error is overruled.

{¶8} The judgment of the trial court is affirmed.

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.

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., A.J., and  
ANITA LASTER MAYS, J., CONCUR