

[Cite as *State v. Smith*, 2016-Ohio-7617.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104156

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**AKEEM A. SMITH**

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-15-599823-A and CR-15-601427-A

**BEFORE:** Boyle, J., Jones, A.J., and Celebrezze, J.

**RELEASED AND JOURNALIZED:** November 3, 2016

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MARY J. BOYLE, J.:

{¶1} Defendant-appellant, Akeem Smith, appeals his sentence, raising the following single assignment of error:

The trial court erred when it imposed consecutive sentences which are contrary to law and not supported by the record.

{¶2} Finding no merit to the appeal, we affirm.

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

{¶3} In Cuyahoga C.P. No. CR-15-599823-A, Smith was indicted for one count of domestic violence, in violation of R.C. 2919.25(A), a third-degree felony, for an offense that occurred on December 6, 2014. The count also carried a furthermore clause stating that the victim was pregnant at the time of the offense. In Cuyahoga C.P. No. CR-15-601427-A, Smith was also indicted for one count of domestic violence, in violation of R.C. 2919.25, a felony of the third degree, for an offense that occurred on September 30, 2015. Both offenses involved the same victim.

{¶4} Smith ultimately reached a plea agreement with the state wherein he pleaded guilty to an amended domestic violence count in Case No. CR-15-599823-A, which did not have the furthermore clause, and therefore the mandatory imposition of a prison term did not apply. Smith pleaded guilty to the indictment as charged in Case No. CR-15-601427-A.

{¶5} Following his guilty plea, the trial court proceeded immediately to sentencing over the objection of defense counsel. At sentencing, the trial court first heard from the prosecutor, who emphasized Smith’s extensive criminal and violent history and requested that the trial court impose a prison term. Next, defense counsel addressed the court. Defense counsel stated that she had hoped to obtain a presentence investigation report as well as have the opportunity for a social worker to assist in creating “a sentencing plan.” According to defense counsel, Smith, who is only 25 years old, “has a history with psychiatric services in our community for almost 20 years” and was not taking his medications at the time of the offenses. Defense counsel further urged the trial court to consider a community-based correctional facility referral for Smith as part of his sentence. Finally, Smith addressed the court and expressed remorse for his actions.

{¶6} The trial court ultimately imposed 30 months in prison on each case to run consecutive for a total prison term of 60 months. Prior to imposing the sentence, the trial court detailed Smith’s extensive juvenile record, which included five violent offenses, and then discussed his past criminal offenses as an adult, stating the following:

As an adult, criminal trespass in Euclid Municipal Court and assault charge in Cleveland Municipal. \* \* \* [D]efendant arrested after police were called for male beating a female. Victim told police that the defendant punched her in the face and kicked her several times, but in this case he was released without charges. That may have actually been — so I’m going to hold that one against him.

But in Toledo, he had a domestic violence charge that we’ve already discussed. He was given 180 days in jail. 120 days suspended and credit for 10 days served. No contact with the victim. It should be noted that

the victim and the defendant resided together at the time, and the victim was eight months pregnant at the time of the incident.

On the day of the offense, the defendant repeatedly punched and hit the victim in the body and face. And for that he was given a suspended jail sentence.

2011, abduction, a felony of the third degree. Domestic violence, a felony of the fourth degree. Disrupting public service, a felony of the fourth degree. Defendant given a prison sentence for one year. Yea, somebody finally held him accountable for his behavior.

2014, F5, breaking and entering in front of me. I decided \* \* \* to give him an opportunity to be on probation and to give him, since it was really a nonviolent offense, he was stealing copper, he was scrapping, I decided to make things right and to get him some help. He allegedly violated that supervision, and like I said, we tried to hold a hearing for him on September 19th of 2014; however, he chose not to appear and he's had this warrant out for him for that violation since 2014.

And now we have two offenses here of felony 3 domestic violence against the same victim. Clearly, in looking at the recidivism factors, he has an extensive delinquency and criminal history. He has not benefitted from whatever services the Juvenile Court attempted to offer him on a multitude of charges that he had in front of them. He's been in prison. Clearly, that hasn't reformed him.

I put him on probation and yet he continues to behave in a negative manner. And so, I think that the defendant clearly in this matter has been given multiple opportunities to conform his behaviors to the laws of society.

He's committing acts of violence and really not showing adequate remorse for his entire criminal history for the offenses here.

{¶7} The trial court further acknowledged that, despite concurrent sentences being favored under the law, it found a consecutive sentence to be necessary, stating as follows:

And in this particular case, the court does believe that given the defendant's criminal history, and the history of violence, that a consecutive sentence is necessary to protect and punish and would not be

disproportionate. The Court finds these offenses were committed while the defendant was on postrelease control and probation, and the defendant's criminal history shows that consecutive terms are necessary to protect the public and particularly [the victim] in this matter.

{¶8} Smith now appeals his sentence, arguing that the record does not support the imposition of consecutive sentences.

## **II. Consecutive Sentences**

{¶9} We review felony sentences under the standard set forth in R.C. 2953.08(G)(2). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 16. R.C. 2953.08(G)(2) provides that when reviewing felony sentences, a reviewing court may overturn the imposition of consecutive sentences where the court “clearly and convincingly” finds that (1) “the record does not support the sentencing court’s findings under R.C. 2929.14(C)(4),” or (2) “the sentence is otherwise contrary to law.”

{¶10} R.C. 2929.14(C)(4) provides that in order to impose consecutive sentences, the trial court must find that consecutive sentences are (1) necessary to protect the public from future crime or to punish the offender, (2) that such sentences would not be disproportionate to the seriousness of the conduct and to the danger the offender poses to the public, and (3) that 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.

{¶11} Moreover, a trial court is required not only to make the statutory findings required for consecutive sentences at the sentencing hearing, but also to incorporate its findings into its sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus.

{¶12} While Smith concedes that the trial court made the required findings to support the imposition of consecutive sentences, he argues that the record does not support the findings. Specifically, he argues that the absence of a recent presentence investigation report or "any description of the events which occurred on December 6, 2014 and September 30, 2015" precludes the imposition of consecutive sentences. According to Smith, the record does not contain evidence to support a finding that the sentence is not "disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public." We disagree.

{¶13} As detailed above, we find that the record overwhelmingly belies Smith's argument on appeal. The record reflects that the trial court was well acquainted with Smith based on his prior case in the same courtroom and had the benefit of a presentence investigation report from that case. As discussed by the trial court at sentencing, apart from his other offenses of violence, Smith has previously been convicted of two other

domestic violence cases prior to being indicted on the two domestic violence cases giving rise to the instant appeal. And contrary to Smith’s inference on appeal, the trial court is not required to order a presentence investigation report in order to impose consecutive sentences. *State v. Williams*, 7th Dist. Mahoning No. 11 MA 131, 2012-Ohio-6277, ¶ 70 (“a trial court is not required to order and consider a presentence investigation where probation is not granted”). Here, the danger that Smith poses to the public is apparent by his extensive criminal record and his failure to benefit from less restrictive sanctions in the past.

{¶14} Furthermore, the trial court also considered the specific facts of the two underlying cases before imposing consecutive sentences. Smith pleaded guilty to have “knowingly cause[d] or attempt[ed] to cause physical harm” to the victim, a household member. Although the facts were not discussed in detail, the court clearly considered that the offenses occurred on separate days — almost a year apart — and that they involved the same victim. And although the furthermore clause was not part of Smith’s plea, the trial court was free to consider the fact that the victim was pregnant during the earlier offense as stated in the indictment.

{¶15} Based on the record before us, we cannot say that the record clearly and convincingly does not support the sentencing court’s findings. *See Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, at ¶ 29. Accordingly, Smith’s sole assignment of error is overruled.

{¶16} Judgment 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. 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

LARRY A. JONES, SR., A.J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR