

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

STATE OF OHIO,	:	
	:	Case No. 24CA23
Plaintiff-Appellee,	:	
	:	
v.	:	
	:	<u>DECISION AND JUDGMENT</u>
MATTHEW JEFFREY STREETER,	:	<u>ENTRY</u>
	:	
Defendant-Appellant.	:	RELEASED: 06/02/2026
	:	

APPEARANCES:

Christopher Pagan, Middletown, Ohio, for appellant.

Keller J. Blackburn, Athens County Prosecuting Attorney, and Merry M. Saunders, Assistant Athens County Prosecuting Attorney, Athens, Ohio, for appellee.

Wilkin, J.

{¶1} This is an appeal of an Athens County Court of Common Pleas judgment entry. Matthew Jeffrey Streeter (“Streeter”) challenges the trial court’s imposition of sentence for aggravated theft and telecommunications fraud. Streeter entered a plea for both offenses as part of a plea agreement that did not include sentencing recommendations. He now argues, however, that the trial court committed sentencing errors by failing to merge the offenses and imposing consecutive sentences. After reviewing the parties’ arguments, the record, and the applicable law, we find no merit to the assignment of error and affirm the judgment of the trial court.

FACTS AND PROCEDURAL BACKGROUND

{¶2} On October 30, 2023, an Athens County grand jury returned an indictment alleging Streeter committed three felony offenses: Count 1, aggravated theft, in violation of R.C. 2913.02(A)(1), a third-degree felony; Count 2, telecommunications fraud, in violation of R.C. 2913.05(A), a third-degree felony; and Count 3, possessing criminal tools, in violation of R.C. 2923.24(A), a fifth-degree felony. Count 1 alleged that the offense occurred on or about July 9, 2018 to November 4, 2022. Counts 2 and 3 were alleged to have occurred on or about July 31, 2020 to October 24, 2022. Streeter entered a not guilty plea at arraignment on November 13, 2023, and the trial court set status conference and jury trial dates.

{¶3} The trial court held a change of plea hearing on April 3, 2024. The State recited the plea agreement, which was that Streeter would plead to Counts 1 and 2 of the indictment, and the State would move to dismiss Count 3, without a sentencing recommendation to the trial court (except that Streeter would pay restitution).

{¶4} The State informed the trial court that the incidents arose when Streeter contacted the Delta Upsilon Alumni House Corporation to volunteer as treasurer. BCI gathered documents and determined that while Streeter was treasurer, he diverted the organization's money for his own personal expenses in the amount of \$179,863.95. The defendant stipulated to these facts. After a colloquy, the trial court accepted Streeter's plea, found Streeter guilty of Counts 1 and 2, dismissed Count 3, and ordered a presentence investigation (PSI).

{¶5} The trial court held a sentencing hearing on July 17, 2024, journalized by entry on July 19, 2024. At the inception of the hearing, the trial court noted receipt of the PSI, and neither the State nor Streeter objected to nor supplemented its contents.

{¶6} At sentencing, the State described how Streeter's actions led to a detailed and lengthy investigation regarding the organization's funds being diverted by Streeter for his own personal use. Streeter served as treasurer from July 2018 through February 2023. Although BCI began its investigation in January 2023

[t]he investigation actually took a significantly long period of time based on the fact that Mr. Streeter was not cooperative [whatsoever]. He failed to provide them with any form of financial ledgers, periodic financial reports and that definitely prolonged the investigation. He also declined to be interviewed or assist [whatsoever] during the entirety of this.

So in essence what happened then was Mike Kaizar from BCI who is a certified fraud examiner took forth many subpoenas to many different organizations in an attempt to put together a very long October 31, 2023 dated forensic analysis which essentially comes to the understanding of the \$179,863.95.

The State went on to discuss the sweeping extent to which Streeter engaged in this conduct through use of multiple accounts and transactions over these series of years.

{¶7} The State also noted the organization had been founded in 1953 and has members who were in the organization during their college age that now had to go through the process of essentially selling real estate, using their own money to pay taxes. The State then requested the court sentence Streeter to 36 months on Count 1 and 36 months on Count 2, to run consecutively for a total of

72 months. The State also noted that the case had been continued numerous times (presumably for Streeter to provide some of the restitution), but Streeter had not paid anything back to “take accountability for his actions and pay some of the money back.” The State also reiterated, “[t]his has been . . . repeatedly continued in order for [Streeter] to come up with some form of restitution to offset this, but he’s failed to do that.”

{¶8} The trial court asked the State whether merger would apply, and the State’s position was that merger did not apply to Counts 1 and 2. The State also pointed out that Streeter used multiple telecommunication devices to incur the fraud, that he used his own personal account and another bank account, and “also he was writing them and passing them[,] uttering them through” yet another bank. During the State’s argument, the trial court also considered the victim impact statements which showed the extensive nature of the fraud, and indicated future economic harm would likely be suffered by the fraternity and its associates.

{¶9} During the defense argument on sentencing, Streeter’s counsel disagreed that Streeter had not been cooperative with the investigation but acknowledged the matter had been continued somewhat for Streeter to come up with restitution. Streeter had been unable to make restitution because of the large amount of funds he had already used. Streeter requested community control for perhaps a long period so he could pay the funds back and argued he had a significant amount of remorse. In the alternative, Streeter requested a 4-year, 11-month sentence. Streeter did not make an argument regarding merger.

{¶10} After hearing argument, the trial court imposed a 36-month sentence for Count 1, aggravated theft, and a 24-month sentence for Count 2, telecommunications fraud, with the counts to run consecutively for a total prison term of 5 years. The trial court made consecutive sentences findings. After pronouncement of the sentence, the trial court specifically asked defense counsel whether there was anything further and defense counsel declined to add anything further, or object to the sentence.

{¶11} Streeter timely appealed his sentence asserting one assignment of error.

ASSIGNMENT OF ERROR

THE TRIAL COURT COMMITTED SENTENCING ERROR

{¶12} In his sole assignment of error, Streeter contends that the trial court committed sentencing errors and presents us with four issues related thereto. Streeter's first issue claims that his convictions for telecommunications fraud and aggravated theft should have merged because his conduct caused the same harm to a single victim with a single animus and the offenses were committed simultaneously. In his second issue, Streeter asserts it was plain error or ineffective assistance to permit multiple convictions for telecommunications fraud and aggravated theft because they were allied offenses of similar import. Third, Streeter states the trial court pronounced a disjunctive consecutive-sentencing test but journalized a conjunctive one and failed to decide proportionality by considering the aggregate sentence produced by the stacked terms. Finally, Streeter avers that the trial court likely considered an inappropriate factor of his silence during the investigation when sentencing him.

{¶13} The State responds that Streeter forfeited his right to appeal the merger issue by failing to argue the convictions should merge in the trial court. The State maintains that in any event the two offenses should not merge, and as a result Streeter did not receive ineffective assistance of counsel. The State concludes that Streeter was properly sentenced to consecutive sentences. For the following reasons, we overrule Streeter's assignment of error.

A. Merger

{¶14} Generally, appellate courts apply a de novo standard of review to a trial court's determination as to whether offenses constitute allied offenses of similar import that require R.C. 2941.25 merger. *State v. Hughes*, 2025-Ohio-894, ¶ 19 (4th Dist.), citing *State v. Williams*, 2012-Ohio-5699, ¶ 28. In the instant case, the record shows that the trial court itself mentioned the issue of merger and heard some argument from the State about merger. However, the record also reflects that Streeter offered no argument about merger nor objected to the trial court's decision that the convictions were separate and should not merge, when the trial court broached the issue during the hearing. Streeter also did not object to merger after the trial court sentenced him even though the trial court specifically asked the parties whether there was anything further after the trial court pronounced sentence.

{¶15} Ohio courts have consistently held that failure to raise merger arguments at or before sentencing forfeits the issue for appellate review, leaving only plain error review available. *State v. Riggins*, 2025-Ohio-3028, ¶ 13 (4th Dist.), citing *State v. Bailey*, 2022-Ohio 4407, ¶ 7; *State v. Bierma*, 2024-Ohio-

2089, ¶ 38 (2d Dist.); *State v. Green*, 2021-Ohio-2412, ¶ 23-24 (7th Dist.); *State v. Rogers*, 2015-Ohio-2459, ¶ 21-25. This is true even when the trial court raises the issue of merger and the defendant fails to object to the trial court's determination or imposition of separate sentences. See *Rogers* at ¶ 21, quoting *State v. Quartermann*, 2014-Ohio-4034, ¶ 15 ("It is a well-established rule that an appellate court will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court."); *State v. Woods*, 2024-Ohio-5301, ¶ 69 (4th Dist.) (plain error applied when defendant's trial counsel did not object to the trial court's failure to merge offenses). Additionally, the defendant bears the burden to establish that R.C. 2941.25 prohibits multiple punishments. *State v. Bontrager*, 2022-Ohio-1367, ¶ 12 (4th Dist.), citing *State v. Stapleton*, 2020-Ohio-4479, ¶ 52 (4th Dist.), citing *State v. Washington*, 2013-Ohio-4982, ¶ 18.

{¶16} "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Crim.R. 52(B). In order to establish plain error, Streeter "must show that (1) there was an error or deviation from a legal rule, (2) the error was plain and obvious, and (3) the error affected the outcome of the trial." *State v. Mohamed*, 2017-Ohio-7468, ¶ 26, citing *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002). "Notice of plain error under Crim.R. 52(B) is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *State v. Long*, 53 Ohio St.2d 91, 97 (1978). A "substantial right" is a "right that the United

States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.” R.C. 2505.02(A)(1). The imposition of multiple punishments for allied offenses of similar import amounts to plain error. *State v. Woods*, 2024-Ohio-5301, ¶ 69 (4th Dist.), citing *State v. Jarrett*, 2020-Ohio-393, ¶ 12 (2d Dist.).

{¶17} “The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no person shall ‘be subject for the same offence to be twice put in jeopardy of life or limb.’ ” *State v. Bontrager*, 2022-Ohio-1367, ¶ 10 (4th Dist.). Thus, “[t]he Double Jeopardy Clause of the Fifth Amendment to the United States Constitution affords protections against the imposition of multiple criminal punishments for the same offense.” *State v. Rogers*, 2015-Ohio-2459, ¶ 16, citing *Hudson v. United States*, 522 U.S. 93, 99 (1997). “ ‘This protection applies to Ohio citizens through the Fourteenth Amendment to the United States Constitution * * * and is additionally guaranteed by the Ohio Constitution, Article I, Section 10.’ ” *Bontrager* at ¶ 10, quoting *State v. Ruff*, 2015-Ohio-995, ¶ 10.

{¶18} The prohibition against multiple punishments is codified in R.C. 2941.25, which provides:

(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may

contain counts for all such offenses, and the defendant may be convicted of all of them.

{¶19} “R.C. 2941.25(A) clearly provides that there may be only *one conviction* for allied offenses of similar import.” (Emphasis in original.) *State v. Underwood*, 2010-Ohio-1, ¶ 26. This principle prevents a trial court from imposing individual sentences for counts that constitute allied offenses of similar import. *State v. Williams*, 2016-Ohio-7658, ¶ 27, citing *Underwood* at ¶ 26.

{¶20} The Supreme Court of Ohio has further explained that

As a practical matter, when determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, courts must ask three questions when the defendant's conduct supports multiple offenses: (1) Were the offenses dissimilar in import or significance? (2) Were they committed separately? and (3) Were they committed with separate animus or motivation? An affirmative answer to any of the above will permit separate convictions. The conduct, the animus, and the import must all be considered.

State v. Earley, 2015-Ohio-4615, ¶ 12, quoting *State v. Ruff*, 2015-Ohio-995, ¶ 31.

{¶21} “With respect to the first question, as explained in *Ruff*, offenses are of dissimilar import “ ‘when the defendant's conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable.’ ” *State v. Wharton*, 2015-Ohio-5026, ¶ 22 (4th Dist.), quoting *Ruff*, paragraph two of the syllabus. “When applying the *Ruff* test, we look at the conduct of the defendant in the context of the statutory elements.” *Id.*, citing *State v. Bailey*, 2015-Ohio-2997, ¶ 82 (1st Dist.).

{¶22} In the instant case, the relevant convictions are aggravated theft, in violation of R.C. 2913.02(A)(1), a third-degree felony, and telecommunications fraud, in violation of R.C. 2913.05(A), a third-degree felony.

{¶23} Count 1 of the indictment is a violation of R.C. 2913.02(A)(1), which provides, “[n]o person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways * * * [w]ithout the consent of the owner or person authorized to give consent[.]” Further, R.C. 2913.02(B)(2) provides “[i]f the value of the property or services stolen is one hundred fifty thousand dollars or more and is less than seven hundred fifty thousand dollars * * * a violation of this section is aggravated theft, a felony of the third degree.” Additionally, Count 1 of the indictment in this case provides that the theft totaled \$179,863.95, and that the offense was committed from July 9, 2018 to November 4, 2022.

{¶24} Count 2 telecommunications fraud in the indictment is R.C. 2913.05(A), which provides, “[n]o person, having devised a scheme to defraud, shall knowingly disseminate, transmit, or cause to be disseminated or transmitted by means of a wire, radio, satellite, telecommunication, telecommunications device, telecommunications service, or voice over internet protocol service any writing, data, sign, signal, picture, sound, or image with purpose to execute or otherwise further the scheme to defraud.” R.C. 2913.05(D) further provides that

[i]f an offender commits a violation of division (A) or (B) of this section and the violation occurs as part of a course of conduct involving other violations of division (A) or (B) of this section or violations of, attempts to violate, conspiracies to violate, or complicity in violations of section 2913.02, 2913.04, 2913.11, 2913.21, 2913.31, 2913.42, 2913.43, or 2921.13 of the Revised Code, the court, in determining the degree

of the offense pursuant to division (E) of this section, “may aggregate the value of the benefit obtained by the offender or of the detriment to the victim of the fraud.”

R.C. 2913.05(E)(1) also indicates that if the value of the benefit obtained by the offender or of the detriment to the victim of the fraud is \$7,500 or more but less than \$150,000, telecommunications fraud is a felony of the third degree. Count 2 of the indictment states that the “value of the benefit obtained by the offender or of the detriment to the victim of the fraud is seven thousand five hundred dollars or more but less than one hundred fifty thousand dollars” and shows that the offense is a third-degree felony. Count 2 also indicates that the time period of the telecommunications fraud was from July 31, 2020 to October 24, 2022.

{¶25} Here, Streeter’s conduct constituting the offenses did not involve separate victims. Thus, we must analyze whether the harm that results from each offense is separate and identifiable. *Wharton*, 2015-Ohio-5026 ¶ 24 (4th Dist.). Although the record is somewhat unclear as to whether the financial harm is distinct, the indictment suggests that some of the funds tied to the theft exceed those involved in the telecommunications fraud. This, in turn, indicates that at least some theft may have occurred at a separate time and/or without the use of telecommunication devices as alleged in Count 2. Accordingly, whether the offenses merge turns on whether the harms are separate and identifiable, and Streeter has not met his burden to show from the record that they are not.

{¶26} Continuing with the Ruff analysis, we assess whether the offenses were committed separately. The answer could be yes. By examining the indictment and reviewing statements from the sentencing hearing, it becomes

clear that some of the theft offenses occurred on different dates than the telecommunications fraud. Although the record shows that multiple devices were used for the fraud, it does not clarify whether any theft was completed before the telecommunications fraud took place. Therefore, the separation of dates suggests distinct offenses, but further evidence is needed to confirm this conclusion.

{¶27} On appeal, Streeter argues that merger applies because the telecommunications fraud is a course-of-conduct violation. He claims he used multiple devices to fraudulently access accounts and transfer funds while simultaneously committing theft, resulting in overlapping conduct with no clear separation between the offenses. He also contends that neither offense was completed before the other began. However, considering the indictment dates and the fact that the theft involved a larger amount of funds, it is possible that some theft occurred independently of the telecommunications devices before the fraud began; otherwise, the telecommunications fraud would have been charged as a second-degree felony. Streeter bears the burden of proving from the record that merger was warranted, and he has not demonstrated that the trial court committed plain error in sentencing him to separate convictions.

{¶28} Streeter also argues that he received ineffective assistance of trial counsel who did not object when the trial court imposed separate sentences for telecommunications fraud and aggravated theft. To prevail on a claim of ineffective assistance of counsel “a criminal defendant must establish (1) deficient performance by counsel, i.e., performance falling below an objective

standard of reasonable representation, and (2) prejudice, i.e., a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.” *State v. Rister*, 2023-Ohio-1284 at ¶ 20 (4th Dist.), quoting *State v. Cremeans*, 2022-Ohio-4832, ¶ 20 (4th Dist.), citing *State v. Wilson*, 2019-Ohio-2754, ¶ 25 (4th Dist.). “Failure to satisfy either part of the test is fatal to the claim.” *Id.* quoting *State v. Trout*, 2020-Ohio-3940, ¶ 31 (4th Dist.), citing *Wilson* at ¶ 25.

{¶29} We have determined that the Streeter has not shown conclusively that offenses should have merged. Therefore, Streeter has not shown how he was prejudiced by counsel failing to request merger. In fact, as the State points out, defense counsel expressed to the trial court how long he had been involved in the case and that he had worked with Streeter to produce records and pay restitution. Additionally, defense counsel sought to mitigate Streeter’s punishment at sentencing. Both show that defense trial counsel grasped an understanding of the facts and legal concepts of the underlying allegations. On appeal, Streeter has also failed to show any prejudice for counsel’s performance, as one of the three charges was dismissed by the State at the plea hearing. Defense counsel also initially requested community control, but, as an alternative, that Streeter receive a 4-year, 11-month sentence. His position proved effective, as the State requested a 6-year sentence, and the trial court ordered 5 years—closer to the sentence requested by the defense.

{¶30} Appellate courts that find that offenses are not subject to merger find that the prejudice prong of an ineffective assistance of counsel claim is not

satisfied. See *State v. Hughes*, 2025-Ohio-894, ¶ 59-60 (4th Dist.) (defendant did not show a reasonably probability, but for counsel's unprofessional errors the result of the proceeding would have been different based on a negotiated plea agreement beneficial to defendant); *State v. Goldsby*, 2025-Ohio-967, ¶ 39 (8th Dist.) (because the court found the offenses were not subject to merger, the prejudice prong of an ineffective assistance of counsel claim was not satisfied by defendant); *State v. Barron*, 2022-Ohio-102, ¶ 80 (12th Dist.) (trial counsel not ineffective in failing to raise issue of merger when the offenses were not allied offenses of similar import); *State v. Fortner*, 2017-Ohio-4004, ¶ 23 (7th Dist.) (because offenses are not allied offenses of similar import, defendant could not demonstrate prejudice from counsel's failure to request merger, and thus, there was no ineffective assistance). Thus, Streeter did not receive ineffective assistance of counsel.

B. Imposition of Consecutive Sentences

{¶31} Appellate courts apply R.C. 2953.08(G)(2) when reviewing felony sentences. R.C. 2953.08(G)(2) provides, in pertinent part:

The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

- (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;
- (b) That the sentence is otherwise contrary to law.

{¶32} “Ordinarily, appellate courts defer to the broad discretion trial courts have in making sentencing decisions, and R.C. 2953.08(G) also reflects that deference.” *State v. Nickell*, 2025-Ohio-1232, ¶ 83 (4th Dist.). This is because “[a] trial judge has the opportunity to preside over the trial, hear witnesses testify, hear the defendant make his allocution directly to the sentencing judge, and hear from the victims at sentencing.” *Id.* citing *State v. Blanton*, 2025-Ohio-237, ¶ 30 (4th Dist.), citing *State v. Glover*, 2024-Ohio-5195, ¶ 39. “Thus, appellate courts should possess no inherent right to second guess a felony sentence.” *Id.* Except “to the extent specifically directed by statute, ‘it is not the role of an appellate court to substitute its judgment for that of the sentencing court as to the appropriateness of a particular sentence.’ ” (Citations omitted.) *Id.* citing *Blanton* at ¶ 30, citing *State v. Glover* at ¶ 39. Accordingly, the appellate court should give “broad deference to a trial court’s sentencing decision and not serve as a ‘second-tier’ sentencing court.” *Id.*, citing *Blanton* at ¶ 30, citing *Glover* at ¶ 39.

{¶33} In that light, the statute does not allow an appellate court to reverse or modify a sentence on the basis that the trial court abused its discretion. *Id.* at ¶ 85, citing *Blanton* at ¶ 31, and *Glover* at ¶ 45. “ ‘The plain language of R.C. 2953.08(G)(2) requires an appellate court to defer to a trial court’s consecutive-sentence findings and the trial court’s findings must be upheld unless those findings are clearly and convincingly not supported by the record.’ ” *State v. Hurst*, 2024-Ohio-5544, ¶ 16 (4th Dist.), quoting *State v. Gwynne*, 2023-Ohio-3851, ¶ 5 (lead opinion). “ ‘The clear-and-convincing standard for appellate review of R.C. 2953.08(G)(2) is written in the negative.’ ” *Id.*, quoting *Gwynne* at

¶ 13. “Moreover, ‘clear and convincing evidence’ is ‘that measure or degree of proof which is more than a mere “preponderance of the evidence,” but not to the extent of such certainty as is required “beyond a reasonable doubt” in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.’ ” *State v. Brummett*, 2025-Ohio-5307, ¶ 33 (4th Dist.), quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶34} In the instant case, Streeter challenges the trial court’s imposition of a consecutive sentence. As to consecutive sentences, R.C. 2929.14(C)(4) provides:

If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

(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 post-release 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.

{¶35} We acknowledge that in general, “a statutory presumption exists in favor of concurrent sentences pursuant to R.C. 2929.41(A) and R.C. 2929.14(C)(4) governs the imposition of consecutive terms of imprisonment.” *State v. Wyke*, 2025-Ohio-4990, ¶ 42 (4th Dist.), citing *State v. Collins*, 2024-Ohio-2891, ¶ 23 (4th Dist.), citing *Glover* at ¶ 38. Accordingly, “[t]o justify the imposition of consecutive terms of imprisonment, ‘a trial court must make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but the court has no obligation to state reasons to support its findings.’ ” *Id.* citing *State v. Blair*, 2019-Ohio-2768 ¶ 52, (4th Dist.), citing *State v. Bonnell*, 2014-Ohio-3177, syllabus. In addition, it is well-established that the trial court is not required to use “talismanic words” as long as the necessary findings can be found in the record and are incorporated into the sentencing entry. *State v. Wyke*, 2025-Ohio-4990, ¶ 48 (4th Dist.) and *State v. Sines-Riley*, 2025-Ohio-3200, ¶ 12 (4th Dist.), citing *Bonnell* at ¶ 37.

{¶36} In the instant case, the trial court stated, as to consecutive sentences:

The Court finds that consecutive sentences are necessary to punish the offender, protect the public from future crime are not disproportionate to the seriousness of the conduct *or* any danger posed by the Defendant or not based upon any [impermissible] purpose and the Court certainly finds that this conduct which spanned a time frame of nearly four years was part of ongoing course of conduct and the harm in this case was so great or unusual that a single prison term would demean the seriousness of that conduct. (Emphasis added.)

The sentencing entry, in turn, provides:

The Court finds that consecutive sentences are necessary to protect the public from future crime by Defendant and to punish Defendant.

The Court also finds that consecutive sentences are not disproportionate to the seriousness of Defendant's conduct *and* to the danger that Defendant poses to the public. The Court finds that consecutive sentences are not being imposed for an impermissible purpose. Further, the Court finds that multiple offenses were committed as a part of the course of conduct and the harm caused by the multiple offenses was so great or unusual that no single prison term for any of the offenses committed adequately reflects the seriousness of Defendant's conduct and therefore consecutive sentences are necessary. (Emphasis added.)

On appeal, Streeter asserts that the trial court's ordering of consecutive sentences is contrary to law because the trial court used a "disjunctive" rather than a "conjunctive" approach when issuing the sentences. He points out that the sentencing hearing transcript differs from the entry in the trial court's finding. In so doing, he points to the sole word that the trial court said "or" rather than "and" during the sentencing hearing but does not point to any other part of the transcript to show that the trial court did not actually apply the correct analysis.

{¶37} The trial court is not required to cite a recitation of the statute verbatim. Nothing in the record shows that the trial court conducted an incorrect analysis. It appears that the use of the word "or" is more likely a clerical error in the transcript, or simply the trial court misspeaking when making the consecutive sentencing findings, that was corrected in the entry.

{¶38} Streeter also challenges the sentence because the trial court failed to recognize that proportionality requires considering the aggregate sentence resulting from the stacked terms when considering Streeter's conduct and dangerousness. However, the Supreme Court of Ohio has determined that "[n]owhere does the appellate-review statute direct an appellate court to consider the defendant's aggregate sentence." *State v. Glover*, 2024-Ohio-5195, ¶ 43. It

is true the Supreme Court of Ohio's majority concluded in December 2022 that the terms "consecutive sentences" and "consecutive service" in R.C.

2929.14(C)(4) were ambiguous and required trial courts to "consider the number of consecutive sentences it intends to impose and the aggregate sentence that will result from those consecutive sentences." *State v. Gwynne*, 2022-Ohio-4607, ¶ 14-16, paragraph one of the syllabus. However, the Supreme Court of Ohio subsequently reconsidered and vacated that holding, with the lead opinion concluding that courts are not required to focus on a defendant's aggregate prison term when imposing or reviewing consecutive sentences. *State v. Gwynne*, 2023-Ohio-3851, ¶ 20-23; *State v. Glover*, 2024-Ohio-5195, ¶ 43.

Thus, we find no error related to the trial court's considering or failing to consider the "aggregate sentence."

{¶39} Finally, Streeter avers that there is a reasonable probability the trial court considered his pre-arrest silence and engagement of counsel as an aggravating sentencing factor or as proof of no remorse. He cites the trial court's comment, "[s]o the Court does find as it pertains to the recidivism factors, that based upon actions rather than words that there has been no remorse shown for this offense." Streeter does not cite any case law that specifically discusses whether the trial court can consider pre-arrest silence or a defendant's obtaining counsel as a component at sentencing. We need not address that issue, however, because it appears that the trial court did not state it relied on Streeter's pre-arrest silence or obtaining of counsel. Taken in context, it appears the trial court considered that Streeter may have said he had remorse but did not make

any efforts to redress his behavior. With counsel it appears Streeter requested the matter be continued for him to make some sort of restitution in mitigation, but he had not made any effort to pay back any of the funds despite his own requests to be permitted to do so. The trial court followed the language of the statute when determining recidivism. Thus, we cannot find that the trial court considered any impermissible factor.

CONCLUSION

{¶40} In summary, we find that none of the issues Streeter raises regarding his sentencing constitutes error. Thus, we overrule his sole assignment of error and affirm the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the **JUDGMENT IS AFFIRMED** and appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County 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.

Smith, P.J. and Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.