

**IN THE OHIO COURT OF APPEALS  
FIFTH APPELLATE DISTRICT  
MUSKINGUM COUNTY, OHIO**

STATE OF OHIO

Plaintiff - Appellee

-vs-

BRIAN WILLEY

Defendant - Appellant

Case No. CT2026-0017

Opinion And Judgment Entry

Appeal from the Court of Common Pleas, Case  
No. CR2025-0679

Judgment: Affirmed/Reversed in Part and  
Remanded

Date of Judgment Entry: August 17, 2026

**BEFORE:** Andrew J. King; Robert G. Montgomery; Kevin W. Popham, Judges

**APPEARANCES:** JOSEPH A. PALMER, for Plaintiff-Appellee; CHRIS BRIGDON, for Defendant-Appellant.

*King, P.J.*

{¶ 1} Defendant-Appellant, Brian Willey, appeals his January 28, 2026 sentence from the Muskingum County Common Pleas Court. Plaintiff-Appellee is State of Ohio. We affirm/reverse the trial court in part.

**FACTS AND PROCEDURAL HISTORY**

{¶ 2} On October 16, 2025, the Muskingum County Grand Jury indicted Willey on two counts of burglary in violation of R.C. 2911.12 (Case No. CR2025-0661).

{¶ 3} On October 29, 2025, the Muskingum County Grand Jury reindicted Willey on one count of engaging in a pattern of corrupt activity in violation of R.C. 2923.32, one count of breaking and entering in violation of R.C. 2911.13, two counts of burglary in violation of R.C. 2911.12, one count of grand theft (firearm) in violation of R.C. 2913.02, two

counts of theft in violation of R.C. 2913.02, one count of having weapons while under disability in violation of R.C. 2923.13, one count of possessing criminal tools in violation of R.C. 2923.24, and one count of tampering with evidence in violation of R.C. 2921.12 (Case No. CR2025-0679). Each of the burglary counts included one-year firearm specifications under R.C. 2941.141.

{¶ 4} On November 26, 2025, Willey pled guilty to the two burglary counts including the firearm specifications, the grand theft of a firearm count, one of the theft counts, and the tampering count; the remaining counts and the indictment in Case No. CR2025-0661 were dismissed. By entry filed December 2, 2025, the trial court accepted the guilty pleas. By entry filed January 28, 2026, the trial court sentenced Willey to an aggregate term of ten years in prison with eight of those years deemed mandatory time.

{¶ 5} Willey filed an appeal with the following assignments of error:

#### I

{¶ 6} "THE TRIAL COURT IMPOSED A SENTENCE CONTRARY TO LAW BY MATERIALLY MISCLASSIFYING MANDATORY PRISON TIME."

#### II

{¶ 7} "THE TRIAL COURT ERRED BY IMPOSING CONSECUTIVE SENTENCES IN CONTRAVENTION OF R.C. §2929.14(C)(4)."

#### I

{¶ 8} In Willey's first assignment of error, he claims the trial court erred in misclassifying mandatory prison time. We agree.

{¶ 9} Under R.C. 2953.08(G)(2), an appellate court may reverse or modify a sentence "only if it determines by clear and convincing evidence that the record does not support the

trial court's findings under relevant statutes or that the sentence is otherwise contrary to law." *State v. Marcum*, 2016-Ohio-1002, ¶ 1. "Clear and convincing evidence" is that "which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶ 10} In its January 28, 2026 entry, the trial court sentenced Willey to a mandatory thirty-six-month sentence on each of the burglary counts (third degree) with a mandatory one-year sentence on each of the firearm specifications, twenty-four months on the grand theft of a firearm count (third degree), and thirty-six months on the tampering count (third degree).<sup>1</sup> One of the burglary sentences and the tampering sentence were to be served concurrently, but consecutively to all of the other sentences that were also ordered to be served consecutively, for an aggregate term of ten years in prison. The trial court deemed eight of those years to be mandatory time.

{¶ 11} Willey argues the only offenses that required mandatory prison time were the two one-year firearm specifications and no other count carried a mandatory prison term under R.C. 2929.13. Appellant's Brief at 6. Therefore, Willey argues under R.C. 2929.13(F)(8) and *State v. Logan*, 2025-Ohio-1772, his sentence is contrary to law.

{¶ 12} R.C. 2929.13(F)(8) requires a mandatory sentence for "[a]ny offense, other than a violation of section 2923.12 of the Revised Code, that is a felony, if the offender had a firearm on or about the offender's person or under the offender's control while committing the felony, with respect to a portion of the sentence imposed pursuant to division (B)(1)(a) of section 2929.14 of the Revised Code for having the firearm." The Supreme Court has held

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<sup>1</sup>The trial court elected not to sentence Willey to any prison time on the theft count, therefore we will omit this count from our analysis.

that a trial court is required under the statute "to impose a prison sentence on an offender convicted of a felony offense that has a corresponding firearm specification." *Logan* at ¶ 25. Willey argues while the trial court was required to impose some prison time on the burglary counts because a firearm specification was attached to each count, *Logan* does not transform the prison term on the underlying offenses into mandatory time. Appellant's Brief at 6.

{¶ 13} In *State v. Young*, 2026-Ohio-2603, ¶ 16 (5th Dist.), this court conducted a thorough analysis of the sentencing statutes and the *Logan* decision and held:

We therefore hold that R.C. 2929.13(F)(8) does not require that a prison term imposed on the underlying felony offense accompanying a firearm specification carry mandatory status precluding reduction mechanisms under Chapter 2967. Although *Logan* requires that a prison term to be imposed for the underlying felony, it does not require that term be designated mandatory within the meaning of R.C. 2929.01(X)(1). The limiting clause, "with respect to a portion of the sentence imposed pursuant to division (B)(1)(a) of section 2929.14 of the Revised Code for having the firearm," confines the non-reduction mandate of R.C. 2929.13(F)(8) to the specification term. The underlying felony sentence, while required to be a prison term by *Logan*, is not thereby rendered mandatory.

{¶ 14} In its appellate brief at 3, the State basically concedes the issue by stating, "[a]ppellee is unable to locate case law or statutory law to support the position of the trial court with regard to 'mandatory' sentences" and we agree with this assessment.

{¶ 15} Upon review, we find the trial court erred in imposing eight years mandatory when in actuality it is two years mandatory for the firearm specifications; we find Willey's sentence is contrary to law. We remand the matter to the trial court for redetermination of the mandatory status of the prison terms imposed on the underlying burglary offenses.

{¶ 16} Assignment of Error I is granted.

## II

{¶ 17} In Willey's second assignment of error, he claims the trial court erred in imposing consecutive sentences under R.C. 2929.14(C)(4). We disagree.

{¶ 18} R.C. 2929.14(C)(4) governs consecutive sentences and states the following:

(4) 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.

{¶ 19} As held by the Supreme Court: "In order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings." *State v. Bonnell*, 2014-Ohio-3177, syllabus. Further, nothing in R.C. 2953.08(G)(2) permits this court to independently weigh the evidence in the record and substitute our own judgment for that of the trial court "concerning the sentence that best reflects compliance with R.C. 2929.11 [purposes and principles of felony sentencing] and 2929.12 [seriousness and recidivism factors]." *State v. Jones*, 2020-Ohio-6729, ¶ 42.

{¶ 20} During the sentencing hearing, the trial court made the requisite findings for consecutive sentencing under R.C. 2929.14(C)(4), stating (January 21, 2026 T. at 10-11):

And I do find that consecutive sentences are necessary to protect the public from future crime or to punish this Defendant and that consecutive sentences are not disproportionate to the seriousness of the Defendant's conduct and the danger the Defendant poses to the public.

At least two of the multiple offenses were committed as part of one or more - - as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses 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 Defendant's conduct. Also, the Defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by this offender.

{¶ 21} In the sentencing entry, the trial court noted, "consecutive sentences are necessary to protect the public from future crime or to punish the Defendant, and that consecutive sentences are not disproportionate to the seriousness of the Defendant's conduct, and to the danger the Defendant poses to the public." Entry filed January 28, 2026. The trial court stated, "[a]t 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 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 Defendant's conduct." *Id.* The trial court further stated: "[t]he Defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender." *Id.*

{¶ 22} As stated above, the trial court was not obligated to state its reasons in support of its findings. *Bonnell*, 2014-Ohio-3177.

{¶ 23} In sentencing Willey, the trial court acknowledged it received a presentence investigation report and noted his prior criminal history. January 21, 2026 T. at 6-7. The trial court stated it was imposing a "mandatory consecutive" sentence for the grand theft of a firearm count, not mandatory time, but mandatory consecutive service, which we find to be proper under R.C. 2929.14(C)(3). *Id.* at 8.

{¶ 24} Upon review, we find the trial court made the required findings at the sentencing hearing for consecutive sentencing and incorporated its findings into its sentencing entry, meeting the requirements of R.C. 2929.14(C)(4).

{¶ 25} Assignment of Error II is denied.

{¶ 26} For the reasons stated in our accompanying Opinion, the judgment of the Muskingum County Court of Common Pleas is affirmed in part as to the consecutive service, but reversed in part and remanded for redetermination of the mandatory status of the prison terms imposed on the underlying burglary offenses.

{¶ 27} Costs to appellee.

By: King, P.J.

Montgomery, J. and

Popham, J. concur.