

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
ASHLAND COUNTY, OHIO

STATE OF OHIO,

Plaintiff - Appellee

-vs-

BROC MCKINNEY,

Defendant - Appellant

Case No. 26-COA-019

Case No. 26-COA-020

Opinion And Judgment Entry

Appeal from the Ashland County Common Pleas
Court, Case No. 24-CRI-312 and 25-CRI-113

Judgment: Affirmed

Date of Judgment Entry: October 15, 2026

BEFORE: Andrew J. King; Robert G. Montgomery; David M. Gormley, Judges

APPEARANCES: CHRISTOPHER R. TUNNELL, Ashland County Prosecuting Attorney, by JAMES B. REESE III, for Plaintiff-Appellee; ANITA A. LAMBERT, for Defendant-Appellant.

Montgomery, J.

{¶1} Defendant-Appellant, Broc McKinney, appeals from the judgment of the Ashland County Common Pleas Court. For the reasons below, we AFFIRM.

STATEMENT OF FACTS

{¶2} In November 2024, Appellant was indicted for several counts related to selling methamphetamines in the vicinity of a school, case number 24-CRI-312. Appellant posted bail and was released, but was required to wear an ankle monitor. In June 2025, while out on bail, Appellant was again arrested for selling methamphetamines in the vicinity of a school. His bail was revoked and the second case, 25-CRI-113, was initiated against him. On or about

October 24, 2025, the State of Ohio filed a Motion for Joinder of the two pending cases and the Motion was granted.

{¶3} On April 24, 2026, Appellant entered pleas of guilty in both cases, 24-CRI-312 and 25-CRI-113. In case 24-CRI-312, Appellant pled guilty to four counts: Aggravated Trafficking in Drugs, a third-degree felony; Aggravated Trafficking in Drugs, a second-degree felony, Aggravated Possession of Drugs, a second-degree felony, and Possessing Criminal Tools, a fifth-degree felony. In case 25-CRI-113, Appellant pled guilty to two counts of Aggravated Trafficking in Drugs, both second degree felonies. On May 11, 2026, the trial court held a sentencing hearing.

{¶4} In case 24-CRI-312, the Court sentenced Appellant to a definite term of thirty (30) months on Count One; an indefinite term of four (4) to six (6) years on Count Two; an indefinite term of four (4) to six (6) years on Count Three; and a definite term of six (6) months on Count Four. The court ordered the prison terms to run consecutively. In its corresponding Judgment Entry, the trial court stated:

The Court finds that consecutive sentences are necessary to punish offender or protect the public from future crime and not disproportionate to seriousness of conduct and danger posed by the defendant and that all the following apply:

1. two or more offenses are part of one or more courses of conduct; and the harm caused is so great or unusual that a single prison term would not adequately reflect the seriousness of the conduct; and
2. The Defendant's criminal history demonstrates that consecutive sentences are necessary to protect the public.

{¶5} In case 25-CRI-113, the Court sentenced Appellant to an indefinite term on each count of six (6) to nine (9) years. The court also ordered the sentences to run consecutively.

{¶6} Appellant timely filed an appeal asserting two assignments of error. Appellant claims that (1) the aggregate sentence for both cases is disproportionate to the offenses; and (2) the trial court improperly imposed consecutive sentences in case 24-CRI-312 (Appellant concedes that the court made the requisite consecutive sentence findings in case 25-CRI-113).

ASSIGNMENTS OF ERROR

{¶7} “I. THE SENTENCES PRONOUNCED WERE DISPROPORTIONATE AND THUS CONTRARY TO LAW.”

{¶8} “II. THE COURT ERRED WHEN IT FAILED TO MAKE FINDINGS THAT APPELLANT’S CONDUCT WARRANTED CONSECUTIVE SENTENCING.”

STANDARD OF REVIEW

{¶9} The appropriate standard of review on appeals challenging a sentence is set forth in R.C. 2953.08(G)(2). *State v. Bonnell*, 2014-Ohio-3177, ¶ 9. An appellate court may vacate a sentence and/or remand a matter to the trial court when a sentence does not comport with sentencing statutes, or when the sentence is otherwise contrary to law. *State v. Williams*, 2024-Ohio-2078, ¶ 17 (5th Dist.). Specifically, R.C. 2953.08(G)(2) provides as follows:

The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

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.

{¶10} “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.” *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶11} “A sentence is not clearly and convincingly contrary to law where the trial court ‘considers the principles and purposes of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, properly imposes post release control, and sentences the defendant within the permissible statutory range.’” *State v. Padilla*, 2023-Ohio-1995, ¶ 13 (5th Dist.), quoting *State v. Dinka*, 2019-Ohio-4209, ¶ 36 (12th Dist.); *State v. Delong*, 2025-Ohio-534 (5th Dist.). Importantly, 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. *Id.*, citing *State v. Jones*, 2020-Ohio-6729, ¶ 42.

ANALYSIS

1) Disproportionate Sentences

{¶12} While Appellant concedes that each individual sentence falls within the statutory range, he argues the combined sentences are simply disproportionate to the offenses for which Appellant was convicted. Appellant argues he “is now facing over twenty (20) years in prison in a case where the most serious charge is a felony of the second degree.” Appellant’s Brief, p. 6. Appellant further claims the trial court did not sufficiently consider mitigating factors, such as Appellant’s drug addiction causing him to also sell drugs and his genuine remorse for his actions.

{¶13} In general, when sentencing a defendant, R.C. 2929.11 requires that the trial court consider and act pursuant to the overriding principles of felony sentencing. *Id.* at ¶ 40. R.C. 2929.11 states in pertinent part:

(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others, to punish the offender, and to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and

others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) A sentence imposed for a felony shall be reasonably calculated to achieve the three overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

{¶14} R.C. 2929.12(A) governs factors to consider in felony sentencing and states the following in pertinent part:

Unless otherwise required by section 2929.13 or 2929.14 of the Revised Code, a court that imposes a sentence under this chapter upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code. In exercising that discretion, the court shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct, the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism, and the factors set forth in division (F) of this section pertaining to the offender's service in the armed forces of the United States and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.

{¶15} A felony sentence should be proportionate to the severity of the offense committed so as not to “shock the sense of justice in the community.” *State v. Chaffin*, 30 Ohio St.2d 13, 17 (1972); R.C. 2929.11(B). A defendant alleging disproportionality in felony

sentencing has the burden of producing evidence to “indicate that his sentence is directly disproportionate to sentences given to other offenders with similar records who have committed these offenses * * *.” *State v. Ewert*, 2012-Ohio-2671, ¶ 33 (5th Dist.), citing *State v. Breeden*, 2005-Ohio-510, ¶ 81 (8th Dist.); *State v. Kirk*, 2023-Ohio-2702, ¶ 20 (5th Dist.); *State v. Starcher*, 2015-Ohio-5250, ¶ 38 (5th Dist.).

{¶16} Here, the trial court specifically stated that it considered the purposes and principles of sentencing under R.C. 2929.11, as well as the sentencing factors in R.C. 2929.12. The court discussed the factors when addressing Appellant at the hearing, specifically noting Appellant’s high risk assessment score, his adult criminal history, and his lengthy history of criminal conduct as a juvenile. Sent. Tr. p. 17. The court further cited the escalation of Appellant’s conduct, a high likelihood of recidivism, and the seriousness of the offenses at hand. Appellant has multiple convictions and resulting prison terms for drug trafficking and drug possession. Law enforcement described Appellant as a major drug dealer in the community for nearly a decade. And, as stated above, Appellant was out on bail with an ankle monitor and engaged in the exact same conduct - selling large amounts of methamphetamines in a school zone. The court further stated, Appellant was also “bringing other people into the drug world as well and getting them involved in drug dealing.” *Id.*

{¶17} The court also discussed the fact that it previously gave Appellant a chance to improve himself and become the person he could be. The court stated:

So I feel like I did give you * * * the chance to become the person that you thought that you could be, a few years ago for 36 months. When I look at your history and the recidivism factors, there is a lengthy, lengthy history of prior adjudications and convictions, and prior failure on sanctions, and I look at

these cases and you are selling a large amount of Methamphetamine and Methamphetamine creates all kinds of problems in the community * * *. And you look at these cases and they involve the trafficking near schools, they involve using others, organizing and using other people in your sickness, and again, it is a significant quantity * * * you have a longstanding criminal history beginning in your juvenile years and you have been to prison before and you have repeat offenses of this nature, and demonstrated a failure * * * and it is very, very concerning that those prior prison sentences have not deterred your conduct. * * *

Tr., p. 16.

{¶18} The court then carefully considered the burden and danger to the community, recognizing that people have been violent themselves and towards others while using methamphetamines. *Id.* at 17. It further stated:

And in fact, your conduct has escalated, it has gone to the higher level of trafficking and on top of this, even worse, your first case is pending and you get out on bond and are selling drugs while on bond, and I cannot think of a worse way to violate your bond, Mr. McKinney.

There is a high likelihood of recidivism, high seriousness factors involved in the cases and they do, and the charges require mandatory prison, and I am finding aside from that, you are not amendable [sic] to Community Control and that would be inappropriate and ineffective, and I am finding that and I am finding that those prior prison terms, there is a repeated opportunity that you failed to

take advantage of and the escalating criminal conduct here that is substantial consecutive sentencings are not [sic] necessary to protect the public.

Tr., p. 18.

{¶19} The record overwhelmingly demonstrates the trial court thoroughly considered the factors and principles in sentencing and engaged in the appropriate analysis regarding proportionality. As conceded by Appellant, the trial court did not impose the maximum sentence on each count, despite Appellant's repeat offenses and extremely bad judgment and conduct while released on bail. Appellant fails to point to any factors or considerations extraneous to those permitted that would establish the sentence is contrary to law. Thus, we find no error by the trial court regarding proportionality. Appellant's first assignment of error is overruled.

2) Consecutive Sentences – Case Number 24-CRI-312

{¶20} Appellant's second assignment of error claims the trial court erred in imposing consecutive sentences in case 24-CRI-312, and that consecutive sentences are not necessary to protect the public. Appellant argues:

[A]lthough the court joined the proceedings via motion and order, the Court separated the sentencing judgments at the hearing by case number. The Court first sentences Appellant in 24-CRI-312, and omits a recitation of the necessary findings pursuant to R.C. § 2929.14; however, when the court sentences Appellant on Case 25-CRI-113, the necessary findings are stated.

Appellant's Brief, p. 8.

{¶21} R.C. 2929.14(C)(4) mandates specific findings a trial court must make on the record when imposing any consecutive sentence. The statute 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:

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.

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).

{¶22} Thus, before a trial court may impose consecutive sentences, it must make three findings: (1) that consecutive sentences are necessary to protect the public from future crime or to punish the offender; (2) 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

(3) that one of the three specific findings set forth in (a)-(c) apply. *State v. Bonnell*, 2014-Ohio-3177, ¶ 29; *State v. Carmel*, 2014-Ohio-1209, ¶ 6 (9th Dist.).

{¶23} In *Bonnell*, the Ohio Supreme Court determined that when imposing consecutive sentences, “a trial court must state the required findings as part of the sentencing hearing, and by doing so it affords notice to the offender and to defense counsel.” *Bonnell*, ¶ 29; Crim.R. 32(A)(4). And because a court speaks through its journal entries, “the court should also incorporate its statutory findings into the sentencing entry.” *Bonnell*, ¶ 29, citing *State v. Brooke*, 2007-Ohio-1533, ¶ 47. Importantly, the court does not need to state reasons for the findings, the findings alone are sufficient. *State v. Willey*, 2026-Ohio-3177, ¶ 22 (5th Dist.). Further, a word-for-word recitation of the language of the statute is not required. *Bonnell*, ¶¶ 29-30.

{¶24} If the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record supports the findings, then consecutive sentences should be upheld. *Id.* Here, the court stated:

In Case 25-CRI-113, again, I am going to give you credit, Mr. McKinney, for accepting responsibility and hopefully you are genuinely changing from what you have up to today, but selling drugs while out on bond, it should be a maximum consecutive sentence. I am not going to do that, but you are going to receive some (inaudible) Count 1, the Court is going to order a minimum six years to a maximum of nine years. Count 3, the Court is going to order a minimum of six years to a maximum of nine years, and that makes your total on that case minimum of 12 years to a maximum of 15 years. I am finding that consecutive sentencings are necessary to protect the public and punish the

offender and consecutives are not disproportionate, the offender and consecutive sentencings are not disproportionate to the seriousness of your conduct and the danger that you pose, I am making with respect to those findings, with respect 25-CRI-113 those offenses occurred while on bond, and with respect to the remaining, *all of the counts I am finding the harm is so great or unusual that a single term does not reflect the seriousness* which does include repeating trafficking, repeated trafficking over time, involvement, multiple participants, proximity to school and a sustained drug distribution activity and I am finding that your criminal history demonstrates that consecutive sentencings are necessary because the prior prison term did not deter your conduct, and prior sanctions greatly failed and you continued to demonstrate and escalated your conduct.

*I am finding that all counts are [to] run consecutive to each other, and bring your total sentence across the two cases, * * **

Tr., pp. 19-20 (emphasis added).

{¶25} The above discussion took place immediately after the court's comments concerning Appellant's conduct, his criminal history, the seriousness of his offenses, etc., and intertwines comments about "all counts," and "across the two cases." The court does not need to repeat every word for both cases, especially where as here, the cases are joined and the sentences are imposed at the same sentencing hearing. Importantly, both Judgment Entries state the required consecutive sentence findings. Thus, the record undoubtedly demonstrates that the court engaged in the correct analysis and supports the imposition of consecutive sentences. Appellant's second assignment of error is overruled.

CONCLUSION

{¶26} Appellant's first and second assignments of error are overruled. The judgment of the Ashland County Common Pleas Court is affirmed.

{¶27} Costs to Appellant.

By: Montgomery, J.

King, P.J. and

Gormley, J. concur.