

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio

Court of Appeals No. S-25-043

Appellee

Trial Court No. 25CR553

v.

Michael Herman

DECISION AND JUDGMENT

Appellant

Decided: August 28, 2026

* * * * *

Beth Tischler, Sandusky County Prosecuting Attorney and
Emily A. Witter, Assistant Prosecuting Attorney, for appellee.

Henry Schaefer, for appellant.

* * * * *

SULEK, J.

{¶ 1} Appellant Michael Herman appeals the judgment of the Sandusky County Court of Common Pleas, which convicted him following a guilty plea to one count of operating a vehicle under the influence (“OVI”) and sentenced him to 24 months in

prison to be served consecutively to an 18-month prison term for violating his community control. For the reasons that follow, the trial court's judgment is affirmed.

I. Facts and Procedural Background

{¶ 2} On July 25, 2025, the Sandusky County Grand Jury indicted Herman in case No. 25-CR-0553 on two counts of OVI in violation of R.C. 4511.19(A)(1)(a), felonies of the third degree. Related to this, on August 29, 2025, a notice of probation violation was filed in case No. 21-CR-0564. Herman was on probation in that case from a previous OVI conviction.

{¶ 3} On September 17, 2025, Herman withdrew his initial plea of not guilty and pleaded guilty to one count of OVI in case No. 25-CR-0553. In addition, Herman admitted to the probation violation in case No. 21-CR-0564. In exchange, the State agreed to dismiss the second OVI count in case No. 25-CR-0553. The trial court accepted Herman's plea, found him guilty, and continued the matter for preparation of a presentence investigation report.

{¶ 4} At the sentencing hearing on November 24, 2025, the State advocated for the imposition of the remainder of the 18-month prison term that was reserved in case No. 21-CR-0564, as well as an additional 24-month prison term in case No. 25-CR-0553. The State described that Herman was pulled over in the early morning hours, had an open bottle of vodka in his car, and had a breathalyzer reading of 0.13. It noted that Herman had multiple OVI convictions, and that he was on probation for a previous OVI conviction and was under an OVI license suspension when the present offense occurred. Indeed, the presentence investigation report detailed that prior to the current charges,

Herman committed an OVI offense in March 2016, violated that probation and committed a second OVI offense in March 2019, violated that probation and committed a third OVI offense and a driving under an OVI suspension offense in January 2021, committed a fourth OVI offense in July 2021, and violated his probation in May 2022. Finally, the State noted that during the pendency of the present case, Herman had his bond revoked because he continued to use alcohol.

{¶ 5} Herman, for his part, acknowledged his need for help and asked the trial court to impose the mandatory minimum sentence and to order him into treatment. He expressed remorse for his conduct and explained that he had been doing very well avoiding alcohol but was “pushed over the edge” by stressors in his life.

{¶ 6} Following the parties’ arguments, and after considering the record and the statutory factors, the trial court ordered Herman to serve the remainder of his 18-month prison sentence in case No. 21-CR-0564, and to serve a 24-month prison sentence in case No. 25-CR-0553. The trial court further ordered the sentences to be served consecutively, finding that “consecutive sentences are made 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, and because Defendant did commit the offense while he was under a sanction imposed pursuant to 2929.16, 2929.17, or 2929.18.” The trial court also found that “Defendant’s history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the Defendant.”

II. Assignment of Error

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{¶ 7} Herman has timely appealed his judgment of conviction, asserting one assignment of error for review:

1. The court erred by imposing consecutive sentences when the record does not clearly and convincingly support the findings required by R.C. 2929.14(C)(4).

III. Analysis

{¶ 8} Felony sentences are reviewed pursuant to R.C. 2953.08(G)(2), which 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.

{¶ 9} When imposing consecutive sentences on a defendant, pursuant to R.C. 2929.14(C)(4) the trial court must make three findings: (1) that consecutive sentences are necessary to protect the public or to punish the offender; (2) that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger that the offender poses to the public; and (3) that one of the conditions in R.C. 2929.14(C)(4)(a)-(c) applies. *State v. Beasley*, 2018-Ohio-493, ¶ 252; *State v. Glover*, 2024-Ohio-5195, ¶ 38; *State v. Ashton*, 2026-Ohio-2023, ¶ 11 (6th Dist.).

{¶ 10} Review on appeal “is deferential and limited by the appellate-review statute: the appellate court may examine whether the trial court’s findings supporting consecutive sentences are clearly and convincingly unsupported by the record, R.C. 2953.08(G)(2)(a), and may also examine whether the sentence is ‘otherwise contrary to law,’ R.C. 2953.08(G)(2)(b).” *State v. Polizzi*, 2026-Ohio-2588, ¶ 30. “The appellate court cannot reweigh the evidence or substitute its judgment based on subjective disagreement with the trial court.” *Id.* at ¶ 25, citing *Glover* at ¶ 45 (lead opinion). “The trial court is ‘clearly in the better position to judge [a] defendant’s dangerousness and to ascertain the effect of the crimes on the victims.’” *Id.*, quoting *State v. Jones*, 2001-Ohio-1341, ¶ 34.

{¶ 11} In support of his assignment of error, Herman takes issue with two of the trial court’s findings.

{¶ 12} First, he argues that the record is devoid of evidence to support the trial court’s finding that “consecutive sentences are not disproportionate to the seriousness of the Defendant’s conduct and to the danger the defendant poses to the public.” He maintains that the evidence consists solely of a 0.13 blood alcohol content, and there are “no additional details suggesting that concurrent service of the mandatory term would be inadequate or that Herman poses a ‘danger’ so unique that it necessitates a full consecutive 24-month term.”

{¶ 13} As noted by the State, however, the record also reveals that Herman is a repeat drunk driver who has four previous OVI convictions and who was on probation for one of those convictions when he committed the current offense. The Ohio Supreme

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Court has recognized that “[d]runk driving is a societal danger.” *State v. O’Malley*, 2022-Ohio-3207, ¶ 93. “The drunk driver essentially plays Russian roulette every time he or she drives on the road while impaired.” *Id.* This court, therefore, cannot clearly and convincingly find that the record does not support the trial court’s finding that consecutive sentences are not disproportionate to the danger Herman poses to the public.

{¶ 14} Second, Herman contests the trial court’s finding that “Defendant’s history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the Defendant.” Again, this court cannot clearly and convincingly find that the trial court’s finding is unsupported by the record. Herman’s pattern of drunk driving and the ineffectiveness of previous sanctions in changing his behavior support the trial court’s conclusion that consecutive sentences are necessary to protect the public.

{¶ 15} Furthermore, this court notes that the trial court’s “history of criminal conduct” finding under R.C. 2929.14(C)(4)(c) is superfluous in light of its uncontested finding under R.C. 2929.14(C)(4)(a) that the offense was committed while Herman was “under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code.” *See State v. Lake*, 2023-Ohio-3191, ¶ 28 (6th Dist.) (“[O]nly one of the subsection findings must be supported in order for this court to find that the imposition of consecutive sentences was proper.”).

{¶ 16} Accordingly, because the trial court’s findings in support of consecutive sentences are not clearly and convincingly unsupported by the record, Herman’s assignment of error is not well-taken.

IV. Conclusion

{¶ 17} For the foregoing reasons, the judgment of the Sandusky County Court of Common Pleas is affirmed. Herman is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, P.J.

JUDGE

Myron C. Duhart, J.

JUDGE

Charles E. Sulek, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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