

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

State of Ohio

Court of Appeals No. OT-25-037
OT-25-038

Appellee

Trial Court No. 21 CR 238
24 CR 251

v.

Alex Fletcher

DECISION AND JUDGMENT

Appellant

Decided: September 11, 2026

* * * * *

James J. VanEerten, Ottawa County Prosecuting Attorney, and
Alex W. Vogelpohl, Assistant Prosecuting Attorney, for appellee.

Brian A. Smith, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is a consolidated appeal from the consolidated judgment by the Ottawa Common Pleas Court, which sentenced appellant, Alexander Forrest Fletcher, to an aggregate prison term of 45 months after a merits hearing on the complaint filed by appellee, the state of Ohio, alleging appellant violated five of 31 community control sanctions for three felony convictions. For the reasons set forth below, this court affirms the trial court's judgment.

{¶ 2} Appellant sets forth the following four assignments of error, which we will address out of order:

1. The trial court erred by conducting a hearing on Appellant's alleged community control violations without advising Appellant of his right to retained counsel, in violation of Crim.R. 32.3(B) and Appellant's right to counsel under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution.
2. The trial court erred by appointing counsel for Appellant on Appellant's alleged community control violation at the preliminary hearing, and did not advise Appellant, at the preliminary hearing, of his Due Process rights, in violation of Appellant's right to counsel under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution and Appellant's right to Due Process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 16 of the Ohio Constitution.
3. The trial court's imposition of consecutive sentences under R.C. 2929.14(c)(4) was not supported by the record.
4. The trial court abused its discretion in revoking Appellant's community control, in both case numbers 2021-CR-I-283A and 2024-CR-I-251A.

I. Background

{¶ 3} On March 3, 2022, in case No. 2021-CR-283, appellant pled guilty to one count of attempted tampering with evidence, a violation of R.C. 2921.12(A)(1) and 2923.02(A), and a fourth-degree felony under R.C. 2921.12(B) and 2923.02(E)(1), and to one count of possessing criminal tools, a violation of R.C. 2923.24(A), and a fifth-degree felony under R.C. 2923.24(C), for an incident on December 10, 2021. As journalized on April 18, 2022, following a hearing, trial court found appellant was amenable to community control and sentenced him to four years of community control under 19

residential and nonresidential sanctions.¹ The trial court specifically explained the consequences of violating his community control sanction:

The Defendant was advised that a violation of community control, a violation of any law, or leaving the State of Ohio without permission will result in a longer or more restrictive period of community control, or the imposition of incarceration. Defendant was advised that reinstatement of the remainder of his original sentence in Case 14 CR 040 could be imposed, along with a sentence of thirty (30) months in the Ohio Department of Rehabilitation and Corrections in Case 21 CR 283, and advised that said sentences could be ordered to run consecutively, for a total possible incarceration of seventy-eight (78) months.

{¶ 4} Then on September 30, 2024, appellee’s probation officer filed a complaint against appellant for three community-control violations: 1) failure to immediately report to his probation officer “if you are arrested, detained or question by any law enforcement officer”; 2) associating “with persons on probation supervision or community control, known felons, persons under indictment, persons who have criminal charges pending in any court, or persons of disreputable or harmful character”; and 3) failure to abide by all laws “and be of general good behavior” where formal charges are anticipated for petty theft and vehicle trespass offenses.

¹ The April 18, 2022 journalized sentencing entry was consolidated with case No. 2014-CR-040 in which appellant pled guilty to fourth-degree felony complicity to disrupt public service, a violation of R.C. 2923.03(A) of the principal offense of R.C. 2909.04(A)(3), and to second-degree felony robbery, a violation of R.C. 2911.02(A)(1). Appellant’s nine-and-one-half-year prison sentence for case No. 2014-CR-040 was subsequently modified by the trial court’s grant of judicial release on July 1, 2019, and placement on community control, extended to July 1, 2024. According to the trial court, “Now, since the Defendant’s Judicial Release in 14 CR 40, the Defendant has been found guilty of 12 new traffic or criminal charges.”

{¶ 5} At the merits hearing on January 2, 2025, appellant attended with his attorney. Appellant does not challenge in this appeal, and we accept, the findings in the trial court's journalized judgment entry:

Defendant admitted the truth of the allegations as charged in the complaint. The Court informed the Defendant of the right to a full hearing and the right to be represented by counsel. Upon the direct examination of the Defendant, the Court finds that Defendant's admission is voluntarily made with full knowledge of the nature of the offense, the possible penalties, and the rights being waived thereby.

{¶ 6} Meanwhile, on January 2, 2025, in case No. 2024-CR-251, appellant pled guilty to one count of attempted tampering with evidence, a violation of R.C. 2921.12(A)(1) and 2923.02(A), and a fourth-degree felony under R.C. 2921.12(B) and 2923.02(E)(1), for an incident on September 30, 2024. As part of the plea agreement, the parties jointly recommended for appellant to serve 15 months in the Ohio Department of Rehabilitation and Corrections to run concurrently with any sentence imposed for violating his community control in case No. 2021-CR-283.

{¶ 7} Despite the joint recommendation, as journalized on March 4, 2025, following a hearing attended by appellant with his attorney, trial court found appellant was still amenable to community control and sentenced him to continued community control in case No. 2021-CR-283, now extended to April 15, 2027. The trial court also sentenced appellant in case No. 2024-CR-251 to five years of community control under 12 residential and nonresidential sanctions.² Among the requirements was appellant's

² The conditions incorporate by reference the general probation conditions under case No. 2023-MI-041. Those conditions are not included in the record before us.

participation in and successful completion in the court's the drug-addiction treatment alliance ("DATA") program. Appellant is to follow all recommendations from his DATA chemical dependency counselor and/or mental health provider(s). In turn, under the DATA program, if appellant used alcohol and/or other mood-altering substances he must immediately notify his probation officer and cooperate with any and all recommendations for additional referrals and/or treatment services.

{¶ 8} The trial court further notified appellant:

The Defendant was advised that a violation of community control, a violation of any law, or leaving the State of Ohio without permission will result in a longer or more restrictive period of community control, or the imposition of incarceration. The Defendant was advised that a sentence of forty-eight (48) months in the Ohio Department of Rehabilitation and Corrections could be imposed.

{¶ 9} However, by August 21, 2025, appellee's probation officer filed a complaint against appellant for two community-control violations for admitted use of Kratom on four occasions. At the merits hearing on October 6, appellant attended with his court-appointed attorney. The trial court heard testimony from appellant and his probation officer and admitted two exhibits into evidence without objection, the lab drug test results and appellant's written admission of using kratom four times. Appellant was under intensive supervision, and his probation officer testified, "He has to drug test with us and he has to remain negative from any mood-altering substances." His probation officer further testified that appellant tested positive for the mood-altering drug kratom and that he admitted three subsequent uses of that prohibited drug after he knew it was a mood-altering substance and would violate his community control sanction.

{¶ 10} Appellant testified that, “I think that in my heart I knew something was wrong, but in my head I wanted it to be okay. I mean, I’m an addict.” Appellant insisted that he did not knowingly use kratom because he thought he was getting a caffeine pill readily available from the gas station where an unidentified employee told him it came from a grocery supplier,

But I didn’t know it was kratom at first. If somebody told me this was kratom, I would never take it. Like that. You know what I mean? Like, I didn’t, I mean, my history just in Drug Court should show that I’m not trying to get high. But in my heart I knew something was wrong and I just wanted to do the right thing. . . . Either way, like I said, I’m not arguing or trying to fight with the system about, you know, having a thinking error. I just, I didn’t know it was kratom until, you know, I mean, I tried to -- I came up here and I tried to do the right thing.

{¶ 11} Nevertheless, appellant admitted that, despite believing they were caffeine pills, he knew they altered his mood.

A: It wasn’t -- I mean, it was -- it just wasn’t -like, I just felt lighter. Like, like my head was just lighter. Like I had just worked out or something. It wasn’t like -- you know, like opiates have you, like, down. You know, I wasn’t -- I don’t know. I can’t explain how it felt. It wasn’t quite -- I guess I would say similar to an opiate, but it wasn’t like Suboxone or, you know --

Q: You’d say that it altered, altered your mood in some regard?

A: Yes, sir. Yes, sir.

{¶ 12} The trial court found that appellant violated his community control sanction: “Well, the, the rules are no substances that alter mood. And this one certainly did. And I think it hit you right in your addiction circuitry. So I will find that you are a violator of community control.” More specifically, the trial court found that appellant knowingly took the mood-altering drug multiple times:

Upon the evidence and argument presented, the Court finds substantial evidence that the Defendant has engaged in conduct in violation of the terms of community control, in that: 1. On August 14, 2025, the Defendant submitted a positive urine screen for Kratom at Firelands Counseling and Recovery Services; and 2. The Defendant admitted to using Kratom on three other occasions, his last date of use being August 17, 2025. 3. Use of Kratom is in violation of the Defendant's community control terms.

{¶ 13} The trial court reviewed his criminal history to date and found that appellant has “had several substance abuse treatment programs offered to him as a juvenile” and as an adult, in addition to programs for his mental health issues. Appellant has been through Drug Court three times. While on community control, appellant was put on an extensive plan to address his substance abuse and mental health issues. However, he “has failed to follow this plan, continues to make poor decisions,” culminating with his numerous community control violations.

{¶ 14} Sentencing immediately followed, at which the trial court sentenced appellant to serve 17 months and eleven months, respectively, to two felonies in case No. 2021-CR-0283 to which he pled guilty and to serve 17 months for one felony in case No. 2024-CR-0251 to which he pled guilty. The trial court determined that the sentences shall run consecutively for a total incarceration of 45 months. The trial court explained:

The Court finds that 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 the danger the offender poses to the public.

The Court further finds the offender’s history of criminal conduct demonstrates that consecutive services are necessary to protect the public from future crime by the offender.

Pursuant to 2929.15(E) (2) as used in this section, a technical violation means a violation of the conditions of a community control sanction imposed for a Felony of the Fifth Degree or Fourth Degree that is

not an offense of violence and is not a sexually oriented offense, and to which the following applies:

The violation consists of or includes the offender's articulated or demonstrated refusal to participate in the community control sanction imposed or -- on the offender or any of its conditions, and the refusal demonstrates to the Court that the offender has abandoned the objects of the community control sanction or condition.

This is not a technical violation.

Court further finds the Defendant's violation was a substantive rehabilitative requirement to address the significant factor in (inaudible) to his criminal conduct.

...

Alex, I don't think anybody's done with you, But I just don't know that this Court has any more to offer you. We've done a lot just trying to -- just trying to help you. And it -- and it's not been a waste. I mean, you, you have made changes. You have made improvements. But I -- so I hope that, you know, going into prison you'll, you'll do it right and you did it right the last time. Stay clean. Stay involved with your faith. And you came out a changed person in one aspect, but still hadn't dealt with the disease aspect. Now you have the whole gambit of what you need to work on while you're in there. And I hope you come out even more changed. And if, if when you do come out, if you'd like assistance, we are here to help you.

{¶ 15} Appellant timely appealed.

II. Right to Retained Counsel

{¶ 16} Appellant's first and second assignments of error challenge different aspects of his right to retain counsel at two stages of the proceedings before the trial court: the probable-cause hearing on August 22, 2025, and the merits hearing on October 6, 2025. Appellant acknowledges that his right to retained counsel under Crim.R. 32.3(B) is not a constitutional right, citing *State v. Bernard*, 2020-Ohio-5545, ¶ 14 (6th Dist.).

{¶ 17} Crim.R. 32.3(B) states:

The defendant shall have the right to be represented by retained counsel and shall be so advised. Where a defendant convicted of a serious offense is unable to obtain counsel, counsel shall be assigned to represent the defendant, unless the defendant after being fully advised of his or her

right to assigned counsel, knowingly, intelligently, and voluntarily waives the right to counsel. Where a defendant convicted of a petty offense is unable to obtain counsel, the court may assign counsel to represent the defendant.

{¶ 18} Nevertheless, appellant argues that the trial court committed reversible error by failing to notify him of his right to retain counsel, citing *State v. Tilley*, 2018-Ohio-2922 (4th Dist.), and that the trial court's appointment of counsel violated his due process rights. We disagree. Appellant does not dispute that he was provided court-appointed counsel or refute his statements on the record that demonstrated he could not afford to retain counsel and that, in fact, he affirmatively wanted court-appointed counsel.

{¶ 19} At the probable cause hearing, appellant requested appointed counsel:

Court: And are you asking for an attorney to be appointed to represent you?

A: Yes, please.

Court: Okay. Let's make sure you qualify for that.

{¶ 20} Appellant then answered under oath a series of questions that established he was indigent and concluded with the question, "Do you have any savings you could use to hire an attorney on your own?" to which appellant answered, "No, ma'am." The trial court found, "Okay. So I'm going to find you indigent" and thereafter appointed him an attorney. At no point did appellant object.

{¶ 21} A trial court possesses inherent power to supervise the appointment of counsel. *State ex rel. Butler v. Demis*, 66 Ohio St.2d 123, 133 (1981). We review the trial court's selection of appointed counsel to represent an indigent criminal defendant for an abuse of discretion. *Thurston v. Maxwell*, 3 Ohio St. 2d 92, 93 (1965). An abuse of discretion occurs when "a court [is] exercising its judgment, in an unwarranted way, in

regard to a matter over which it has discretionary authority.” *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

{¶ 22} Later, appellant’s appointed counsel responded “stipulate” to the trial court’s inquiry, “[W]ould you like a reading of the Complaint or do you stipulate to probable cause?” The trial court then stated, “I’ll make a probable cause finding at this time that a violation has occurred in these cases. Will enter a denial?” Appellant’s appointed counsel responded, “Yes, please,” and appellant’s denial was preserved for the merits hearing. Further, appellant’s appointed counsel requested a bond of appellant’s own recognizance, to which the trial court responded, “Well, with everything in mind, I’m going to order no bond be set at this time in each case. We will revisit that at the Merits Hearing. And that will be all. Is there anything further today?” All parties declined to raise any other issues or any objections.

{¶ 23} We fail to see how appellant was “severely” prejudiced “as a result of the trial court’s failure to advise him of his right to retained counsel under Crim.R. 32.3(B) . . . [because he] would have retained counsel, rather than proceeding with appointed counsel.” We find no evidence in the record to support his argument that he would have retained his own counsel by requesting “a reasonable continuance to allow him to obtain the funds and hire counsel of his choice.” We decline to speculate as to appellant’s motive for accepting appointed counsel at the probable cause hearing or whether he preferred a different attorney be appointed to him. “In general, an indigent defendant does not have a constitutional right to choose the attorney who will represent him or her at state expense.” (Citations omitted.) *State v. Fry*, 2010-Ohio-1017, ¶ 64.

{¶ 24} Relying on *State v. Bentley*, 2023-Ohio-1708, ¶ 7-8 (9th Dist.), appellant argues that at the probable-cause stage of a community control violation he was entitled to the same due process rights as a probation violation allegation, including notice of the alleged violation, an opportunity to appear and to present evidence, and a conditional right to confront adverse witnesses, an independent decisionmaker, and a written report of the hearing. We disagree, based on the historical application of the right to counsel in community control violation proceedings, which are distinctly different from the former probation violation proceedings. *State v. Amos*, 2026-Ohio-2510, ¶ 21-24 (6th Dist.). Importantly, “Under the present community control scheme, an indigent defendant has a right to court-appointed counsel, with no need to notify a defendant that they may need to hire an attorney, in certain instances, regardless of their ability to hire counsel.” *Id.* at ¶ 23.

{¶ 25} It is undisputed that the indigent appellant was facing a “serious offense” at the merits hearing, which Crim.R. 32.3(B) compelled the trial court to assign counsel “to represent the defendant, unless the defendant after being fully advised of his or her right to assigned counsel, knowingly, intelligently, and voluntarily waives the right to counsel.” Appellant knowingly, intelligently, and voluntarily answered the trial court’s questions to support the conclusion that he was indigent while facing serious charges. Appellant did not waive his right to appointed counsel under Crim.R. 32.3(D), which cross-references Crim.R. 44(C); rather, he sought and accepted appointed counsel to represent him during every stage of the community-control-violation proceedings.

“[W]ith no waiver of counsel, there was no requirement to obtain a waiver under Crim.R. 44(C).” *Id.* at ¶ 24.

{¶ 26} Appellant’s focus on the probable-cause stage of the proceedings is misguided. At the probable-cause stage, appellee was merely required to produce sufficient evidence to establish the belief that a community control violation occurred. *State v. Scott*, 92 Ohio St.3d 1, 8 (2001), Cook, J. concurring. Apparently, appellant is unhappy that his appointed counsel stipulated to probable cause as if that stipulation conclusively proved the merits of the alleged community control violations. It did not. The subsequent merits hearing required the production of actual proof of the alleged community control violations. *Id.* (“No probable cause determination in any area of the law equates to actual proof of the issue involved.”). Here, appellant attended the merits hearing with court-appointed counsel, testified in his own defense, and extensively cross-examined appellee’s witness and exhibits. Thus, the probable-cause stipulation did not prejudice appellant’s due process rights to prepare for the subsequent merits hearing. *See In re E.S.*, 2023-Ohio-4273, ¶ 22.

{¶ 27} We reviewed the record and find no abuse of discretion when the trial court appointed counsel to represent appellant at all stages of the community control violations proceedings.

{¶ 28} Appellant’s first and second assignments of error are not well-taken.

III. Community Control Revocation

{¶ 29} We will next address appellant’s fourth assignment of error, where he argues the trial court abused its discretion when it revoked his community control sanction after holding the merits hearing.

{¶ 30} A “community control sanction was the appropriate sentence for a crime in lieu of a prison term, and the revocation of the community control sanction was within the broad discretion of the trial court, resulting in an appropriate sanction for violating the terms and conditions of the community control sanction, not for the underlying crime.” *State v. Calhoun*, 2019-Ohio-228, ¶ 19 (6th Dist.).

{¶ 31} Although appellant admits that he tested positive for kratom, he invites us to speculate that it could have been a false positive result. Then, although he admits taking kratom on four occasions, appellant argues there was one negative drug screen “using a ‘test strip’” such that he honestly didn’t know if the pills he consumed were kratom. The negative test information, combined with his insistence that he “was unsure of the content of the pills,” is the basis for him urging us to find the trial court abused its discretion because there was a lack of “substantial evidence” that he had knowingly taken kratom. We disagree.

{¶ 32} We review a trial court’s decision to revoke a community control sanction for an abuse of discretion. *State v. Hope*, 2019-Ohio-3023, ¶ 14 (6th Dist.).

{¶ 33} The record contains the 19 residential and non-residential sanctions/conditions to appellant’s community control sanction in case No. 2021-CR-283 and 12 residential and non-residential sanctions/conditions to appellant’s community

control sanction in case No. 2024-CR-251. Any violation of the 31 community control sanctions/conditions would suffice for the trial court to revoke appellant's community control.

{¶ 34} For case No. 2021-CR-283, appellee's complaint alleged three community control violations by appellant. Appellant admitted he committed those three violations, and appellant does not challenge those violations in this appeal.

{¶ 35} For case No. 2024-CR-251, appellee's complaint alleged two community control violations by appellant. Although appellant also admitted committing those community control violations, he argued the first-time kratom use was an honest mistake while the subsequent three times were due to his addict's need to believe the honest mistake while a part of him knew it was not a mistake. The basis of these violations was taking kratom, a mood-altering substance, to which he admitted it altered his mood, even if he didn't know it was kratom. Appellant has a lengthy history of drug offenses to which the trial court repeatedly provided him with rehabilitation services. Appellant successfully graduated from one drug court program; otherwise, he has not been successful in rehabilitating his drug problems which left the trial court to reasonably conclude he was no longer amenable to community control after considering the factors under R.C. 2929.13. Thereafter, the trial court revoked appellant's community control sanctions and sentenced him for them. The record shows that appellant was advised by the trial court of the consequences of violating his community control sanctions.

{¶ 36} We reviewed the record and find no abuse of discretion when the trial court found appellant violated his community control sanctions and revoked them.

{¶ 37} Appellant's fourth assignment of error is not well-taken.

IV. Consecutive Sentences

{¶ 38} For his third assignment of error, appellant acknowledges the "trial court made the required findings under R.C. 2929.14(C)(4), both at Fletcher's sentencing hearing and in its sentencing entry." But, appellant argues, "the trial court's findings were not supported by the record" with clear and convincing evidence to support consecutive sentences for three reasons: 1) his honesty and forthright nature with both his sober/support counselor and his probation officer, 2) "the inadvertent nature of the alleged violation -- taking pills purchased at a gas station that inadvertently contained Kratom," and 3) the trial court's erroneous belief "on an alleged 'lack of other options.'" Appellant argues that these mitigating circumstances support imposing concurrent sentences rather than consecutive sentences.

{¶ 39} However, this court has determined, under *State v. Ratcliffe*, 2019-Ohio-308, ¶ 10 (6th Dist.), that since appellant did not object to the imposition of consecutive sentences, he forfeited the issue, absent plain error under Crim.R. 52(B). Recently in *State v. Fonseca-Mora*, 2026-Ohio-2385, ¶ 9 (6th Dist.), this court determined that plain-error review did not apply where "appellant expressly requested that the trial court not impose any prison time for the offenses he committed." That is not the case here, as there is no indication appellant argued he should serve no prison time. Rather, appellant

acknowledged he pled guilty to three felonies and passionately argued he should only serve concurrent sentences because of his mitigating circumstances. He testified:

I take responsibility for everything. Every character defect. And every thinking error that has happened. And I understand that the courts have worked with me extensively. And I'm grateful for every piece of help that I've received. Prison saved my life. I missed the entire Fentanyl epidemic.

It's been a long journey and I have a very dark background. You know my father died of an overdose. My mother's on drugs. I don't have any family. I just have my children and my wife.

And I have no desire to fight with the criminal justice system. I just want to manage my disease. When I was offered Drug Court again, Leah and Tabbie and everybody, they told me to work this program. Don't just check the boxes. Work this program like your life depends on it and come forward and be honest and transparent about everything. I believe I've done that. And I might not be a finished product, but God's not done with me.

That's it.

{¶ 40} Plain-error analysis applies in this matter. “Plain error exists when the error is plain or obvious and when the error affects substantial rights. To rise to the level of plain error, it must appear on the face of the record that an error was committed.” *Ratcliffe* at ¶ 10. Appellant has the burden of demonstrating the plain-error doctrine's three-part test: “(1) an error occurred, (2) the error was obvious, and (3) the error affected the outcome of the trial.” *Id.* “We take notice of plain error with the utmost of caution, under exceptional circumstances, and only to prevent a manifest miscarriage of justice.” *Id.* Appellant fails the first prong of the plain-error doctrine because no error occurred with his felony sentencing.

{¶ 41} We review a challenge to felony sentencing pursuant to R.C. 2953.08(G)(2). *State v. McIntosh*, 2024-Ohio-2284, ¶ 14 (6th Dist.). “R.C. 2953.08(G)(2) provides that an appellate court may only increase, reduce, or otherwise

modify consecutive sentences if the record does not “clearly and convincingly” support the trial court’s R.C. 2929.14(C)(4) consecutive sentence findings.”” *Id.* at ¶ 15, quoting *State v. Gwynne*, 2023-Ohio-3851, ¶ 13. The Ohio Supreme Court guides appellate courts that under R.C. 2953.08(G)(2)(a), “clear and convincing” means “a firm belief or conviction that the record does not support the trial court’s findings before it may increase, reduce, or otherwise modify consecutive sentences” under R.C. 2929.14(C)(4). *Id.*, quoting *Gwynne* at ¶ 15.

{¶ 42} The three findings the trial court must determine to support consecutive sentences are: “(1) consecutive sentences are necessary to protect the public from future crime or to punish the offender; (2) 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) one or more of the findings listed in R.C. 2929.14(C)(4)(a), (b), or (c).” *Id.* at ¶ 16. The trial court’s findings need not contain specific words or reasoning so long as the record contains some evidence to support the findings and is incorporated into the sentencing entry. *Id.* at ¶ 18. Here, appellant admits the trial court did so, and appellant’s sentence is not contrary to law. *State v. Hammons*, 2024-Ohio-6128, ¶ 26 (6th Dist.), *appeal allowed*, 2025-Ohio-1483 (the trial court is only required to make the R.C. 2929.14(C)(4) findings at the sentencing hearing and the judgment entry); *State v. Disher*, 2025-Ohio-1287, ¶ 10 (6th Dist.) (where the trial court makes all findings necessary at both the sentencing hearing and in its judgment entry, the requirements necessary to impose consecutive sentences are met).

{¶ 43} “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.” *Gwynne* at ¶ 5.

{¶ 44} The first *McIntouch* finding, that consecutive sentences are necessary to protect the public from future crime or to punish the offender, is supported by clear and convincing evidence in the record. Here, the trial court specifically found that consecutive sentences were necessary to punish the offender. The trial court stated in the record appellant’s lengthy criminal history, beginning with a 2014 criminal case that, although “[that] matter has since expired. . . . that is the reason that Mr. Fletcher originally came to the Court’s attention.” The trial court reviewed appellant’s guilty pleas and convictions to three felonies in the underlying cases and his post-conviction relief histories in each case where he was provided with many opportunities to limit his incarceration time under judicial release, community control, and drug treatment, yet he continued to reoffend.

{¶ 45} The second *McIntouch* finding, that consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public, is supported by clear and convincing evidence in the record. Here, the trial court found that appellant reoffended, despite his opportunities to stop. In addition, the trial court found the following:

Most recently, in June of 2025, a child found -- was found to have consumed edibles in his home. The child was transported via ambulance to Toledo, Toledo where he spent the night in the hospital. According to

treatment team notes, the Defendant appeared to minimize the situation and denied that the edibles were his.

On 9/12, the treatment team received notice that the Defendant had not been going to group in jail. He has seen Tabbie. The Probation Department was advised that the Defendant is refusing his mental health medications over this past week.

{¶ 46} The third *McIntouch* finding, that one or more of the findings listed in R.C. 2929.14(C)(4)(a), (b), or (c), is supported by clear and convincing evidence in the record. The evidence for the first *McIntouch* finding supports a finding under R.C. 2929.14(C)(4)(c).

{¶ 47} We find that appellant does not meet his burden that the trial court's R.C. 2929.14(C)(4) consecutive sentence findings are clearly and convincingly not supported by the record.

{¶ 48} Upon review we find no plain error to prevent a manifest miscarriage of justice in this matter. Applying the required deferential standard in R.C. 2953.08(G)(2), we cannot say the record does not clearly and convincingly support the trial court's findings of consecutive sentences for appellant's community control violations to three felony convictions. *Id.* at ¶ 19; *McIntouch*, 2024-Ohio-2284, at ¶ 14 (6th Dist.), citing *Gwynne*, 2023-Ohio-3851, at ¶ 15. Appellant's third assignment of error is not well-taken.

V. Conclusion

On consideration whereof, the judgment of the Ottawa County Court of Common Pleas is affirmed. Appellant 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.

Thomas J. Osowik, P.J.

JUDGE

Myron C. Duhart, J.
CONCUR.

JUDGE

Gene A. Zmuda, J.
CONCURS AND WRITES
SEPARATELY.

JUDGE

ZMUDA, J., concurring,

{¶ 49} I concur in the majority’s resolution of each of appellant’s assignments of error. I write separately, however, because I believe the majority misstates this court’s holding in *State v. Fonseca-Mora*, 2026-Ohio-2385 (6th Dist.). In *Fonseca*, we held that assigned errors alleging that the trial court’s consecutive sentencing findings were not

supported by the record are reviewed pursuant to R.C. 2953.08(G)(2). *Id.* at ¶ 14 (“[W]e find that an appellant’s challenge to a trial court’s findings under R.C. 2929.14(C)(4) are reviewed under the standard described in R.C. 2953.08(G)(2)[.]”). Our decision rejected the requirement that the defendant “object” to the trial court’s imposition of sentence at the sentencing hearing in order to avoid review of the trial court’s consecutive sentencing findings under a plain error standard. *Id.*

{¶ 50} Here, appellant’s third assignment of error states “[t]he trial court’s imposition of consecutive sentences under R.C. 2929.14(C)(4) was not supported by the record.” This assignment falls squarely within our holding in *Fonseca* and demands that appellant’s assigned error be reviewed pursuant to R.C. 2953.08(G)(2). The majority, while recognizing *Fonseca*, concludes that our holding there was limited to instances in which a defendant requests no prison time as opposed to cases like the present appeal where appellant acknowledged that he would be sentenced to prison but requested that the terms run concurrently rather than consecutively. The majority somehow concludes that appellant waived his challenge to the imposition of consecutive sentences under R.C. 2953.08(G)(2) based on this language and proceeded to analyze his third assignment of error under a plain error standard.

{¶ 51} This “distinction”³ is immaterial to our standard of review. A defendant is not obligated to object to the imposition of consecutive sentences under R.C.

³ Not only does the majority’s conclusion defy our holding in *Fonseca*, it is difficult to understand the logic that appellant’s direct challenge to the imposition of consecutive sentences here constitutes a waiver of that argument on appeal when *Fonseca*’s general

2929.14(C)(4) to avoid plain error review. Consecutive sentence findings are reviewed pursuant to R.C. 2953.08(G)(2) as a matter of law regardless of whether the defendant “objects” or remains entirely silent. Because the majority seeks to find a factual “distinction” between this case and *Fonseca* to show that appellant waived this issue, it has incorrectly reviewed appellant’s third assignment of error for plain error only. Because that assignment must be reviewed under R.C. 2953.08(G)(2), I do not join in that portion of the majority’s analysis. That notwithstanding, I believe that appellant failed to identify error under the standard described in R.C. 2953.08(G)(2). As a result, I concur with the majority’s conclusion and find appellant’s third assignment of error not well-taken.

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: http://www.supremecourt.ohio.gov/ROD/docs/.

request for no prison time served as the basis for protecting the statutory standard of review.