

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

State of Ohio

Court of Appeals No. L-25-00180

Appellee/Cross Appellant

v.

Trial Court No. CR0202402390

Kenan Smith Jr.

DECISION AND JUDGMENT

Appellant/ Cross Appellee

Decided: September 11, 2026

* * * * *

Julia R. Bates, Prosecuting Attorney and
Lorrie J. Rendle, Assistant Prosecuting Attorney, for appellee/cross appellant.

Adam H. Houser, for appellant/cross appellee.

* * * * *

DUHART, J.

{¶ 1} Appellant/cross-appellee, Kenan Smith, Jr., and appellee/cross-appellant, the State of Ohio, appeal from a judgment of the Lucas County Court of Common Pleas convicting and sentencing Smith following a no contest plea to the offenses of

involuntary manslaughter, improperly discharging a firearm into a habitation, and discharge of a firearm on or near prohibited premises.

{¶ 2} For the reasons that follow, the trial court's judgments are affirmed in part and reversed in part, and the matter is remanded for resentencing in accordance with R.C. 2929.14(A)(1)(a) and (A)(2)(a) and for correction of the sentencing judgment entry to reflect the post-release control notification that Smith received at sentencing.

Statement of the Case and the Facts

{¶ 3} On September 23, 2024, a Lucas County Grand Jury returned a 26-count indictment charging Smith, along with co-defendant Deontae Mitchell, with various offenses related to events that occurred on September 14, 2024, when Mitchell exited a vehicle driven by Smith and fired a gun more than 15 times on a crowded street, causing the death of I.P.

{¶ 4} Smith was charged as follows: Count 1, aggravated murder in violation of R.C. 2903.01(A) and (G), an unspecified felony; Count 2, murder in violation of R.C. 2903.02(A) and R.C. 2929.02, an unspecified felony; Count 3, murder in violation of R.C. 2903.02(B) and R.C. 2929.02, an unspecified felony; Counts 4-7, felonious assault in violation of R.C. 2903.11(A)(2) and (D), each a felony of the second degree; Counts 8 and 9, felonious assault in violation of R.C. 2903.11(A)(2) and (D), each a felony of the first degree; Count 10, improper discharge of a firearm into a habitation in violation of R.C. 2923.161(A)(1) and (C), a felony of the second degree; Counts 11-25, discharge of a firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3) and (C)(4),

each a felony of the first degree; and Count 26, tampering with evidence in violation of R.C. 2921.12(A)(1) and (B), a felony of the third degree. Counts 1-25 each additionally included a firearm specification in violation of R.C. 2941.145(A), (B), (C), and (F). At the time of the events that gave rise to these charges, Smith was subject to community control for a prior unrelated felony conviction in case No. CR22-1912.

{¶ 5} An arraignment was held on October 2, 2024. Defense counsel was appointed, and Smith entered a plea of not guilty to all counts in the indictment.

{¶ 6} Following several earlier pretrial hearings, a final pretrial hearing was held on July 8, 2025. Smith and Mitchell were present and represented by counsel. The trial court discussed the State's plea offers made to both defendants, each of which included the dismissal of several charges against them. The trial court informed Mitchell that if he were found guilty at trial, he would face a maximum prison sentence of life without parole, plus an additional 230.5 years. But if he accepted the State's offer, his maximum prison sentence would be 59 years to life. The trial court informed Smith that if he were found guilty at trial, he was subject to a maximum sentence of life in prison without parole, plus an additional 233.5 years. If, however, he accepted the State's offer, his maximum sentencing exposure was 58.5 years to life. Smith and Mitchell rejected the State's respective offers, and the court confirmed that trial -- during which Smith and Mitchell were to be tried jointly -- was set for July 14.

{¶ 7} During the same pretrial hearing, Smith, through counsel, indicated that he wished to waive his right to a jury trial and have his case decided by the court, the effect of which would have been a bench trial for Smith, held simultaneously with a jury trial

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for co-defendant Mitchell. The trial court, relying on *State v. Spradlin*, 2010-Ohio-2140 (2d Dist.), denied Smith’s motion on the grounds that to grant his request would render the trial proceedings “not functional.” Smith did not move to sever his case from that of co-defendant Mitchell.

{¶ 8} A resolution was ultimately achieved, and on July 11, 2025, a combined change-of-plea hearing was held for both co-defendants. In accordance with the negotiated plea, Smith entered a plea of no contest to the lesser included offense of Count 3, involuntary manslaughter in violation of R.C. 2903.04(A) and (C), a felony of the first degree; Count 10, improper discharge of a firearm into a habitation, a felony of the second degree, as indicted; and Count 11, improper discharge of a firearm on or near prohibited premises, a felony of the first degree, as indicted. In exchange for Smith’s no contest plea, all of the remaining charges and all of the attached firearm specifications were dismissed, and the State recommended a prison term of 18 to 23 years.

{¶ 9} The court conducted a complete plea colloquy, during which Smith was informed that, as a result of his no-contest plea, he was subject to a potential maximum indefinite prison sentence of 30 to 35.5 years. Smith confirmed that he understood the maximum sentencing exposure associated with the offenses to which he was pleading, and after the trial court explained each of the rights Smith was waiving by entering his plea, Smith indicated that he freely and voluntarily waived these rights and felt that it was in his best interests to enter the no-contest plea.

{¶ 10} The State’s prosecutor presented the underlying factual allegations, as follows:

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With respect to the facts of that case for Defendant Kenan Smith, had this matter proceeded to trial the State would have proved the Defendant acted in a complicit manner in this case as an aider and abettor as he supported, encouraged, and helped Defendant Deontae Mitchell commit these [offenses] and shared requisite mens rea required to commit them.

We would have proved beyond a reasonable doubt that on or about September 14, 2024, and in Lucas County, Ohio, the Defendant caused the death of another, as a proximate result of committing any felony, in this case felonious assault.

Further we would have shown the Defendant aided and abetted in the knowing discharge of a firearm upon or into a habitation.

Further knowingly aided and abetted in the discharge of a firearm over a public roadway.

All of these offenses did occur on September 14, 2024.

More specifically, Judge, we would have shown that on that date around 1:30 in the morning Defendant Deontae Mitchell was at This Is It Restaurant and Lounge located at 302 North Detroit Avenue.

While there he got into a fight with a number of people at the bar. That fight spilled out onto Detroit Avenue and Buckingham, the intersection there. This is all caught on surveillance video that the bar had both within the restaurant and outside. There were exterior cameras at multiple angles.

Deontae Mitchell is clearly seen, and while they were matching that of the shooter, same stature, hair style, tattoos, etc. [sic]

Once out on the street there were two projecting officers within that crowd of people who were helping disburse people out onto the street and near the area of Detroit and Buckingham.

Defendant Kenan Smith is on video arriving in a car, a black Dodge Charger. He picks up Deontae Mitchell. And the car can be seen driving slowly down near the intersection of Detroit and Buckingham where they pass a group of people I think that were in the fight with Deontae, go down to a dead end and turn around.

Kenan Smith is the driver and pulls right back in front of the This Is It Barbecue at [t]hat point Defendant Deontae Mitchell exits the vehicle and

starts shooting a .40-caliber extended magazine gun into that crowd of people that did contain those two officers, multiple folks.

One person was the unfortunate victim, [I.P.]. He was struck in the head with a bullet and died. His wife, [O.P.] was standing next to him.

Another bullet traveled down Detroit Avenue and struck 218 Detroit. The woman that lived there, [S.H.], her testimony was she was sitting on her couch, and the bullet came over her head and struck the wall, the projectile from the home.

There were 15 shell casings on the street that all came from that same gun. Once Mr. Mitchell finished firing he got back into Kenan Smith's car, and Kenan quickly drove away, took him home, and then changed the tires off of his car. They were red rimmed and identifiable. We would have argued he did that to reflect the consciousness of guilt in trying to hide his involvement.

Further, the video from within the bar clearly shows Deontae Mitchell doesn't have a gun. He is picked up just moments later. We are given to believe Kenan provided him that gun.

So, Your Honor, he provided the means, the murder weapon, and the transportation, and encouragement to Deontae Mitchell.

{¶ 11} The trial court found that Smith made a knowing, intelligent, and voluntary waiver of his constitutional rights, and understood the nature of the charges against him, the effect of his plea, and the maximum penalties that could be imposed. The trial court accepted Smith's no-contest plea and found him guilty of Count 3 as amended, and Counts 10 and 11 as indicted, excluding the respective firearm specifications. The trial court added: "After hearing the statement of facts here from the State the Court does accept that a theory of complicity is consistent with the allegations of Mr. Smith as articulated here on the record by the State of Ohio. Therefor[e] the Court enters findings

of guilty to Counts 3, 10, and 11 as just articulated.” A pre-sentence investigation report was ordered, and sentencing was scheduled for a later date.

{¶ 12} On July 29, 2025, a combined sentencing hearing was held, during which Smith and Mitchell were present and represented by counsel. At the commencement of the sentencing hearing, the court addressed the issue of merger as raised in Smith’s sentencing memorandum. Smith, through counsel, specifically moved for merger of the offenses of involuntary manslaughter, Count 3, and discharge of a firearm on or near prohibited premises (a roadway), Count 11. The State opposed, relying on the Ohio Supreme Court’s decision in *State v. Ruff*, 2015-Ohio-995, stating “where there are separate victims and separate identifiable harms there is no merger.” The State’s prosecutor further argued, “In this case we would say the public as a whole was the victim of the district of the roadway, the involuntary manslaughter is for [I.P.], and shooting into the habitation is [A.H.]. We have three separate identifiable victims, three different harms. We request they not merge.”

{¶ 13} Next, Smith challenged the State’s factual allegations as presented during the plea hearing, specifically pertaining to Smith’s complicity. The trial court asked the State’s prosecutor to reiterate the underlying facts establishing Smith’s engagement and involvement that support the theory of his complicity. The State offered the following explanation:

Yes, Judge, but for the actions of the Defendant, Kenan Smith, none of this would have occurred.

He provided the murder weapon, the gun in his car, to the Defendant, Deontae Mitchell. He provided transportation in scoping out the scene, and tried to find the intended victim. He positioned the Defendant, Deontae Mitchell, to be able to shoot, and he drove him away. He was the getaway driver.

Just hours later he was changing the tires on the car which reflects his consciousness of guilt. Those are the key facts for the complicity in this case, Judge.

{¶ 14} Defense counsel continued to challenge the State's statement of the factual allegations at the plea hearing. The State responded and further clarified its position on Smith's complicity:

[During the plea hearing,] I stated that we would prove this case beyond a reasonable doubt [on] each and every element.

The video does not show Kenan Smith handing Deontae Mitchell a gun. We would have proved that circumstantially. We know Deontae Mitchell was in the This Is It bar area. He was in a fight. His shirt was off his body, and his pants – you can see there was no gun.

As you walk in people are patted down. We believe that will show he did not have the gun in the bar. He is picked up very quickly thereafter.

He and Kenan Smith are the only two in the car. That's how we would have proved that Kenan Smith provided the gun.

{¶ 15} Next, the trial court heard from Smith's counsel, who addressed the court in mitigation. Smith also addressed the court directly on his own behalf.

{¶ 16} In accordance with the negotiated plea, the State's prosecutor urged the court to impose the recommended sentence.

{¶ 17} Regarding defense counsel's argument that the State's presentation of the facts at the plea hearing was in some way defective, the court stated:

We can argue about semantics of no contest plea and what would be proven in court and all that part. The bottom line is when a no contest plea is put in and you go forward you are accepting the facts as they were presented to the Court, and that's the only thing the Court can accept is the facts that are presented to me, okay?

Factual allegations, that's the complete sentence. Those are the allegations. Until we are actually in trial and put forward the trial they are the allegations, but that's accepted and taken as true.

{¶ 18} The trial court also acknowledged the victims at the scene who suffered no physical injury: "This is a situation where it is just inexplicable. The people that were there and that did not receive a gunshot wound or get injured, the trauma of being at a gathering where all the sudden a crowd is being shot at, that's going to stay with those people for the rest of their lives as well."

{¶ 19} Thereafter, Smith admitted that a conviction in the current matter constituted a violation of the terms of his community control and he waived his right to a hearing.

{¶ 20} The trial court stated as to both Smith and Mitchell that it had considered the record, oral statements, victim impact statements, presentence reports as prepared, as well as the principles and purposes of sentencing under R.C. 2929.11. The trial court also stated that it had balanced the seriousness and recidivism factors under R.C. 2929.12 and any and all factors in R.C. 2929.13.

After imposing sentence on Mitchell, the trial court turned its attention to Smith:

As it relates to Mr. Smith, the Court hereby orders that on the amended charge of involuntary manslaughter in Count 3, that of the 3 to 11 year potential sentence, the Court orders a 10 year sentence, which this is being

the qualifying charge for the maximum retention hearing of an additional 5 years.

So Count 3 is a 10 year sentence with potential up to 5 if held upon his expected release date.

Count 10, improperly discharge[ing] a firearm at or into a habitation, felony of the second degree, the Court orders a 7 year sentence.

As to Count 11, discharge of a firearm on a prohibited premises on or upon a roadway, felony of the first degree, Defendant order[ed] to serve a sentence of 9 years.

Those are ordered to be consecutive. That brings the sentence to 26 years, and then the indefinite sentencing could take that up by an additional 5 years which equals 31...potential years on the indefinite sentencing.

Then as far as it relates to CR22-1912, having considered the reports and the information and finding that Mr. Smith had been convicted of having weapons while under disability that sentence was put into place on September 28th of 2022 after entering a plea of guilty pursuant to North Carolina versus Alford.

The Court had accepted same, entered a finding of guilty having weapons while under disability, felony of the third degree 2923.13(A)(3) & (b).

That is ordered to be serving a 24 month sentence consecutive. That takes the sentencing up to a potential with the indefinite sentencing of 5 additional years...to 33 years.

Regarding consecutive sentencing, the court made the following findings:

So, the Court makes the finding as it relates to Counts 3, 10, and 11 that is – the Court finds consecutive sentences are necessary to protect the public from future crime or to punish the Defendant.

It is not disproportionate to the seriousness of the Defendant's conduct or the danger that the Defendant poses, and the Court further finds that the harm caused was so great or unusual that no single prison term for any offenses committed as part of any of the courses of conduct adequately reflect the seriousness of the offender's conduct.

The Court had ample opportunity to consider the arguments of Counsel here in open court that were made, and although valid points it does not take away from the Court feeling it is appropriate and required to order consecutive sentences.

{¶ 21} With regard to the community control violation relating to case No. CR22-1912, the trial court explained that consecutive sentence was mandatory.

{¶ 22} Finally, the trial court stated that as a result of his conviction, Smith was subject to a mandatory term of post-release control of not less than two years, but not more than five years.

{¶ 23} The journal entry memorializing Smith's sentence provides:

It is ORDERED that Defendant to serve a minimum prison term of 10 years and a maximum prison term of 15 years as to Count 3; a stated prison term of 7 years as to Count 10; and a stated prison term of 9 years as to Count 11. Being necessary to fulfill the purposes of R.C. 2929.11 and 2929.14(C)(4), consecutive sentences are necessary to protect the public from future crime or to punish the offender and are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. The court further finds the harm caused was great or unusual such that no single prison term is adequate, and the defendant's criminal history demonstrates that consecutive sentences are necessary to protect the public, therefore the sentences ordered in this case and the sentence ordered in CR 22-1912 are to be served consecutively for an aggregate of a minimum of 28 years and a maximum of 33 years.

{¶ 24} With regard to post-release control, the sentencing entry states: "Defendant notified of post-release control as follows: 18 months– 3 years mandatory as to Count 10."

{¶ 25} On appeal, Smith challenges his conviction and sentence.

Assignments of Error

{¶ 26} On appeal, Smith asserts the following assignments of error:

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- I. It was against the manifest weight of evidence to sentence appellant to consecutive sentences.
- II. The trial court made reversible error when it failed to merge the involuntary manslaughter charge and the improper discharge of a firearm on or near a prohibited premise.
- III. The appellant received ineffective assistance of counsel as trial counsel failed to file a relief from prejudicial joinder of his case and the co-defendant's case which caused the court to deny appellant request for a bench trial.

The State's assignments of error on cross-appeal are as follows:

- I. Appellant's sentence is contrary to law because the trial court did not impose indefinite sentences for each of his qualifying offenses under R.C. 2929.14(A)(2)(a).
- II. Smith's sentence is also contrary to law because the journal entry memorializing his sentence reflects an incorrect term of post-release control.

Smith's First Assignment of Error

{¶ 27} Smith argues in his first assignment of error that "[i]t was against the manifest weight of the evidence to sentence [him] to consecutive sentences."

{¶ 28} Appellate review of felony sentences is governed by R.C. 2953.08(G). *State v. Peoples*, 2025-Ohio-5777, ¶ 18 (6th Dist.), citing *State v. Kleinhans*, 2023-Ohio-2621, ¶ 24 (6th Dist.) The statute provides that an 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" only 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.

R.C. 2953.08(G)(2).

{¶ 29} Because Smith challenges the trial court's imposition of consecutive sentences, R.C. 2953.08(G)(2) applies. To modify or vacate consecutive sentences under the statute, a reviewing court must clearly and convincingly find that the record does not support the trial court's findings under R.C. 2929.14(C)(4).

{¶ 30} Pursuant to R.C. 2929.14(C)(4), a trial court may impose consecutive sentences for convictions on multiple offenses if it finds that consecutive sentences (1) are necessary to protect the public or to punish the offender; (2) are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public; and (3) one 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.

{¶ 31} The trial court must make these findings at the sentencing hearing and must incorporate those findings into its sentencing entry. *State v. Bonnell*, 2014-Ohio-3177, ¶ 37. But the trial court is not required to state the reasons behind its findings. *Id.* Also, “‘a word-for-word recitation of the language of the statute is not required...’ as long as the reviewing court ‘can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings....’” *State v. Blanton*, 2023-Ohio-2242, ¶ 25 (6th Dist.), quoting *Bonnell* at ¶ 29. A reviewing court may “liberally review the entire sentencing transcript to discern whether the trial court made the requisite findings.” *State v. Stan*, 2017-Ohio-7756, ¶ 26 (7th Dist.), citing *Bonnell* at ¶ 29.

{¶ 32} Although Smith appeals the trial court’s imposition of consecutive sentencing, his brief ignores the standard set forth in R.C. 2953.08(G)(2). Smith has not claimed that his sentence is contrary to law, nor has he identified a consecutive sentence finding that the court neglected to make. Thus, he has not raised any argument addressing the felony sentence review statute. Instead, Smith suggests that this court should apply the clearly inapplicable manifest weight of the evidence standard. This we decline to do.

{¶ 33} Turning to the record, we find that the trial court made each of the requisite consecutive sentencing findings at the sentencing hearing and incorporated those findings in the sentencing judgment entry. Specifically, the trial court found that (1) consecutive sentences were necessary to protect the public, (2) they were not disproportionate to the seriousness of the offender’s conduct and to the danger the offender posed to the public, and (3) the harm caused was so great or unusual that no single prison term for any

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offenses committed as part of any of the courses of conduct adequately reflected the seriousness of the offender's conduct. In addition, we do not clearly and convincingly find that the record does not support the trial court's findings under R.C. 2929.14(C)(4).

{¶ 34} Because Smith has failed to establish any error in the imposition of consecutive sentencing in this case, his first assignment of error is found not well-taken.

Smith's Second Assignment of Error

{¶ 35} Smith argues in his second assignment of error that the trial court committed reversible error in failing to merge the offenses of involuntary manslaughter and improper discharge of a firearm on or near prohibited premises for purposes of sentencing.

{¶ 36} “R.C. 2941.25 codifies the protections of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and Section 10, Article 1 of the Ohio Constitution, which prohibit multiple punishments for the same offense.” *State v. Sproles*, 2023-Ohio-3403, ¶ 44 (6th Dist.), quoting *State v. Rogers*, 2022-Ohio-4126, ¶ 16 (6th Dist.). R.C. 2941.25 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.

{¶ 37} It is well settled that the test for determining whether offenses are allied within the meaning of R.C. 2941.25 requires courts to ask three questions when a defendant's conduct supports a conviction for 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." (Quotations omitted.) *Sproles* at ¶ 45, quoting *State v. Bailey*, 2022-Ohio-4407, ¶ 10, quoting *State v. Earley*, 2015-Ohio-4615, ¶ 12, quoting *State v. Ruff*, 2015-Ohio-995, ¶ 31. "[T]wo or more offenses of dissimilar import exist within the meaning of R.C. 2941.25(B) when the defendant's conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable." *Id.*, quoting *Ruff* at ¶ 23.

{¶ 38} "The defendant bears the burden of establishing his entitlement to the protection, provided by R.C. 2941.25, against multiple punishments for a single criminal act." (Quotations omitted.) *Id.* at ¶ 46, quoting *State v. Washington*, 2013-Ohio-4982, ¶ 18, quoting *State v. Mughni*, 33 Ohio St.3d 65, 67 (1987); *State v. Smith*, 2023-Ohio-866, ¶ 10 (6th Dist.). "An appellate court reviews de novo whether offenses should be merged as allied offenses under R.C. 2941.25." (Quotations omitted.) *Id.*, quoting *Smith* at ¶ 10, citing *Bailey* at ¶ 6.

{¶ 39} Here, the trial court declined to merge the offenses of involuntary manslaughter in violation of R.C. 2903.04(A) and (C) and improper discharge of a

firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3) and (C)(4), each a felony of the first degree.

{¶ 40} R.C. 2903.04(A), the involuntary manslaughter statute, states: “No person shall cause the death of another or the unlawful termination of another’s pregnancy as a proximate result of the offender’s committing or attempting to commit a felony.” And division (C) explains that a violation of division (A) is a felony of the first degree.

{¶ 41} R.C. 2923.162(A)(3) relevantly provides: “No person shall...[d]ischarge a firearm upon or over a public road or highway.” And division (C)(4) states: “If the violation causes serious physical harm to any person, a violation of division (A)(3) of this section is a felony of the first degree.”

{¶ 42} Smith argues that because the two convictions stem from the shooting death of a single victim and were committed with a “single state of mind,” merger is required. However, the mere fact that the first-degree discharge-of-a-firearm offense under R.C. 2923.162 (C)(4) required proof that serious physical harm resulted to the same victim who was identified in the involuntary manslaughter offense does not necessitate that the offenses merge. *See State v. Hoffer*, 2026-Ohio-235 (5th Dist.) (merger not required where discharge of a firearm under R.C. 2923.162(C)(4) required proof that serious physical harm resulted to the same victim identified in a felonious assault offense); *see also State v. Johnson*, 2019-Ohio-4265, ¶ 19 (though the act of shooting the victim elevated the degree of the offense of discharging a firearm on or near prohibited premises to a first-degree felony pursuant to R.C. 2923.162(C)(4), the offense of discharge of a firearm on or near prohibited premises was still found to cause separate

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and distinct harm); *State v. Johnson*, 2022-Ohio-4629, ¶ 28 (the analysis did not change even though the discharge of a firearm offense was elevated to a second degree felony due to the offender causing physical harm to his victim as charged in a separate felonious assault offense).

{¶ 43} This is because the statutes that define the two crimes at issue in this case focus on different conduct, with the discharging-a-firearm offense targeting “the inherently dangerous-to-the-public act of firing a projectile over a public road,” while the involuntary manslaughter offense aims to punish the act of causing the death of a particular person while committing or attempting to commit a felony. *See Hoffer* at 13 (discharge of firearm offense addressed inherently dangerous to the public act of firing a projectile over a public road, while felonious assault offense aims to punish the act of knowingly using a deadly weapon to harm a particular person). “Even where, as here, the same person happens to have been harmed by the defendant’s violations of the two statutes, the offenses are distinct because the harm caused by the discharging offense is never confined to one person and always extends to the public at large.” *Id.* Although the same conduct resulted in injury to the victim, the discharge-of-a-firearm offense involved a separate and identifiable harm to the public by firing a weapon over a public roadway, while the involuntary manslaughter offense dealt with the harm inflicted upon the individual victim. *See State v. Hargraves*, 2026-Ohio-2378, ¶ 46 (5th Dist.) (although the same conduct of shooting resulted in injury to the victim, the discharge of a firearm offense involved a separate and identifiable harm to the public by firing a weapon over a public roadway, while the felonious assault offense addressed the harm inflicted upon the

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individual victim); *see also Johnson*, 2019-Ohio-4265 at ¶ 17 (the harm caused by voluntary manslaughter was the victim's death, while the harm caused by discharge of a firearm on or near prohibited premises was to the public).

{¶ 44} Accordingly, the trial court did not err in declining to merge Count 3, involuntary manslaughter, with Count 11, improper discharge of a firearm on or near prohibited premises. Smith's second assignment of error is therefore found not well-taken.

Smith's Third Assignment of Error

{¶ 45} Smith argues in his third assignment of error that his trial counsel rendered ineffective assistance in failing to file a motion for severance of trials in this case inasmuch as "it was prejudicial to his right to have the trial to the bench" that had previously been denied due to the joinder of his trial with that of his co-defendant.

{¶ 46} To prevail on a claim for ineffective assistance of counsel, an appellant must show that trial counsel's performance fell below an "objective standard of reasonable representation," and that counsel's deficient performance prejudiced him as a result. *State v. Stewart*, 2018-Ohio-3517, ¶ 31 (6th Dist.), citing *Strickland v. Washington*, 466 U.S. 668 (1984).

{¶ 47} The first prong of the *Strickland* test requires deferential scrutiny of counsel's performance. *See Strickland* at 689. In Ohio, "a properly licensed attorney is presumed competent and the burden is on the appellant to show counsel's ineffectiveness." *State v. Craig*, 2022-Ohio-2976, ¶ 15 (6th Dist.), citing *State v.*

Hamblin, 37 Ohio St.3d 153, 155-156 (1988). ““Because a court cannot second guess trial strategies and it has the benefit of hindsight, there is a strong presumption that...counsel acted in a reasonable and competent manner.”” *Stewart* at ¶ 31, quoting *State v. Gaston*, 2008-Ohio-1856, ¶ 31 (6th Dist.), citing *State v. Mason*, 82 Ohio St.3d 144, 157-158 (1998), and *Strickland* at 689.

{¶ 48} ““Where a conviction is based on guilty or no contest pleas, the prejudice element requires the defendant to show that there is a reasonable probability that, but for counsel’s errors, he would not have entered a plea.”” (Citations omitted.) *State v. Miller*, 2017-Ohio-670, ¶ 7 (6th Dist.), quoting *State v. Luciano*, 2015-Ohio-1264, ¶ 24 (6th Dist.). (Additional citation omitted.)

{¶ 49} R.C. 2945.13 states that “[w]hen two or more persons are jointly indicted for a felony, except a capital offense, they *shall be tried jointly* unless the court, for good cause shown on application therefor by the prosecuting attorney or one or more of said defendants, orders one or more of said defendants to be tried separately.” (Emphasis added.) “The ‘[j]oinder of defendants and the avoidance of multiple trials is favored in the law’ because it ‘conserves judicial and prosecutorial time, lessens the not inconsiderable expenses of multiple trials, diminishes inconvenience to witnesses, and minimizes the possibility of incongruous results in successive trials before different juries.’” *State v. Shakhmanov*, 2019-Ohio-4598, ¶ 35, quoting *State v. Thomas*, 61 Ohio St.2d 223, 225 (1980).

{¶ 50} Under Crim.R. 14, “[i]f it appears that a defendant...is prejudiced by a joinder of...defendants in an indictment, information, or complaint, or by such joinder for

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trial together of indictments, informations or complaints, the court shall order an election or separate trial of counts, grant a severance of defendants, or provide such other relief as justice requires.”

{¶ 51} Here, we note that Smith and Mitchell were indicted jointly, thus under R.C. 2945.13, joinder of co-defendants for trial is the rule, and not the exception. In addition, all of the charges against the co-defendants involved the same events. Therefore, all of the evidence that would have been introduced at trial would have been introduced in separate trials. Finally, the evidence pertaining to Smith’s conduct was clearly distinguishable from the evidence pertaining Mitchell’s conduct. That is, Mitchell was charged as the shooter, while Smith was charged as an aider and abettor for driving Mitchell to the scene and providing the firearm.

{¶ 52} Nothing in the record suggests that Smith was prejudiced by joinder. As such, there is nothing to suggest that if trial counsel had moved for severance of the trials his efforts would have been successful. Thus, Smith has failed to establish either that his trial counsel’s performance was deficient or that he suffered prejudice. Smith’s third assignment of error is therefore found not well-taken.

The State’s First Assignment of Error

{¶ 53} The State argues that Smith’s sentence is contrary to law because the trial court did not impose indefinite sentences for each of his qualifying offenses under R.C. 2929.14(A)(2)(a). “A sentence that does not comply with a mandatory provision of the

sentencing statutes is contrary to law.” *State v. Wilson*, 2026-Ohio-216, ¶ 105 (6th Dist.), citing *State v. Williams*, 2022-Ohio-2439, ¶ 50 (6th Dist.).

{¶ 54} R.C. 2929.14(A) provides in relevant part:

[I]f the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a prison term that shall be one of the following:

(1)(a) For a felony of the first degree committed on or after March 22, 2019, the prison term shall be an indefinite prison term with a stated minimum term selected by the court of three, four, five, six, seven, eight, nine, ten, or eleven years and a maximum term that is determined pursuant to section 2929.144 of the Revised Code....

...

(2)(a) For a felony of the second degree committed on or after March 22, 2019, the prison term shall be an indefinite prison term with a stated minimum term selected by the court of two, three, four, five, six, seven, or eight years and a maximum term that is determined pursuant to section 2929.144 of the Revised Code....

R.C. 2929.144(B)(2) further instructs:

(B) The court imposing a prison term on an offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree shall determine the maximum prison term that is part of the sentence in accordance with the following:

...

(2) If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that some or all of the prison terms imposed are to be served consecutively, the court shall add all of the minimum terms imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree that are to be served consecutively and all of the definite terms of the felonies that are not qualifying felonies of the first or second degree that are to be served consecutively, and the maximum term shall be equal to the total of those terms so added by the court plus fifty per cent of the longest minimum term or definite term for the most serious felony being sentenced.

{¶ 55} “[T]he indefinite prison terms will consist of a minimum term, selected by the sentencing judge from a range of terms set forth in R.C. 2929.14(A), and a maximum term determined by formulas set forth in R.C. 2929.144.” *State v. Soto*, 2021-Ohio-3859, ¶ 16, quoting *State v. Montgomery*, 2020-Ohio-5552, ¶ 20 (6th Dist.).

{¶ 56} Smith was found guilty of involuntary manslaughter in violation of R.C. 2903.04(A) and (C), a felony of the first degree (Count 3); improper discharge of a firearm into a habitation in violation of R.C. 2923.161(A)(1) and (C), a felony of the second degree (Count 10); and improper discharge of a firearm on or near a prohibited premises in violation of R.C. 2923.162(A)(3) and (C)(4), a felony of the first degree (Count 11). These offenses were committed after the March 22, 2019 effective date. Therefore, each of Smith’s three offenses is a qualifying felony under R.C. 2929.14(A).

{¶ 57} Although the trial court properly ordered Smith to serve an indefinite prison term of a minimum of 10 years to a maximum of 15 years as to Count 3, involuntary manslaughter, it imposed definite prison terms as to Counts 10 and 11. As such, Smith’s sentence is contrary to law. *See State v. Wilson*, 2026-Ohio-216 (where trial court failed to impose a required indefinite prison term on the appellant’s burglary offense, the sentence was contrary to law). Accordingly, the State’s first assignment of error is found well-taken, and the matter will be remanded for resentencing in accordance with R.C. 2929.14(A)(1)(a) and (A)(2)(a).

The State's Second Assignment of Error

{¶ 58} The State argues that Smith's sentence is also contrary to law because the journal entry memorializing his sentence states an incorrect term of post-release control. "R.C. 2967.28(B) requires that prison sentences for certain felonies include a mandatory term of postrelease control to be imposed by the parole board after the offender is released from imprisonment." *State v. Bates*, 2022-Ohio-475, ¶ 10. R.C. 2967.28(B) and (C) identify the length of the term of the post-release control supervision for each degree of felony. *Id.* "At the sentencing hearing, the court must notify the offender of this mandatory supervision under R.C. 2967.28(B)." *Id.*, citing R.C. 2929.19(B)(2)(d) and (f). The trial court must also notify the defendant if he or she "violates that supervision or a condition of post-release control..., the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender." *Id.*

{¶ 59} "It is settled that 'a trial court has a statutory duty to provide notice of postrelease control at the sentencing hearing' and that 'any sentence imposed without such notification is contrary to law.'" *State v. Grimes*, 2017-Ohio-2927, ¶ 8, citing *State v. Jordan*, 2004-Ohio-6085, ¶ 23. "[O]nce the court orally provides all the required advisements at the sentencing hearing, it must then incorporate those advisements into the sentencing entry." *Bates* at ¶ 12, citing *Grimes* at ¶ 8, citing *Jordan* at ¶ 17.

{¶ 60} Therefore, to validly impose post-release control, the court must first provide all the required advisements at the sentencing hearing, and the sentencing entry must include:

(1) whether postrelease control is discretionary or mandatory, (2) the duration of the postrelease-control period, and (3) a statement to the effect that the [Adult Parole Authority] will administer the postrelease control pursuant to R.C. 2967.28 and that any violation by the offender of the conditions of postrelease control will subject the offender to the consequences set forth in that statute.

Bates at ¶ 12, citing *Grimes* at ¶ 1.

{¶ 61} The record reflects that the trial court properly notified Smith that post-release control was mandatory in his case and that the term would range between two and five years. *See* R.C. 2967.28(B)(2) (explaining that the “period of post-release control required by this division for an offender shall be...[f]or a felony of the first degree that is not a felony sex offense, up to five years, but not less than two years”). However, the sentencing judgment entry states: “Defendant notified of post-release control as follows: “18 months– 3 years mandatory as to Count 10.” Accordingly, the State’s second assignment of error is found well-taken, and the matter will be remanded to the trial court with instructions to correct the sentencing judgment entry to reflect the post-release control notification that Smith received at his sentencing hearing.

Conclusion

{¶ 62} The judgment of the Lucas County Court of Common Pleas is affirmed in part and reversed in part consistent with this opinion. The matter is remanded to the trial court for resentencing in accordance with R.C. 2929.14(A)(1)(a) and (A)(2)(a) and for correction of the sentencing judgment entry to reflect the post-release control notification that Smith received at sentencing.

{¶ 63} Appellant is ordered to pay the costs of appeal pursuant to App.R. 24.

State of Ohio v. Kenan Smith, Jr.
Appeals Case No.: L-25-00180
Trial Court Case No.: CR0202402390

Judgment affirmed in part and reversed in part.

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