

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

MICHAEL R. GAY,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY

Case No. 26 MA 0029

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2025 CR 00226

BEFORE:

Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:

Affirmed.

Atty. Lynn Maro, Mahoning County Prosecutor, and *Atty. Kristie M. Weibling*, Assistant
Prosecutor, for Plaintiff-Appellee

Atty. Robert T. McDowall, Jr., for Defendant-Appellant

Dated: October 21, 2026

WAITE, P.J.

{¶1} Appellant Michael R. Gay appeals his sentence, arising from a negotiated plea agreement, for two counts of gross sexual imposition based on Appellant's sexual assault of the 11-year-old granddaughter of his girlfriend. The trial court imposed two consecutive 4-year prison sentences, for a total of 8 years in prison. Appellant argues that consecutive sentences were not appropriate because the record does not support two of the findings made by the court. On the contrary, the record fully supports the imposition of consecutive sentences, and the judgment of the trial court is affirmed.

Facts and Procedural History

{¶2} On or about March 22, 2025 Appellant sexually assaulted the 11-year-old granddaughter of his girlfriend. Appellant was 54 years old at the time. As a result, he was indicted in Mahoning County on two counts of gross sexual imposition, R.C. 2907.05(A)(4) (third degree felony); importuning, R.C. 2907.07(A) (third degree felony); and disseminating matter harmful to minors, R.C. 2907.31(A) (fourth degree felony).

{¶3} On December 10, 2025 Appellant entered into a written Crim.R. 11 plea agreement. He agreed to plead guilty to two counts of gross sexual imposition with maximum possible sentences of five years in prison on each count. The state agreed to dismiss counts three and four, and to recommend eight years in prison. The court accepted the plea on December 10, 2025 after a change of plea hearing. The sentencing hearing took place on February 12, 2026. The court sentenced Appellant to two 48-month prison terms to be served consecutively, five years of postrelease control, and designated Appellant a Tier II Sex Offender. This appeal followed.

ASSIGNMENT OF ERROR

FINDINGS OF THE TRIAL COURT USED TO IMPOSE CONSECUTIVE SENTENCES ARE NOT CLEARLY AND CONVINCINGLY ESTABLISHED BY THE RECORD REQUIRING REMAND FOR RESENTENCING.

{¶4} Appellant argues that the findings made by the trial court to order the imposition of consecutive sentences is not supported by the record. Specifically, he contends that there is no evidence to support the victim suffered ongoing adverse impacts from the crime, or that his crime involved a course of conduct. Appellee responds that the trial court made the necessary findings pursuant to R.C. 2929.14(C) to impose consecutive sentences, and that the record must simply contain some support for the court's findings. Appellee contends that both of the trial court's findings are amply supported in the record.

{¶5} Before reaching Appellant's argument, we first address whether Appellant raised his argument to the trial court. On appeal, Appellant contends there was no evidence he engaged in a course of conduct or that his victim suffered any particular harm. These evidentiary matters could easily have been cured at the trial court level if Appellant had raised an objection or even mentioned them as concerns at sentencing. Failure to object to sentencing matters at the trial court level, including the imposition of consecutive sentences, results in the forfeiture of claimed error on appeal. "[B]ecause Whitaker failed to object to the imposition of consecutive sentences at the sentencing hearing, he has forfeited this issue, absent plain error." *State v. Whitaker*, 2022-Ohio-2840, ¶ 166.

{¶6} R.C. 2929.14(C)(4) requires a trial court to make three findings before imposing consecutive sentences: (1) consecutive sentencing is necessary to protect the public from future crime or to punish the offender; (2) the 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) the court must make one of the findings required by sub-sections (a), (b), or (c). In this case, the trial court relied on sub-section (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.

{¶7} The appellate standard in a review of a felony sentence is primarily found in R.C. 2953.08(G)(2). An appellate court's standard of review is not whether the sentencing court abused its discretion, but rather:

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 . . . (C)(4) of section 2929.14 . . .; (b) That the sentence is otherwise contrary to law.

See *State v. Marcum*, 2016-Ohio-1002, ¶ 1.

{¶8} The trial court must make the R.C. 2929.14(C)(4) findings at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to

state reasons in support of its findings, nor must it recite certain talismanic words or phrases in order to be considered to have complied. *State v. Bonnell*, 2014-Ohio-3177, ¶ 29.

{¶9} A sentence is otherwise contrary to law if the trial court fails to make the consecutive sentencing findings required by R.C. 2929.14(C). *State v. Sargent*, 2025-Ohio-2579, ¶ 39 (7th Dist.). Appellant concedes that the trial court made the necessary findings, here, and that one of the findings was that the crimes were committed as part of a course of conduct.

{¶10} There is no question that the trial court made the appropriate findings at the sentencing hearing and in the sentencing entry. The court found that consecutive sentences were necessary pursuant to R.C. 2929.14(C) when it found consecutive sentences were necessary to protect the public from future harm and to punish the offender, and that consecutive sentences were not disproportionate to the seriousness of the offender's conduct and to the danger the offender posed to the public. The court also found that at least two 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 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. Appellant does not question that the court properly made these findings.

The appellate-review statute does not require that the appellate court conclude that the record supports the trial court's findings before it may affirm the sentence. Rather, the statute only allows for modification or

vacation only when the appellate court “clearly and convincingly finds” that the evidence does not support the trial court’s findings.

State v. Mills, 2026-Ohio-2917, ¶ 13 (5th Dist.), citing *State v. Glover*, 2024-Ohio-5195, ¶ 43-46.

{¶11} Many recent sentencing appeals now coming before this Court, including this one, seek to overturn consecutive sentences on the grounds that the record does not support the consecutive sentencing findings, asking in essence for this Court to overturn the sentence based on the manifest weight of the evidence. We have recently rejected this argument:

An appellate court cannot weigh the evidence in the record and substitute its judgment for that of the trial court concerning a sentence that best reflects compliance with the overriding purposes of felony sentencing. *State v. Jones*, 2020-Ohio-6729, paragraph one of the syllabus. An appellate court cannot make a ‘freestanding inquiry’ regarding whether a felony sentence is appropriate. *Id.* at ¶ 42.

State v. Adams, 2026-Ohio-1128, ¶ 14 (7th Dist.).

{¶12} Appellant’s first argument concerns the trial court’s finding that “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.” R.C. 2929.14(C)(4)(b). Based on this record, Appellant’s argument is wholly misplaced. Appellant committed two acts of gross sexual imposition against the 11-year-old

granddaughter of his girlfriend. The court’s finding that great harm was incurred is completely supported. R.C. 2907.05(A)(4) states:

No person shall have sexual contact with another; cause another to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies: . . . (4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person. “Sexual contact” is defined as: “touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.”

{¶13} Based on the statutory definitions, Appellant pleaded guilty to two acts of touching the erogenous zones of his 11-year-old victim for the purpose of sexual gratification. The record reflects Appellant was born in 1971 and was 54 years old when the crimes were committed. He was in a position similar to that of a grandfather to the victim, and was an authority figure to her. Nothing more is required in order to conclude that Appellant caused great or unusual harm to the child, supporting consecutive sentences. *See, e.g., State v. Gaffney*, 2025-Ohio-4963, ¶ 103 (7th Dist.), appeal not allowed, 2026-Ohio-667 (even if the record does not directly show serious physical or mental harm, such harm can be inferred from nature of the crimes themselves).

{¶14} Appellant assumes the trial court made its findings as to great or unusual harm simply by restating the words of the gross sexual imposition statute, and that this

finding was not based on facts in the record. However, absent an express demonstration from the record to the contrary, we must presume that the trial court reviewed the facts and correctly applied the relevant law to its decision. *State v. Sarigianopoulos*, 2013-Ohio-5772, ¶ 8 (7th Dist.). The facts in the record demonstrate the great and unusual harm caused in this case.

{¶15} The record contains a great deal of factual information. Appellant was originally charged with not only the two counts of gross sexual imposition, but also with importuning and disseminating matter harmful to juveniles. Charges dismissed as part of a plea agreement may be used to support consecutive sentences: “Valid sentencing considerations may also include uncharged conduct, prior arrests, facts supporting a charge that resulted in acquittal, and facts related to a charge that was dismissed under a plea agreement.” *State v. Riley*, 2025-Ohio-3276, ¶ 15-16 (8th Dist.) (in reference to imposing consecutive sentences). Thus, the record reveals additional criminal acts in this matter that support consecutive sentences.

{¶16} The sentencing hearing transcript contains graphic details of the crime. Appellant was home alone with the victim when he summoned her to his bedroom. He ordered her to take off her clothes. He ordered her to sit on his lap, pretend it was someone’s face, and spread her legs. He instructed the victim on how to pleasure herself. He touched her vagina with his fingers. He instructed her to put her fingers in her vagina. Appellant licked his fingers and touched her breasts. He pulled out his penis and masturbated while the victim touched herself. Appellant told the victim to touch him, but she refused. While this was happening, he exposed the victim to pornography. (2/12/26 Tr., pp. 2-3.)

{¶17} He then told the victim to get dressed so they could visit a friend of his. While in the car, the victim recorded their conversation. In the recording, Appellant can be heard speaking at length about the victim pleasuring herself in different ways. (2/12/26 Tr., pp. 4-6.) He told her she could not talk about these things with other people because they would think she was “a freak.” He told her they would both go to jail if she reported the assault. Again, the many, various types of harm that these actions would certainly cause an 11-year-old child can be inferred from the context of the crimes.

{¶18} Appellant, in one section of his brief, argues that the case should be remanded because the record does not clearly and convincingly establish that consecutive sentences are necessary. This is not our standard for reviewing consecutive sentences. R.C. 2953.08(G)(2).

“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.” *State v. Alexander*, 2025-Ohio-5215, ¶ 8 (7th Dist.), appeal not allowed, 2026-Ohio-475. An appellate court “must have 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.” *State v. Gwynne*, 2023-Ohio-3851, ¶ 15. “The statutory language does not require that the appellate court have a firm belief or conviction that the record supports the findings.” *Id.*

State v. Taylor, 2026-Ohio-2893, ¶ 8 (7th Dist.).

{¶19} Appellant has attempted to invert the standard for our review to his benefit. We review to determine whether the record clearly and convincingly fails to support the court’s findings, rather than whether there is clear and convincing support for the findings. “Clearly and convincingly” means more than a preponderance, but less than beyond a reasonable doubt. *State v. Currence*, 2024-Ohio-1320, ¶ 22 (7th Dist.). Thus, even if the record only somewhat supported the findings, we must affirm. In order to reverse or modify the consecutive sentence, we are required to have a firm belief or conviction that the record does not support the consecutive sentencing findings. *State v. Wise*, 2021-Ohio-2353, ¶ 8 (7th Dist.). “[A]n appellate court’s determination that the record does not support a sentence does not equate to a determination that the sentence is ‘otherwise contrary to law’ as that term is used in R.C. 2953.08(G)(2)(b).” *Jones* at ¶ 32.

{¶20} Appellant’s second argument is that the record does not support the court’s determination that he engaged in a course of conduct. The phrase “course of conduct” is not defined in R.C. 2929.14(C)(4)(b). Courts have defined “course of conduct” in this context:

The supreme court has held that, for purposes of a death specification in a case involving multiple murders, a course of conduct may be established by factual links, including time, location, weapon, cause of death, or similar motivation. *State v. Short*, 129 Ohio St.3d 360, 2011-Ohio-3641, 952 N.E.2d 1121, ¶ 144. Ohio Jury Instructions has included this definition in at least one of its instructions. See 2 Ohio Jury Instructions 513.49(E)(6). Similarly, “some connection, common scheme, or some pattern or psychological thread that ties” offenses together can establish a

single course of conduct. *State v. Sapp*, 105 Ohio St.3d 104, 2004-Ohio-7008, 822 N.E.2d 1239, syllabus.

State v. Summers, 2014-Ohio-2441, ¶ 14 (2d Dist.).

{¶21} The record reflects that at least two acts of gross sexual imposition took place. Appellant did not commit a single, isolated crime. The very fact that Appellant pleaded guilty to two acts of the same crime on the same day implies a course of conduct. Based on the details contained in the sentencing hearing transcript, the crimes took place over an extended period of time and involved many different aspects. He ordered the victim to the bedroom, ordered her to get undressed, ordered her to touch herself, he touched her, and there was pornography viewed during all of these acts. Appellant then took the victim out of the house, drove around in his car with her, and continued to talk about the crimes and the possibility of continuing these crimes in the future. It is not difficult to determine Appellant engaged in a course of criminal conduct in this case.

{¶22} Appellant's assignment of error has no merit and is overruled.

Conclusion

{¶23} Appellant argues that consecutive sentences were not appropriate because he contends the record does not support that the victim suffered any great or unusual harm, or that there was a course of conduct involved in this case. This Court reviews the trial court's consecutive findings to determine if the record clearly and convincingly fails to support the findings. The context of the crimes themselves, along with the detailed description of them in the sentencing transcript, indicate that the victim suffered great or unusual harm. The course of conduct involved in these crimes is also apparent from the

record. Appellant's assignment of error is overruled and the judgment of the trial court is affirmed.

Robb, J., concurs.

Hanni, J., concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.