

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 115943
	:	
v.	:	
	:	
AUSTIN CLEVELAND,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 17, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-24-694343-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Chloe Robinson, Assistant Prosecuting Attorney, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Rick Ferrara, Assistant Public Defender, *for appellant*.

MICHAEL JOHN RYAN, J.:

{¶ 1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc.App.R. 11.1. The purpose of an accelerated appeal is to allow an

appellate court to render a brief and conclusory decision. *State v. Trone*, 2020-Ohio-384, ¶ 1 (8th Dist.), citing *State v. Priest*, 2014-Ohio-1735, ¶ 1 (8th Dist.).

{¶ 2} In this appeal, defendant-appellant Austin Cleveland (“Cleveland”) contends that the trial court’s imposition of sentences on each of the two one-year firearm specifications to which he pleaded guilty violated his constitutional protection against double jeopardy. After review of the facts and pertinent law, we affirm the trial court’s judgment.

{¶ 3} In August 2024, Cleveland was charged with several crimes. A co-defendant, Desiree McClay (“McClay”), was also charged in the indictment. According to the State’s representations at sentencing, the victim had sold Cleveland and McClay a car and was attempting to repossess it for nonpayment when Cleveland and McClay confronted him, banging on the victim’s car window. The defendants then followed the victim as he drove away, and Cleveland shot at him. Cleveland got out of the vehicle he was in, chased the victim, knocked him to the ground, and stole his wallet and car keys.

{¶ 4} After pretrial proceedings, the State offered Cleveland and McClay a “package plea”; both accepted. Cleveland pleaded guilty to an amended Count 1, felonious assault with a one-year firearm specification, and an amended Count 4, discharge of firearm on or near prohibited premises with a one-year firearm specification; both counts were amended to delete the three- and five-year firearm specifications. The remaining two counts against Cleveland were dismissed.

{¶ 5} The trial court sentenced Cleveland to a stated prison term of four to five years. The sentence included, without objection, a mandatory prison term of two years on the gun specifications — one year for each specification to be served consecutively to each other and consecutively to the sentence on the underlying counts. In his sole assignment of error in this appeal, Cleveland challenges the sentences on both of the gun specifications. According to Cleveland, the trial court’s sentence exposes him to double punishment for possessing the same gun.

{¶ 6} Cleveland did not object at sentencing to the imposition of consecutive terms on the gun specifications as violative of his constitutional right against double punishment. Generally, the failure to raise at the trial-court level the issue of constitutionality of a statute or its application constitutes a waiver of such on appeal. *State v. Awan*, 22 Ohio St.3d 120 (1986), syllabus. But application of the *Awan* waiver doctrine is discretionary. *In re M.D.*, 38 Ohio St.3d 149 (1988), syllabus (“Even where waiver is clear, this court reserves the right to consider constitutional challenges to the application of statutes in specific cases of plain error or where the rights and interests involved may warrant it.”); *see also* Crim.R. 52(B) (providing that “[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court”); *State v. Zuern*, 32 Ohio St.3d 56 (1987).

{¶ 7} We exercise our discretion to consider Cleveland’s assigned error and find that the issue presented therein has been settled by the Supreme Court of Ohio and this court — precedent we will follow.

{¶ 8} R.C. 2929.14(B)(1)(b) provides, in relevant part, that “[e]xcept as provided in division (B)(1)(g) of this section, a court shall not impose more than one prison term on an offender under division (B)(1)(a) of this section for felonies committed as part of the same act or transaction.” The exception set forth in R.C. 2929.14(B)(1)(g) provides:

If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, *felonious assault*, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose on the offender the prison term specified under division (B)(1)(a) of this section for each of the two most serious specifications of which the offender pleads guilty and, in its discretion, may also impose on the offender the prison term specified under that division for any or all of the remaining specifications.

(Emphasis added.)

{¶ 9} In *State v. Bollar*, 2022-Ohio-4370, the Supreme Court of Ohio recognized the exception under R.C. 2929.14(B)(1)(b) and, in interpreting the plain language of R.C. 2929.14(B)(1)(g), held that the statute requires that the offender receive prison terms for each of the two most serious firearm specifications when the offender pleads guilty to multiple felony offenses (and at least one of those is a felony listed in the statute) and also pleads guilty to multiple accompanying specifications. *See id.* at ¶ 19-20.

{¶ 10} Here, because Cleveland was convicted of two or more felonies, one of which was felonious assault, and he was convicted of two one-year firearm specifications of the type described in R.C. 2929.14(B)(1)(a)(iii), the trial court was

required to impose a prison term for each of the two most serious specifications of which Cleveland was convicted.

{¶ 11} We are not persuaded by Cleveland’s contention that this case is distinguishable from *Bollar* because, here, “[n]either of Cleveland’s two specifications were more serious nor any different than the other.” (Appellant’s brief, p. 6.) The same was true in *Bollar*.

{¶ 12} The defendant in *Bollar* pleaded guilty to three counts — involuntary manslaughter, felonious assault, and having weapons while under disability — each with a three-year firearm specification; the counts were based on a single shooting incident that resulted in the death of the victim. *See State v. Bollar*, 2021-Ohio-1578, ¶ 2, 5 (5th Dist.). At sentencing, the trial court merged the involuntary-manslaughter and felonious-assault convictions. *Id.* at ¶ 8-9. Despite the merger of those two underlying convictions, the trial court separately sentenced the defendant on both three-year firearm specifications. *Id.* The Supreme Court’s decision in *Bollar*, 2022-Ohio-4370, does not even mention that the two firearm specifications on which the defendant was sentenced were both three-year specifications. The Supreme Court “did not base its decision on the facts of the case or the offenses that merged. Instead, the Court focused on the plain language of R.C. 2929.14(B)(1)(g)” *State v. Ali*, 2024-Ohio-5324, ¶ 9 (8th Dist.). The fact that *Bollar* was convicted of two three-year firearm specifications did not change the outcome; likewise, the fact that Cleveland was convicted of two one-year specifications does not change the outcome.

{¶ 13} This court has followed *Bollar* since its release, and we continue to follow it as binding precedent. *See, e.g., State v. Yaeger*, 2026-Ohio-2186, ¶ 52-54 (8th Dist.); *State v. Buchanan*, 2025-Ohio-5348, ¶ 27 (8th Dist.); *State v. Dobson*, 2025-Ohio-2148, ¶ 66-67 (8th Dist.); and *Ali* at ¶ 12-15. Thus, Cleveland's sole assignment of error is overruled.

{¶ 14} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MICHAEL JOHN RYAN, JUDGE

MICHELLE J. SHEEHAN, A.J., and
LISA B. FORBES, J., CONCUR