

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 115428
	:	
v.	:	
	:	
STEVEN HARRIS, SR.,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART, VACATED IN PART,
REVERSED IN PART, AND REMANDED
RELEASED AND JOURNALIZED: October 8, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-20-654918-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, Zachary LaFleur and Michael R. Wajda,
Assistant Prosecuting Attorneys, and Sophie E. Kormos,
Certified Legal Intern, *for appellee*.

Moran & Fisher, Attorneys at Law, LLC, Susan J. Moran,
and Michael T. Fisher, *for appellant*.

LISA B. FORBES:

{¶ 1} Steven Harris, Sr. (“Harris”) appeals following a resentencing hearing
and the imposition of a 12-year term of imprisonment. After a thorough review of

the facts and the law, we affirm Harris’s sentence. We remand for the trial court to provide required postrelease-control advisements. We also reverse and vacate the trial court’s decision denying a supposed motion for early judicial release and remand for the trial court to issue a corrected entry deleting any reference to a motion for early judicial release.

I. Procedural History

{¶ 2} A jury found Harris guilty of four counts of drug possession in violation of R.C. 2925.11(A) (Counts 2, 4, 6, and 7), one count of possessing criminal tools in violation of R.C. 2923.14(A) (Count 9), and one count of having weapons while under disability in violation of R.C. 2923.13(A)(3) (Count 10). Count 4, drug possession, was a felony of the first degree; Counts 2 and 6, drug possession, were third-degree felonies; Count 7, drug possession, was a felony of the fifth degree.

{¶ 3} At Harris’s first sentencing hearing, the trial court imposed an 11-year definite term of incarceration for Count 4, the first-degree felony offense, and one 12-month term of incarceration for a third-degree felony drug-possession count, to be served consecutively to Count 4. Sentences imposed on the other charges ran concurrently to these sentences resulting in a total term of incarceration of 12 years.

{¶ 4} However, in the judgment entry of conviction issued on January 2, 2024, the court imposed an aggregate sentence of 13 years of imprisonment.¹ The

¹ In Harris’s first appeal, *State v. Harris*, 2024-Ohio-5807 (8th Dist.) (“*Harris I*”), the State conceded the disparity in the trial court’s judgment entry with the aggregate sentence announced in open court. However, due to the disposition of *Harris I*, the issue has been rendered moot.

court ordered the 11-year mandatory sentence on the first-degree felony drug-possession charge in Count 4 to run consecutively to the two 12-month sentences imposed on Counts 2 and 6, the two third-degree felony drug-possession counts, which were themselves ordered to run consecutively to each other. Sentences on all other counts were imposed concurrently.

{¶ 5} Harris appealed. In *Harris I* this court found that

the sentences imposed on Counts 4 and 6 are contrary to law based on the State's concession that those two offenses should have merged. Both of those sentences are vacated, and the matter remanded for the purposes of the State's election on resentencing. And finally, the consecutive sentences on all counts are reversed. At the resentencing hearing, the court must impose a sentence on either Count 4 or 6 (at the State's discretion) and then, if applicable, make the findings under R.C. 2929.14(C)(4) and include those in a new final entry of conviction.^[2]

Id. at ¶ 24.

{¶ 6} The trial court reconvened for Harris's resentencing hearing on July 14, 2025, ("resentencing hearing") at which the trial court made the following findings regarding consecutive sentencing:

I am ordering that the defendant serve his prison terms consecutively because I find that consecutive service is necessary to protect the public from future crime and to adequately punish the offender pursuant to Revised Code 2929.14(C)(4). I further find that consecutive sentences are not disproportionate to the seriousness of the defendant's conduct and the danger the defendant still poses to the public.

I find specifically that the defendant under subsection (B) committed at least two of his multiple offenses as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses

² This court noted that the trial court failed to impose a non-life indefinite sentence for the qualifying first-degree felony. However, because that was not an issue raised on appeal by either party, no mandate will be issued in that regard.

thus 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 would adequately reflect the seriousness of the defendant's conduct.

Regarding merged Counts 4 and 6, the trial court imposed an 11-year prison term on Count 4. The trial court informed Harris, “Everything else I told you, sir, at the time of your sentencing on January 2nd of 2024 is unchanged.”

{¶ 7} The trial court issued a journal entry on July 17, 2025, which reflected the findings it had made at the resentencing hearing in support of consecutive sentences. The journal entry announced a total sentence of 12 years of incarceration as follows: Count 2, 12 months incarceration to be served consecutively to Count 4; Count 4, 11 years in prison; Count 6 merged into Count 4; Count 7, 12 months in prison to run concurrently to all other counts; Count 9, 12 months in prison to run concurrently to all other counts; Count 10, 12 months in prison to run concurrently to all other counts. For each of the counts on which the court imposed a prison sentence, the court also imposed a term of postrelease control and the journal entry further explained the operation of postrelease control.

{¶ 8} Harris appeals from this journal entry, raising the following assignments of error:

I. The consecutive sentence imposed by the court on remand is not clearly and convincingly supported by the record.

II. The sentence imposed by the court is contrary to law because it failed to inform appellant of post-release control, pursuant to R.C. 2929.19.

III. The court erred by converging appellant’s allocution into an oral motion for judicial release, denying Appellant’s right to due process as provided in the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 16 of the Ohio Constitution.

II. Law and Analysis

A. Assignment of Error No. 1: Consecutive Sentences

{¶ 9} In his first assignment of error, Harris argues that the trial court's imposition of consecutive sentences is not supported by the record because the trial court "failed to provide sufficient reasons to support the imposition of consecutive sentences." We disagree.

{¶ 10} To impose consecutive prison sentences, a trial court must make three findings: first, the court must find that consecutive sentences are "necessary to protect the public from future crime or to punish the offender." R.C. 2929.14(C)(4). Second, the court must find "that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public." *Id.* Third, the court must find that at least one of the following applies:

(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.

Id.

{¶ 11} To make the requisite statutory findings, “the [trial] court must note that it engaged in the analysis’ and that it ‘has considered the statutory criteria and specifie[d] which of the given bases warrants its decision.” *State v. Bonnell*, 2014-Ohio-3177, ¶ 26, quoting *State v. Edmonson*, 86 Ohio St.3d 324, 326 (1999). The trial court must “incorporate its findings into its sentencing entry.” *Bonnell* at ¶ 37. The trial court is not required to state reasons that support its findings or to make a “talismanic incantation of the words of the statute.” *Id.*

{¶ 12} Our review of consecutive felony sentences is guided by R.C. 2953.08(G)(2), which “compels appellate courts to modify or vacate sentences if they find by clear and convincing evidence that the record does not support any relevant findings under . . . (C)(4) of section 2929.14” *State v. Marcum*, 2016-Ohio-1002, ¶ 22; *see also State v. Jones*, 2020-Ohio-6729, ¶ 28.

{¶ 13} “The statute is written in the negative; that is, an appellate court does not need to clearly and convincingly find that the record supports the findings in order to affirm, but instead must clearly and convincingly find that the record does not support the findings in order to reverse or modify a sentence.” *State v. Roberts*, 2017-Ohio-9014, ¶ 10 (8th Dist.), citing *State v. Venes*, 2013-Ohio-1891, ¶ 19 (“If the court made the required findings in order to impose consecutive sentences, we must affirm those sentences unless we ‘clearly and convincingly’ find that the record does not support the court’s findings”). The Ohio Supreme Court recently explained that appellate courts “generally defer to trial courts on sentencing decisions” and

that R.C. 2953.08(G) does not “require consideration of the aggregate prison term.” *State v. Polizzi*, 2026-Ohio-2588, ¶ 17, 26.

{¶ 14} Harris does not dispute that at the resentencing hearing, the trial court made the necessary findings under R.C. 2929.14(C)(4) or that those findings were incorporated into the resentencing journal entry. Rather, Harris argues that the trial court did not reference anything unique about this case to support imposing consecutive sentences or “how this defendant is worse than other defendants who only require concurrent prison sentences.” We find Harris’s arguments unpersuasive.

{¶ 15} This court has explained, “There is no authority requiring the trial court to state reasons to support its findings or engage in additional analysis.” *State v. Davis*, 2025-Ohio-2863, ¶ 26 (8th Dist.). Nonetheless, here the trial court did explain that it had considered “the record itself, the relevant, material, and competent statements made [at the resentencing hearing], the decision of the Court of Appeals, all other factors, the defendants’ prior record, the nature of the offenses.”

{¶ 16} Contrary to Harris’s argument that the trial court did not explain in what way Harris is “worse” than some hypothetical other defendant who received a concurrent sentence, the Supreme Court has recently explained that R.C. 2929.14(C)(4)’s reference to proportionality must be distinguished from consistency. Consistency relates “to sentences given others while [proportionality] relates to the sentences given to the offender, i.e., whether the punishment fits the

crime, not how it compares with the punishment of others.” *Polizzi*, 2026-Ohio-2588, at ¶ 16.

{¶ 17} Assessing the sentence imposed on Harris, we find that Harris has not demonstrated that the trial court’s consecutive-sentencing findings are clearly and convincingly not supported by the record. The record demonstrates that Harris was convicted of multiple drug-possession charges, including possession of cocaine and of a fentanyl-related compound or combination thereof. Harris had multiple prior convictions for trafficking and possession and had previously been incarcerated for those prior offenses. Yet, Harris continued to possess dangerous, illicit substances in significant quantities; Count 4 related to possession of greater than 500 unit doses of fentanyl but less than 1,000 doses or greater than 50 grams but less than 100 grams of the drug. In addition to possession of drugs and possessing criminal tools, Harris was convicted in this case of one count of having weapons while under disability.

{¶ 18} Accordingly, Harris’s first assignment of error is overruled.

B. Assignment of Error No. 2 — Postrelease-Control Advisements

{¶ 19} In his second assignment of error, Harris argues that at the resentencing hearing, the trial court failed to advise him of the operation of postrelease control. Harris requests this court to nullify his postrelease control unless the notifications are provided to him. The State concedes the advisements were not given. We agree the advisements were required but not given and remand this case for the limited purpose of correcting the error. *See* R.C. 2929.191(C).

{¶ 20} Pursuant to R.C. 2929.19, Harris is entitled to be informed by the trial court that he will be subject to postrelease control and that the parole board could impose a prison term for a violation of postrelease control. *See* R.C. 2929.19(B)(3)(d) and (e); *State v. Tolson*, 2023-Ohio-3734 (2nd Dist.). At Harris’s original sentencing hearing, the trial court informed Harris that he would be subject to postrelease control but did not provide any explanation of the role of the adult parole authority or the potential for an additional prison term if Harris were to violate postrelease control. The trial court made no mention of postrelease control at Harris’s resentencing hearing.

{¶ 21} Assignment of error No. 2 is sustained, and this matter is remanded for the limited purpose of providing Harris with the required postrelease-control advisements. *See* R.C. 2929.191(C).

C. Assignment of Error No. 3 — Harris’s Allocution

{¶ 22} In his third assignment of error, Harris argues that the trial court erred when it converted his allocution into a motion for early judicial release and then denied it. We agree.

{¶ 23} After a discussion between the trial court and Harris regarding whether *Harris I* addressed double jeopardy, the following colloquy occurred:

THE COURT: Is there anything else you wish to tell me, sir?

THE DEFENDANT: No, Your Honor.

THE COURT: Very well. A moment, please.

THE DEFENDANT: Your Honor, can I say one more thing, please?

THE COURT: This is your last thing. Yes.

THE DEFENDANT: Yes, Your Honor. Okay, so I have really been rehabilitating myself since the date that this happened in 2020. It's been four years and seven months, including the time I spent in prison. And I have really been — really have rehabilitated myself. I have been in honor dorm for 13 months. Never had a ticket since the day I left here. And I really have been doing good as far as my thinking and making good — the right decisions. And I just want — I want to ask for mercy of the Court to give me a chance to be — to be the good citizen that I know I can be.

THE COURT: Thank you. I will consider that to be an oral motion for judicial release, and it is hereby denied as unpersuasive for the reasons I set forth on the record at the time of your sentencing, which was just last year. A moment, please.

{¶ 24} The trial court's July 17, 2025 journal entry of conviction following the resentencing hearing stated, "Defendant's oral motion for judicial release is hereby denied as unpersuasive."

{¶ 25} Pursuant to Crim.R. 32(A)(1), "At the time of imposing sentence, the court shall . . . address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment." The Ohio Supreme Court has recognized this rule "unambiguously require[s] that an offender be given an opportunity for allocution whenever a trial court imposes a sentence at a sentencing hearing." *State v. Jackson*, 2016-Ohio-8127, ¶ 10, citing *State v. Campbell*, 90 Ohio St.3d 320 (2000), paragraph one of the syllabus. The right to allocution has been recognized to apply at resentencing. At a resentencing hearing: "[The] right of allocution is confined to the matters remanded to the court for resentencing." *State v. Novoa*, 2023-Ohio-3595, ¶ 28 (7th Dist.), quoting *State v. King*, 2011-Ohio-3985, ¶ 9 (8th Dist.).

{¶ 26} Unlike allocution, a motion for judicial release pursuant to R.C. 2929.20 seeks early release from a prison sentence. Granting such a motion requires consideration of whether the defendant is an “eligible offender” as that term is defined by statute, including having served a required portion of his sentence and other criteria. A court “shall hold only one hearing for any offender under consideration as an eligible offender.” R.C. 2929.20(C)(1)(e).

{¶ 27} We find that when Harris was communicating with the court at the resentencing hearing, he exercised his right to allocution; he did not make an oral motion for judicial release. While speaking with the judge at his resentencing hearing, Harris did not request release from prison and he did not address any of the criteria for qualifying as an eligible offender. He described for the judge what he considered to be his good behavior while incarcerated and requested mercy. But, at no time did Harris specifically request release. Moreover, Harris was represented by counsel at the resentencing hearing and counsel made no request for Harris’s release.

{¶ 28} In light of the foregoing, assignment of error No. 3 is sustained. We reverse and vacate the trial court’s denial of a motion for judicial release. We also remand to the trial court to issue a corrected journal entry deleting any reference to a motion for early judicial release.

{¶ 29} The judgment of the trial court is affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. Specifically, Harris’s consecutive sentences are affirmed. This matter is remanded for the trial court to

provide Harris with the required advisements regarding postrelease control. Finally, the trial court's decision denying a motion for judicial release is reversed. That portion of the journal entry is vacated. This matter is remanded for issuance of a journal entry deleting any reference to a motion for judicial release.

It is ordered that appellant and appellee share equally 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.

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

LISA B. FORBES, PRESIDING JUDGE

MICHELLE J. SHEEHAN, A.J., and
MICHAEL JOHN RYAN, J., CONCUR

