

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 116144
	:	
v.	:	
	:	
ROSCO HILLIARD,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

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

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-25-701922-A

Appearances:

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

Cullen Sweeney, Cuyahoga County Public Defender, and Jennifer J. Pritchard, Assistant Public Defender, *for appellant*.

SEAN C. GALLAGHER, P.J.:

{¶ 1} Rosco Hilliard appeals his guilty plea to offenses arising from his point-blank shooting into a vehicle with five passengers and his fleeing from the immediately responding officers, as well as the resulting aggregate term of

imprisonment of 12 to 15 years that includes the sentences imposed on the firearm specifications and the indefinite, nonlife felony term. For the following reasons, we affirm the convictions.

{¶ 2} Hilliard pleaded guilty to felonious assault in violation of R.C. 2903.11(A)(1), a second-degree qualifying felony offense that included a one-year firearm specification; improperly discharging a firearm into a habitation in violation of R.C. 2923.161(A)(1), also a second-degree qualifying felony offense; failure to comply with the order or signal of a police officer in violation of R.C. 2921.331(B), a third-degree felony offense under R.C. 2921.331(C)(4); tampering with evidence in violation of R.C. 2921.121(A)(1), a third-degree felony offense; and having weapons while under disability in violation of R.C. 2923.13(A)(2), a third-degree felony offense. The trial court imposed concurrent nonlife indefinite sentences of a six-to-nine-year term on the felonious-assault and improper-discharge counts, along with the attendant one-year sentence on the firearm specification, three years on the failure to comply that is statutorily consecutive to all other sentences, and two 24-month terms of imprisonment on the remainder, only one of which was consecutively imposed under the trial court's discretionary authority under R.C. 2929.14(C)(4).

{¶ 3} Hilliard advances three assignments of error. Each will be addressed in turn.

{¶ 4} In the first assignment of error, he claims the 24-month sentence consecutively imposed on the weapons-while-under-disability count, the only

discretionary consecutive sentence imposed, was not supported by the record under R.C. 2953.08(G)(2) because the trial court failed to identify relevant prior criminal conduct.

{¶ 5} A trial court has discretionary authority to “impose consecutive sentences for multiple offenses if it finds that doing so is necessary to protect the public or to punish the offender[,]” “that the sentences are not disproportionate to the seriousness of the offender’s conduct and the danger the offender poses to the public[,]” and in pertinent part based on the findings in this case, “[t]he offender’s history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.” *State v. Polizzi*, 2026-Ohio-2588, ¶ 14; R.C. 2929.14(C)(4). “Appellate courts generally defer to trial courts on sentencing decisions.” *Polizzi* at ¶ 17. An appellate court “may increase, reduce, or otherwise modify a sentence or vacate the sentence and remand the matter to the sentencing court for resentencing, but only if it finds that the record clearly and convincingly ‘does not support’ the trial court’s finding that consecutive sentences are not disproportionate.” *Id.*, citing *State v. Glover*, 2024-Ohio-5195, ¶ 52, and R.C. 2953.08(G)(2)(a). Importantly, in order to vacate a sentence, it must be concluded that “the record does not support the trial court’s findings under R.C. 2929.14(C) — not that the appellate court would have imposed a different sentence.” *Id.*

{¶ 6} In this case, Hilliard claims there is no support for the trial court’s finding that serving the 24-month sentence consecutively to the other sentences was

necessary based on his criminal history because that history was not referenced at sentencing. The having-a-weapon-while-under-disability offense, however, was based on a disability arising from Hilliard's juvenile record. Thus, the initial question posed by Hilliard is whether his juvenile record can be considered under R.C. 2929.14(C)(4)(c).

{¶ 7} “Ohio case law has . . . ‘established that a defendant’s juvenile record may be considered as part of an offender’s criminal conduct under R.C. 2929.14(C)(4) for the purposes of determining whether to impose consecutive sentences.’” *State v. Kijanski*, 2026-Ohio-1277, ¶ 45 (8th Dist.), quoting *State v. Akins*, 2025-Ohio-5632, ¶ 54 (8th Dist.), and citing *State v. Riley*, 2025-Ohio-3276, ¶ 15 (8th Dist.), and *State v. Viers*, 2022-Ohio-4083, ¶ 18 (8th Dist.). In this case, the relevant prior criminal conduct stems from the offense itself — Hilliard was under a weapons disability based on a prior juvenile delinquency proceeding. As reflected in the indictment, Hilliard was adjudicated delinquent in 2019 for a robbery offense with a deadly weapon under his control that if committed by an adult would have been a felony offense of violence. Hilliard pleaded guilty to that charge as indicted. The record inherently supports the trial court’s finding that Hilliard had a criminal history of an offense of violence, which can be and was considered for the purposes of R.C. 2929.14(C)(4). *See Glover* at ¶ 53-54. Because no other argument was presented related to that consecutive sentence, the first assignment of error is overruled.

{¶ 8} In the second assignment of error, Hilliard claims that the sentences are contrary to law in general because the trial court failed to consider R.C. 2929.11 and 2929.12 and that the sentence imposed for the failure to comply with an order or signal of a police officer under R.C. 2921.331(B) and (C)(4) is also contrary to law because the trial court failed to consider the factors set forth under subdivision (C)(5)(b) of that statute.

{¶ 9} As to the first point in this assignment of error, and as Hilliard concedes, a sentence within the applicable statutory range, if imposed after consideration of the sentencing purposes and factors, is presumptively valid. *State v. Hinton*, 2015-Ohio-4907, ¶ 10 (8th Dist.), quoting *State v. Collier*, 2011-Ohio-2791, ¶ 15 (8th Dist.).

{¶ 10} The trial court in this case considered that which was required:

I must and have formulated my decision based upon the overriding principles and purposes of felony sentencing; namely to protect the public from future crime by you and others, and to punish you using the minimum sanctions the Court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.

I have considered the need for incapacitation, deterrence, rehabilitation and providing for restitution.

I have considered the seriousness and recidivism factors relevant to you and the offense pursuant to Revised Code 2929.12.

I must, and have, ensured that the sentence being imposed does not demean the seriousness of the crime and the impact [it has] had on the community and the victims. I also have ensured that this is similar to offenses committed by other like offenders.

Finally, this sentence is not based upon any impermissible purposes, namely the race, ethnic background, gender or religion of Mr. Hilliard.

Hilliard does not address the trial court's oral sentencing statement or the final entry of conviction in which the trial court memorialized consideration of the sentencing factors and the purposes of felony sentencing under R.C. 2929.11: "the court considered all required factors of the law. The court finds that prison is consistent with the purpose of R. C. 2929.11." There is no merit to his argument that the trial court failed to consider R.C. 2929.11 and 2929.12 when the record conclusively demonstrates otherwise.

{¶ 11} With respect to Hilliard's claim that the trial court failed to consider the factors under R.C. 2921.331(C)(5)(b) before imposing a sentence on the failure to comply with an order or signal of a police officer, a violation of R.C. 2921.331(B), Hilliard's argument is misplaced. The trial court was not required to consider those factors based on the charged offense in this case.

{¶ 12} Hilliard pleaded guilty to a violation of R.C. 2921.331(B), which provides that "[n]o person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop." The indictment contained a furthermore clause, alleging that Hilliard "was fleeing immediately after the commission of a felony" offense. Under R.C. 2921.331(C)(4), that violation is a third-degree felony if the trier of fact finds that in committing this offense, the offender was fleeing immediately after the commission of a felony offense. Hilliard's guilty plea to the failure to comply as indicted obviated the need for a trier of fact's finding under subdivision (C)(4). As a result, the trial court was required to sentence Hilliard

under R.C. 2929.14(A)(3) for a third-degree felony offense under the general sentencing principles and considering the general sentencing factors. R.C. 2921.331(C)(4) does not present any additional considerations or requirements for sentencing purposes.

{¶ 13} Hilliard’s appellate argument focuses on the additional sentencing factors under R.C. 2921.331(C)(5)(b). Under subdivision (C)(5)(a), a failure-to-comply offense is also elevated to a third-degree felony offense if “the jury or judge as trier of fact finds . . . by proof beyond a reasonable doubt: (i) The operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property[, or] . . . caused a substantial risk of serious physical harm to persons or property.” If found guilty of that offense, an offender must be sentenced under the third-degree felony sentencing provisions, but in addition to the general sentencing factors and consideration, the trial court must consider several factors exclusively under R.C. 2921.331(C)(5)(b), generally dealing with the severity of the pursuit that caused or created a substantial risk of physical or personal property harm.

{¶ 14} That subdivision is inapplicable to the offense as charged in this case because Hilliard pleaded guilty to an R.C. 2921.331(C)(4) violation, which does not require the additional sentencing considerations. The State did not allege that the operation of the motor vehicle caused harm to persons or property or created a substantial risk to the same, and therefore, the factors under R.C. 2921.331(C)(5)(b) are not relevant. The second assignment of error is overruled.

{¶ 15} And finally, in the third assignment of error, Hilliard identifies a scrivener's error in the final entry of conviction related to the postrelease control imposed on Count 2, the second-degree felonious-assault offense. At the sentencing hearing, the trial court correctly noted that the appropriate postrelease-control term would be 18 months and up to three years under R.C. 2967.28(B)(3). The journal entry imposed a two- to five-year term. The State concedes the error.

{¶ 16} “Although trial courts generally lack authority to reconsider valid final judgments in criminal cases, they retain continuing jurisdiction to correct clerical errors through a nunc pro tunc entry so the judgment reflects what the court actually decided.” *State v. Qualls*, 2012-Ohio-1111, ¶ 13, quoting *State ex rel. Womack v. Marsh*, 2011-Ohio-229, ¶ 13, and citing *State ex rel. Cruzado v. Zaleski*, 2006-Ohio-5795, ¶ 18-19, and Crim.R. 36.

{¶ 17} The parties are correct that under R.C. 2967.28(B)(3), a second-degree felony that is not a sex offense carries a mandatory postrelease-control term of 18 months to three years and that Hilliard was correctly advised of that term at his sentencing hearing. Because the sentencing journal entry does not reflect either the statutory postrelease-control term or the term pronounced at sentencing, this matter is remanded for the purpose of issuing a nunc pro tunc entry correcting the final entry of conviction to reflect the postrelease-control term imposed at the sentencing hearing and reissuing the corrected version of the final entry of conviction.

{¶ 18} The remainder of the convictions are otherwise affirmed.

{¶ 19} Affirmed in part and remanded.

It is ordered that appellant and appellee share the 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 the issuance of a nunc pro tunc sentencing journal entry, issuance of the corrected final entry of conviction, and execution of sentence.

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

SEAN C. GALLAGHER, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
EILEEN A. GALLAGHER, J., CONCUR