[Cite as *State v. Brown*, 2026-Ohio-4280.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellant,	:	No. 115985
v.	:	
ANTHONY BROWN,	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: VACATED IN PART; REMANDED
RELEASED AND JOURNALIZED: October 29, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-25-699838-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Brian Callahan, Assistant Prosecuting Attorney, *for appellant*.

Berkman, Gordon, Murray & DeVan and William C. Livingston, *for appellee*.

MARY J. BOYLE, P.J.:

{¶ 1} Plaintiff-appellant, the State of Ohio ("State"), appeals the trial court's judgment with respect to defendant-appellee Anthony Brown's ("Brown") sentence of one year and nine months in prison for two third-degree felony counts of having

weapons while under disability (Counts 1 and 4), with each count carrying a one-year firearm specification. The State raises the following single assignment of error for review:

> The trial court erred in ordering concurrent prison terms for firearm specifications when the underlying felonies were not committed as part of the same act or transaction.

{¶ 2} For the reasons set forth below, we find that this portion of Brown's sentence is contrary to law. Therefore, we vacate Brown's sentence on Counts 1 and 4, and remand the matter to the trial court to impose consecutive sentences on the firearm specifications attached to these counts.

I. Facts and Procedural History

{¶ 3} In February 2025, Brown was charged in a five-count indictment stemming from a video he posted of himself firing a gun outside his home. Counts 1, 3, and 4 charged him with having weapons while under disability ("HWWUD"), with each count carrying a one-year firearm specification. Count 2 charged him with the discharge of a firearm on or near a prohibited premises, and Count 5 charged him with receiving stolen property. Relevant to this appeal, the indictment lists the date of the offense for Count 1 as "[o]n or about December 31, 2024" and for the firearm specification indicates that "Brown had a firearm on or about his person or under his control while committing the offense firearm [sic] purchased at gun store." (Indictment, Feb. 27, 2025.) As to Count 4, the indictment lists the date of the offense as "[o]n or about January 7, 2025" and for the firearm specification indicates that "Brown had a firearm on or about his person or under his control while

committing the offense firearm [sic] located during search warrant." (Indictment, Feb. 27, 2025.)

{¶ 4} The matter proceeded to a plea hearing in October 2025. At the onset of the hearing, the trial court noted that there was a recommended sentence. The court explained:

> So what has happened is your attorney and the [State] agreed on a range that they're requesting this Court to stay within, which means that a recommended sentence is simply that. It's just a recommendation to this Court.
>
> I can tell you that in seven years of being a judge I've gone against the recommended range less than a handful of times, less than five times. That doesn't mean that it wouldn't eventually apply to you. I can go below, I can go above. But the recommendation is a very strong recommendation that I stay within that.
>
> . . .
>
> So that recommendation is 2 years and 9 months up to 5 years. And the way that they've decided to get there is to run the two firearm specifications consecutive to one another, so that's 2 years of mandatory prison prior and consecutive to a minimum of 9 months up to 36 months. So 2 years mandatory prison plus anywhere between 9 to 36 months. That's where that recommended sentence is.

(Tr. 4-5.)

{¶ 5} The trial court then informed Brown of his constitutional rights and explained the maximum penalties he would face based on his plea. The parties agreed that the court had complied with Crim.R. 11. The court accepted Brown's guilty plea to Count 1 (HWWUD) with a one-year firearm specification; Count 2 (discharge of a firearm on or near a prohibited premises); Count 4 (HWWUD), with a one-year firearm specification; and Count 5 (receiving stolen property). Count 3

was dismissed. Furthermore, Brown agreed to forfeit any right, title, or interest he had in the Springfield XD-9 firearm bearing serial number BY242691, which was to be returned to the rightful owner, Ashley Cook.

{¶ 6} The trial court held the sentencing hearing in December 2025. The court began the hearing by noting the parties agreed that "the two firearm specifications will run consecutive to one another, meaning that the minimum sentence [the court can] impose is two years [to be served] prior and consecutive to nine months[.]" (Tr. 18.) Before imposing its sentence, the trial court stated:

> This is a mandatory prison sentence, so there's a requirement that you are sentenced to prison.
>
> . . .
>
> [The State] did bring up the point that when I inform people of what a recommended sentence is, I can go higher, I can go lower. You did provide a significant amount of mitigation here from people in the community. You've stayed out of trouble. You've done everything else that is expected of people that come out of prison. You even saved a boy's life.
>
> I've actually never done this before, but I am going to go against the recommended sentence. I'm going to give you on the firearm specification one year on each of those firearm specifications. I'm actually going to run those concurrent to one another because it is not required that I run those mandatory consecutive.

(Tr. 46-47.) The court issued a nunc pro tunc journal entry following the hearing to clarify that "all counts shall be served concurrent to one another, and all specifications be served concurrent to one another." (Journal Entry, Dec. 9, 2025.) As a result, the trial court sentenced Brown to serve one year in prison on each of the firearm specifications in Counts 1 and 4, to be served concurrently to one

another, and prior and consecutive to the nine months on the underlying HWWUD charge. For Count 5, the court sentenced Brown to nine months in prison, to be served concurrently to the other counts, making his total sentence one year and nine months in prison. The State did not object to the sentence at the hearing.

{¶ 7} The State now appeals, raising a single assignment of error for review.

II. Law and Analysis

{¶ 8} The State argues that Brown's sentence on Counts 1 and 4 is contrary to law because the trial court was required to run the firearm specifications consecutively under R.C. 2929.14(C)(1)(a) and failed to do so.

{¶ 9} When reviewing the imposition of consecutive sentences, we must apply the standard of review set forth in R.C. 2953.08(G)(2). *State v. Polizzi*, 2026-Ohio-2588, ¶ 25. Under this statute, an appellate court may modify the imposition of consecutive sentences only if "the record clearly and convincingly does *not* support the trial court's consecutive-sentence findings [R.C. 2953.08(G)(2)(a)] or if "'the sentence is otherwise contrary to law.'" (Emphasis in original.) *Id.*, quoting *State v. Glover*, 2024-Ohio-5195, ¶ 42, quoting R.C. 2953.08(G)(2)(b).

{¶ 10} "Otherwise contrary to law" has been defined as "'"in violation of statute or legal regulations at a given time."'" *State v. Bryant*, 2022-Ohio-1878, ¶ 22, quoting *State v. Jones*, 2020-Ohio-6729, ¶ 34, quoting *Black's Law Dictionary* (6th Ed. 1990). This court has previously found that a sentence is contrary to law when it "'falls outside the statutory range for the particular degree of offense[.]'"

State v. Robinson, 2017-Ohio-8162, ¶ 9 (8th Dist.), quoting *State v. Price*, 2016-Ohio-591, ¶ 12 (8th Dist.).

{¶ 11} As an initial matter, we must first address Brown's reliance on *State v. Ross*, 2023-Ohio-1185 (9th Dist.), and his contention that the State forfeited its right to challenge his sentence because it did not object to the imposition of concurrent firearm specifications in the proceedings below and it did not raise the issue of plain error in its appellate brief. Brown further argues that even if we were to consider plain error, the State failed to demonstrate such because the offenses in Counts 1 and 4 were committed as part of the same act or transaction and R.C. 2929.14(B)(1)(b) provides an exception to the imposition of consecutive sentences of firearm specifications under these circumstances. The State counters, for the first time in its reply brief, that it has not forfeited its right to challenge Brown's sentence because Brown's reliance on *Ross* is misplaced, Brown's sentence is contrary to law, and the State may appeal as a matter of right under R.C. 2953.08(B)(2). As a result, the State contends that Brown's sentence may be reviewed for plain error.

{¶ 12} In *Ross*, the Ninth District Court of Appeals found that ""'an appellant may not assert a claim of plain error for the first time in a reply brief.'"" *Id.* at ¶ 68, quoting *State v. Andrews*, 2020-Ohio-2703, ¶ 51 (9th Dist.), quoting *State v. Irvine*, 2019-Ohio-959, ¶ 45, fn. 1 (9th Dist.). The defendant in *Ross* appealed his convictions, and the State cross-appealed, challenging the defendant's sentence. At the sentencing hearing, the State did not object to the court's failure to sentence the

defendant on the firearm specifications attached to the defendant's two most serious offenses. *Id.* at ¶ 59. The State, however, filed a motion to correct sentence before the trial court journalized its sentencing order. In the motion, the State argued the law required the trial court to impose separate, consecutive sentences on defendant's firearm specifications for the aggravated murder of one victim and the murder of another victim. *Id.* at ¶ 62.

{¶ 13} In its first cross-assignment of error, the State in *Ross* argued that the defendant's sentence was contrary to law because the trial court failed to impose prison terms for the two most serious firearm specifications as required by R.C. 2929.14(B)(1)(g). *Id.* at ¶ 58. The Ninth District Court of Appeals found that while the State did not object at the sentencing hearing, it sufficiently preserved its argument for appeal by virtue of its motion. *Id.* at ¶ 62. The *Ross* Court then concluded that the defendant's sentence was contrary to law because the trial court was required to impose a three-year prison term for each of those specifications and run those terms consecutively. *Id.* at ¶ 64.

{¶ 14} In its second cross-assignment of error, the State in *Ross* contended that the trial court's sentence was contrary to law because the court improperly merged the one-year firearm specification linked to the defendant's tampering conviction and the one-year firearm specification linked to his HWWUD conviction with the firearm specification linked to his aggravated-murder conviction because these offenses were not allied offenses of similar import. *Id.* at ¶ 67. The *Ross* Court noted that because the State failed to make an allied offense argument of this nature

at the sentencing hearing and its motion to correct sentence, it forfeited all but plain error. *Id.* at ¶ 68, citing *Andrews*. The *Ross* Court rejected the State's merger argument regarding the firearm specifications for tampering and HWWUD with the firearm specification for aggravated murder, noting that while the State attempted to raise plain error in its reply brief, an appellant may not assert a claim of plain error for the first time in a reply brief. *Id.*, citing *Andrews*, citing *Irvine*.

{¶ 15} We find that Brown's reliance on *Ross* is misplaced because the State did not need to object to the trial court's imposition of a concurrent sentence on the firearm specification to preserve the issue on appeal. Rather, the State can challenge the sentence through an appeal under R.C. 2953.08(B)(2), which provides that the State may appeal as a matter of right a sentence that is contrary to law. A sentence that fails to impose a mandatory provision "may be appealed because such a sentence is 'contrary to law'[.]" *State v. Underwood*, 2010-Ohio-1, ¶ 21. "Otherwise contrary to law" has been defined as "'"in violation of statute or legal regulations at a given time."'" *Bryant*, 2022-Ohio-1878, at ¶ 22, quoting *Jones*, 2020-Ohio-6729, at ¶ 34, quoting *Black's Law Dictionary* (6th Ed. 1990).

{¶ 16} Moreover, we are mindful that a court may "impose sentences only as provided by statute." *State v. Williams*, 2016-Ohio-7658, ¶ 22, citing *State v. Fischer*, 2010-Ohio-6238, ¶ 21-22. This tenet "'reflects a fundamental understanding of constitutional democracy' that the power to define criminal offenses and prescribe punishment is vested in the legislative branch of government[.]" *Id.*, quoting *id.*; *see also State v. Hitchcock*, 2019-Ohio-3246 ("[I]n

Ohio, judges have no inherent power to create sentences, and the only sentence that a trial judge may impose is that provided for by statute." *Id.* at ¶ 18, citing *State v. Anderson*, 2015-Ohio-2089.).

{¶ 17} Here, Brown was convicted of two separate one-year firearm specifications under R.C. 2941.141(A) that were attached to two counts of HWWUD under R.C. 2923.13(A)(2) (Counts 1 and 4), both being third-degree felonies. R.C. 2923.13(A)(2) provides in relevant part: "Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if . . . [t]he person is under indictment for or has been convicted of any felony offense of violence[.]"

{¶ 18} R.C. 2929.14(B)(1)(a)(iii) provides that if an offender is convicted of a firearm specification under R.C. 2941.141(A), the court shall impose a one-year prison term on the specification. R.C. 2929.14(C)(1)(a) provides that when the trial court imposes a prison term on a firearm specification, the court must run the prison term consecutively to all other prison terms. This statute states, in relevant part:

> [I]f a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(a) of this section for having a firearm on or about the offender's person or under the offender's control while committing a felony . . . the offender shall serve any mandatory prison term imposed . . . consecutively to any other mandatory prison term imposed [for a firearm specification] . . . consecutively to and prior to any prison term imposed for the underlying felony . . . and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

R.C. 2929.14(C)(1)(a).

{¶ 19} While R.C. 2929.14(C)(1)(a) generally requires consecutive service of all firearm specifications, R.C. 2929.14(B)(1)(b) provides an exception to the consecutive service of firearm specifications if the felonies and attendant firearm specifications were committed as part of the same act or transaction. *State v. Adkins*, 2021-Ohio-1294, ¶ 23 (8th Dist.). However, if the felonies and attendant firearm specifications were committed separately, "then the trial court must follow the default rule set forth in R.C. 2929.14(C)(1)(a), which requires mandatory consecutive service of all firearm specifications." *Id.*

{¶ 20} The Ohio Supreme Court has defined the term "transaction" for purposes of R.C. 2929.14(B)(1)(b) as "a series of continuous acts bound together by time, space and purpose, and directed toward a single objective." (Cleaned up.) *State v. Wills*, 69 Ohio St.3d 690, 691 (1994). "In other words, courts generally evaluate whether the offenses and attendant firearm violations occurred at separate times, locations, and to different victims." *State v. Williams*, 2020-Ohio-1368, ¶ 16 (1st Dist.), citing *State v. Dean*, 2015-Ohio-4347, ¶ 214; *State v. Kennedy*, 2018-Ohio-4997, ¶ 42 (2d Dist.).

{¶ 21} A review of the record in this case demonstrates that the firearm specifications and the underlying felonies were not committed as part of the same act or transaction because the offenses occurred on different days and separate firearms were utilized. The indictment provides that Counts 1 and 4 were committed on separate dates — December 31, 2024, and January 7, 2025, respectively. The indictment further identifies that two separate and different firearms were used in

these offenses — "firearm purchased at gun store" by Brown's girlfriend in Count 1 and a separate "firearm located during search warrant" in Count 4. Lastly, the indictment included a specific serial number for the firearm that was recovered at Brown's home (Count 4), which belonged to the victim named in Count 5, not Brown's girlfriend. The State explained to the trial court at the time of sentencing that Brown's girlfriend purchased the firearm at the gun store on December 31, 2024, which was "never actually found[.]" (Tr. 24.) The State further explained that the gun found at Brown's home during the execution of a search warrant was a stolen handgun and was not the gun purchased by Brown's girlfriend on December 31, 2024.

{¶ 22} Based on the foregoing, we agree with the State that Counts 1 and 4 were not part of the same act or transaction. As a result, the trial court was required under R.C. 2929.14(C)(1)(a) to run the one-year firearm specifications consecutively, not concurrently. Accordingly, Brown's sentence on Counts 1 and 4 is unauthorized by statute and contrary to law. R.C. 2953.08(G)(2)(b) provides that we may vacate a sentence and remand for resentencing when a felony sentence is contrary to law. *State v. Williamson*, 2023-Ohio-932, ¶ 10 (8th Dist.) (noting that there was no objection to the codefendants' sentence at the hearing, but the sentencing error was challenged by the State through a direct appeal, and finding that "because the trial court failed to impose indefinite sentences on the codefendants' qualifying offenses in accordance with the [Reagan] Tokes Law, the sentences were contrary to law [and] R.C. 2953.08(G)(2)(b) provides [that] we may

vacate a sentence and remand for resentencing when a felony sentence is contrary to law"). As a result, we vacate the trial court's sentence with respect to Counts 1 and 4 and remand for the trial court to resentence Brown on the mandatory firearm specifications in accordance with the law.

{¶ 23} Having found that Brown's sentence on Counts 1 and 4 is contrary to law, we need not reach the plain-error analysis.

{¶ 24} The State's sole assignment of error is sustained.

{¶ 25} Accordingly, the trial court's judgment is vacated only as to Brown's sentence on Counts 1 and 4, and the matter is remanded to the trial court for the sole purpose of resentencing Brown on the firearm specifications in accordance with the law.

It is ordered that appellant recover from appellee 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.

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MARY J. BOYLE, PRESIDING JUDGE

KATHLEEN ANN KEOUGH, J., and
TIMOTHY W. CLARY, J., CONCUR