[Cite as *State v. Fay*, 2026-Ohio-4370.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 115904
v.	:	
JASMINE FAY,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: November 5, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-25-699530-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Lindsay L. Patton, and Michael Timms Assistant Prosecuting Attorneys, *for appellee*.

Joseph V. Pagano, *for appellant*.

ANITA LASTER MAYS, J.:

{¶ 1} Defendant-appellant Jasmine Fay ("Fay") appeals the sentence imposed by the Cuyahoga County Court of Common Pleas following her guilty plea.

She raises three assignments of error challenging the sentence as contrary to law and asserting that she was deprived of the effective assistance of counsel at sentencing. For the reasons that follow, we affirm.

I. Facts and Procedural History

{¶ 2} Fay was named, along with several codefendants, in an indictment charging multiple felony offenses, including engaging in a pattern of corrupt activity with a forfeiture specification in violation of R.C. 2923.32(A)(1), conspiracy in violation of R.C. 2923.01, involuntary manslaughter in violation of R.C. 2903.04(A), corrupting another with drugs in violation of R.C. 2925.02(A)(3), and a trafficking offense in violation of R.C. 2925.03(A)(1). The charges arose out of the July 2024 overdose death of S.B. The case was then assigned to the docket of a general division judge on the Cuyahoga County Common Pleas Court ("Original Judge").

{¶ 3} On October 23, 2025, the matter proceeded to a change-of-plea hearing conducted by a colleague of the Original Judge ("Plea Judge") with Fay's consent. Tr. 4. At that hearing, the State placed the terms of the plea agreement on the record, including an agreed recommended sentence of five to ten years with no early release. Tr. 8-11. The assistant prosecuting attorney stated that "it would just be a condition as part of the plea that it's an agreed prison sentence." Tr. 9. The Plea Judge responded, "So that's what we're talking about, not that there's a mandatory period of time, but rather it's an agreed period of time." Tr. 9. The Plea Judge later asked, "It is also agreed, though, that there would be a prison sentence

between the parties . . . because it's a recommendation to the Court, is that correct?" Both the State and defense counsel agreed. Tr. 10. The Plea Judge then enumerated the conditions of the agreement on the record, stating, "[S]o the record is clear, those conditions, I'll number them . . . four being that there's an agreed recommended prison sentence between the parties to the court at the time of sentencing and five that there's an agreed recommended sentence as well and you said five to ten years." Tr. 10-11. Defense counsel stated that she believed Fay understood, among other things, "the conditions that are attached to this particular plea and the rights she's giving up." Tr. 12.

{¶ 4} During the colloquy, Plea Judge advised Fay that it would be Original Judge's "choice at the time of sentencing whether to follow the agreed recommendation or to pick a different number in the range" and that "[Original Judge] will ultimately decide what your sentencing is." Tr. 30, 35. The Plea Judge also told Fay, "Those are just examples. Again, your condition that you're agreeing to with the State of Ohio is that you and your attorney, along with the prosecuting attorney at the time of sentencing, would be making that joint agreed recommendation of five to ten years, okay?" Tr. 35. The Plea Judge further advised Fay of the minimum and maximum terms of the indefinite sentencing scheme and of her maximum possible sentence. Fay stated that she was taking Subutex, Buspar, and Lexapro while incarcerated. Tr. 17. She also stated that she had attended school through the eighth or ninth grade. Tr. 16.

{¶ 5} Fay then pleaded guilty to engaging in a pattern of corrupt activity with a forfeiture specification, a first-degree felony, as amended in Count 1 by deletion of the aggravated drug funding predicate offense; involuntary manslaughter, a first-degree felony, as charged in Count 5; corrupting another with drugs, a second-degree felony, as charged in Count 6; and a trafficking offense, a fifth-degree felony, as charged in Count 7. Counts 2, 3, 4, and 31 were nolled, and Fay agreed to forfeit a 2005 Chevrolet Trailblazer to the Cleveland Division of Police. The plea journal entry sets forth six conditions of the plea agreement, including that the codefendants must both plead guilty as a package plea, that the offenses are not allied offenses of similar import, that there is a mandatory prison sentence on Count 6, and that there is a "recommended sentence of 5-10 years with no early release." The trial court referred Fay for a presentence-investigation report and set sentencing for November 18, 2025.

{¶ 6} The presentence-investigation report was completed on November 11, 2025. It was made a part of the appellate record by order of this court and was filed under seal.

{¶ 7} At the November 18, 2025 sentencing hearing, Original Judge presided. The State recounted that S.B. overdosed shortly after completing a drug-rehabilitation program, that Fay began selling drugs after codefendant Robert Ferguson ("Ferguson") was incarcerated in the county jail, and that Ferguson instructed Fay by telephone on how to maintain his drug business. Tr. 59-60. The State referenced a recorded jail call between Fay and Ferguson in which S.B.'s

death was discussed and in which Fay acknowledged that S.B. had resumed using narcotics after her release from a drug-treatment program. Tr. 60. The State played exhibit No. 1, a video, and submitted exhibit Nos. 2 through 4, victim-impact statements, for the trial court's consideration. Tr. 61. The State requested a sentence of eight years. Tr. 62.

{¶ 8} Defense counsel addressed the trial court, describing Fay's drug addiction, her acceptance of responsibility and remorse, the increase in her drug dependence following the death of her mother, and her limited criminal history. Tr. 63-64. Defense counsel requested a sentence of five or six years and stated that "there is a recommended range of five to ten." Tr. 64. Fay then addressed the trial court and apologized to S.B.'s family, stating that S.B. was her friend and that she was sorry. Tr. 64-65.

{¶ 9} The trial court found that Fay took over Ferguson's drug-trafficking enterprise while he was in jail and that this led to S.B.'s death. Tr. 65. The trial court merged Count 6 into Count 5, and the State elected to proceed to sentencing on Count 5. The trial court imposed four years on Count 1, a minimum term of 11 years and a maximum term of 16.5 years on Count 5, and 12 months on Count 7, and ordered the term imposed on Count 5 to be served consecutively to the term imposed on Count 1. Tr. 66-69. As to consecutive service, the trial court stated, "as far as consecutive findings go, I find that consecutive service is necessary to protect the public from future crime and to punish the conduct and that consecutive sentences are not disproportionate to the seriousness of Ms. Fay's

conduct in this case and to the danger that she poses to the public." Tr. 67. The trial court continued:

> That danger, I find she has no job skills and limited education and almost certainly will have to return to a life of crime if released. And I find that at least two of the multiple offense[s] were committed in this case as part of one or more courses of conduct and the harm caused by the multiple offenses were so great or unusual that no single prison term for any of the offenses committed as part of any of the course of conduct adequately reflects the seriousness of Ms. Fay's conduct.

Tr. 67.

{¶ 10} The trial court declared Fay indigent, waived costs, and advised her of her appellate rights. No objection to the sentence was raised. Tr. 68-69.

{¶ 11} The sentencing journal entry journalized on November 19, 2025, states that the trial court imposed a minimum aggregate prison term of 12 years and a maximum prison term of 20.5 years, sets forth the terms imposed on each count, and states that "count 6 is to run consecutive to count 1." On November 24, 2025, the trial court issued a nunc pro tunc entry as of and for November 18, 2025, which states a minimum aggregate prison term of 12 years and a maximum prison term of 20.5 years and states that "count 5 is to run consecutive to count 1." On December 18, 2025, the trial court issued a second nunc pro tunc entry as of and for November 18, 2025, which states a minimum aggregate prison term of 15 years and a maximum prison term of 20.5 years and likewise states that Count 5 is to run consecutively to Count 1. Each of the sentencing entries recites the statutory

findings for consecutive service. None of the sentencing entries references the recommended sentence of five to ten years.

{¶ 12} Fay filed a timely appeal, and appellate counsel was appointed by this court. She raises three assignments of error for our review:

1. Appellant's sentence is contrary to law because it was imposed in violation of a condition of the plea agreement and due process requirements;

2. Appellant was deprived of the effective assistance of counsel in violation of her state and federal constitutional rights where the sentencing judge was not advised of the jointly recommended sentencing range being a condition of the plea and the sentencing judge imposed a sentence in excess of it without objection from the defense; and

3. Appellant's sentence is contrary to law because the record does not support the imposition of consecutive sentences.

II. Sentence Contrary to Law

A. Standard of Review

{¶ 13} R.C. 2953.08(G)(2) governs appellate review of consecutive-sentence challenges. *State v. Gwynne*, 2023-Ohio-3851, ¶ 11. Under that statute, an appellate court may increase, reduce, modify, or vacate and remand a challenged sentence if it clearly and convincingly finds that either (1) the record does not support the sentencing court's findings under R.C. 2929.14(C)(4), or (2) the sentence is otherwise contrary to law. R.C. 2953.08(G)(2); *State v. Glover*, 2024-Ohio-5195, ¶ 42.

B. Law and Analysis

{¶ 14} Fay's argument proceeds from the premise that the five-to-ten-year sentencing range recited at the plea hearing was a binding term of her plea agreement so that the imposition of an aggregate term of 15 to 20.5 years breached the agreement and rendered her sentence contrary to law. The record does not support that premise.

{¶ 15} Plea agreements are contracts between the State and the defendant and are governed by principles of contract law. *State v. Wagner*, 2024-Ohio-6182, ¶ 9 (8th Dist.), citing *State v. Bethel*, 2006-Ohio-4853, ¶ 50. Where "a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Santobello v. New York*, 404 U.S. 257, 262 (1971). When one of the parties breaches, the trial court may permit the defendant to withdraw the plea or may order specific performance, with resentencing before a different judge. *Wagner* at ¶ 9. A breach by a party to the agreement is thus the predicate for the relief Fay seeks. The trial court, however, is not a party to the plea agreement, and a sentencing recommendation made jointly by the parties is precisely that, a recommendation.

{¶ 16} That distinction is not a technicality on this record; it is the distinction the plea colloquy itself drew, repeatedly and in terms Fay confirmed she understood. At the October 23, 2025 plea hearing, the prosecutor stated that "it would just be a condition as part of the plea that it's an agreed prison sentence."

Tr. 9. The court responded, "So that's what we're talking about, not that there's a mandatory period of time, but rather it's an agreed period of time," and then confirmed with both counsel, "It is also agreed, though, that there would be a prison sentence between the parties . . . because it's a recommendation to the Court, is that correct?" Tr. 9-10. When the Plea Judge numbered the conditions for the record, he identified the fourth as "an agreed recommended prison sentence between the parties to the Court at the time of sentencing" and the fifth as "an agreed recommended sentence as well and you said five to ten years." Tr. 10-11. The October 23, 2025 journal entry memorializes the same condition in the same terms: "defendant understands and agrees that recommended sentence of 5-10 years with no early release."

{¶ 17} The Plea Judge went further and told Fay directly what the recommendation would and would not accomplish. He advised her that it would be Original Judge's "choice at the time of sentencing whether to follow the agreed recommendation or to pick a different number in the range," and that "[Original Judge] will ultimately decide what your sentencing is." Tr. 30, 35. He then explained that "your condition that you're agreeing to with the State of Ohio is that you and your attorney, along with the prosecuting attorney at the time of sentencing, would be making that joint agreed recommendation of five to ten years." Tr. 35. The condition Fay accepted, by the plain terms of the colloquy she now invokes, obligated the parties to make a joint recommendation. It did not obligate the sentencing court to adopt one. The same entry reflects that Fay was

apprised of and understood the maximum and consecutive penalties she faced and was advised of her maximum possible sentence.

{¶ 18} Fay identifies no promise that went unperformed. The State moved to amend Count 1 by deleting the aggravated drug funding predicate, nolled Counts 2, 3, 4, and 31, and, at the November 18, 2025 sentencing hearing, requested a prison term of eight years, a term within the recommended range. Tr. 62. Defense counsel requested five to six years and told the trial court that "there is a recommended range of five to ten." Tr. 64. Both sides did what the agreement required of them. Because neither party failed to perform, there was no breach, and the remedies described in *Wagner*, 2024-Ohio-6182 (8th Dist.), and *Santobello*, 404 U.S. 257, are not implicated. Fay's reliance on *State v. Huffman*, 2018-Ohio-1192 (8th Dist.), for the proposition that a sentence may be contrary to law when imposed in breach of a binding plea agreement, does not advance her position because the agreement here bound the parties to a recommendation rather than binding the court to a sentence.

{¶ 19} Fay's strongest point is that the judge who imposed sentence was not the judge who took the plea, and that the single reference at tr. 64 to a "recommended range of five to ten" did not convey to Original Judge that the range was a negotiated condition of the plea. The record shows that the sentencing court was in fact told of the range on the record and the plea entry setting out the numbered conditions, including the recommended sentence, was in the court's file. But even accepting Fay's characterization of the reference as a passing one, the

argument fails for the reason already given: a fuller statement would have conveyed only that the parties had bound themselves to recommend a term of five to ten years. It could not have converted the recommendation into a limit on the court's sentencing authority because Fay was expressly told at the plea hearing that it was not one. As this court explained in *Huffman*, where a plea includes "a nonbinding recommendation from the prosecutor or a joint nonbinding recommendation from both the prosecutor and defense counsel about sentencing to the trial court," it "is well settled that a trial court judge is not required to accept or even comment on that recommendation as long as the court has indicated that no promises, threats, or coercion has been used to induce the plea and that understanding is placed on the record and acknowledged by the defendant." *Huffman* at ¶ 16. Such arrangements "do not restrict a trial court's discretion to reject plea agreements, nor do they bind a trial court to a jointly recommended sentence." *Id.* at ¶ 19, citing *State v. Underwood*, 2010-Ohio-1, ¶ 28. *Huffman* also recognizes that "due process requires the trial court to put the defendant on notice of the possibility that it could impose a longer prison term than negotiated under a plea agreement before accepting a guilty plea." *Id.* at ¶ 21, citing *State v. Williams*, 2017-Ohio-2662, ¶ 4 (8th Dist.). That notice was given here. The Plea Judge advised Fay of the maximum term she faced, told her that Original Judge would "ultimately decide what your sentencing is," and told her that it would be Original Judge's choice "whether to follow the agreed recommendation or to pick a different number in the range." Tr. 30, 35. A defendant who is advised that the

sentencing judge may "pick a different number in the range," and who pleads guilty on that understanding, does not lose the benefit of her bargain when the judge does so.

{¶ 20} For the same reason, the absence from the sentencing entries of any reference to the recommended range, or of any explanation for declining to follow it, does not make the sentence contrary to law. A trial court is "not required to accept or even comment on that recommendation." *Huffman* at ¶ 16. *Huffman*'s further statement that a court presented with a binding agreed sentence "must express its acceptance or rejection of the agreement for it to be clear the plea is knowingly, voluntarily, and intelligently made," *id.* at ¶ 18, does not apply here, because the agreement bound the parties to make a recommendation and left the sentence to the trial court. Nor did defense counsel object when the sentence was pronounced. Tr. 68-69.

{¶ 21} What remains is whether the sentence is otherwise contrary to law. A sentence is contrary to law when it falls outside the statutory range for the offense or when the trial court fails to consider the purposes and principles of felony sentencing in R.C. 2929.11 and the factors in R.C. 2929.12. *State v. Sampson*, 2026-Ohio-1381, ¶ 34 (8th Dist.). Fay does not contend that the four-year term on Count 1, the indefinite term of 11 to 16.5 years on Count 5, or the 12-month term on Count 7 exceeds the range authorized for those offenses. The sentencing entry reflects that the court considered all required factors of the law and found that prison is consistent with the purposes of R.C. 2929.11, and this court may not

substitute its judgment for that of the trial court concerning the weight assigned to the R.C. 2929.11 and 2929.12 factors. *Sampson* at ¶ 33. Fay was also given the notifications required by R.C. 2929.19(B)(2)(c) and was properly advised of postrelease control.

{¶ 22} This court accordingly cannot clearly and convincingly find that the sentence was imposed in breach of the plea agreement, in violation of due process, or otherwise contrary to law.

{¶ 23} The first assignment of error is overruled.

III. Ineffective Assistance of Counsel

A. Standard of Review

{¶ 24} To establish ineffective assistance of counsel, Fay must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689, quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955).

B. Law and Analysis

{¶ 25} Fay argues in her second assignment of error that trial counsel rendered constitutionally deficient representation in two respects: by failing to advise Original Judge at sentencing that the jointly recommended sentencing

range of five to ten years was a condition of her plea and by failing to object when the sentence imposed exceeded that range. Because the judge who accepted the plea was not the judge who imposed sentence, Fay maintains that counsel's silence left the sentencing court unaware of a material term of the bargain and that had counsel spoken, a sentence within the range would in reasonable probability have followed.

{¶ 26} The record does not bear out the factual premise of the first claim. At the November 18, 2025 sentencing hearing, defense counsel addressed the court on Fay's behalf; described Fay's addiction and its origins, her remorse and acceptance of responsibility, and her limited criminal history; and then asked the court to impose a term of five or six years, noting that there was a "recommended range of five to ten." Tr. 63-64. Defense counsel, thus, placed the recommended range before Original Judge and advocated for a term at the bottom of it, below the eight-year term the State requested. Tr. 62. Fay's complaint is not that the range went unmentioned, but that counsel did not characterize it in a particular way, that is, as a "condition" of the plea rather than as a recommendation. Defense counsel's decision to state the range and then argue affirmatively for a term below its midpoint, rather than to press a label, falls comfortably within the wide range of reasonable professional assistance, and Fay has not overcome the presumption that it was sound strategy.

{¶ 27} Nor was counsel deficient in failing to object after sentence was pronounced. The term Fay negotiated was, as the parties and the court described

it at the October 23, 2025 plea hearing, a recommendation. The State advised that "it would just be a condition as part of the plea that it's an agreed prison sentence," and Plea Judge confirmed that the parties had agreed to a prison term "because it's a recommendation to the Court." Tr. 9-10. When the Plea Judge enumerated the conditions on the record, he identified the fourth and fifth as "an agreed recommended prison sentence between the parties to the Court at the time of sentencing" and "an agreed recommended sentence as well and you said five to ten years." Tr. 10-11. The plea journal entry records the same term and that Fay "understands and agrees that recommended sentence of 5-10 years with no early release." The Plea Judge went on to tell Fay that it would be Original Judge's "choice at the time of sentencing whether to follow the agreed recommendation or to pick a different number in the range" and that "[Original Judge] will ultimately decide what your sentencing is." Tr. 30, 35. Fay confirmed her understanding and entered her pleas on that footing. Counsel does not perform deficiently by declining to lodge an objection that the record shows would have been without merit, and counsel was not obliged to insist that the sentencing court was bound by a term that the plea colloquy repeatedly and expressly described as a recommendation the court was free not to follow. *See State v. Short*, 2011-Ohio-3641, ¶ 132 (finding that counsel did not perform deficiently by declining to raise claims with no chance of success).

{¶ 28} Fay's showing of prejudice fails for a related reason. She argues that this court cannot know what Original Judge would have done had he been told the

recommendation was a condition of the plea and that to conclude otherwise would be speculation. But the burden is hers, and the record affirmatively shows that the sentencing court had the recommended range before it and imposed a different sentence for reasons it stated. Original Judge found that Fay took over the drug trafficking enterprise of her codefendant while he was in jail and that this led to the death of the victim. Tr. 65. In imposing consecutive terms, the court made findings on the record concerning the need to protect the public and to punish the conduct, the proportionality of consecutive service to the seriousness of Fay's conduct and the danger she poses, and the harm caused by multiple offenses committed as part of a course of conduct. Tr. 67. That the court declined not only the range but also the eight-year term the State requested confirms that it reached an independent judgment about the appropriate sentence. On this record, the assertion that a further statement by defense counsel, or an objection after pronouncement, would in reasonable probability have produced a sentence within the five-to-ten-year range is precisely the speculation that cannot establish prejudice under *Strickland* 466 U.S. at 694.

{¶ 29} Fay has therefore demonstrated neither deficient performance nor resulting prejudice.

{¶ 30} The second assignment of error is overruled.

IV. Consecutive Sentences

A. Standard of Review

{¶ 31} R.C. 2953.08(G)(2) governs appellate review of consecutive-sentence challenges. *Gwynne*, 2023-Ohio-3851, at ¶ 11. Under that statute, an appellate court may increase, reduce, modify, or vacate and remand a challenged sentence if it clearly and convincingly finds that either (1) the record does not support the sentencing court's findings under R.C. 2929.14(C)(4), or (2) the sentence is otherwise contrary to law. R.C. 2953.08(G)(2); *Glover*, 2024-Ohio-5195, at ¶ 42.

{¶ 32} In order to impose consecutive sentences, the trial court must make the findings required by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate those findings into its sentencing entry. *State v. Bonnell*, 2014-Ohio-3177, ¶ 37. Those findings are (1) that consecutive sentences are necessary to protect the public from future crime or to punish the offender; (2) that 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) that one of the three additional findings set forth in R.C. 2929.14(C)(4)(a), (b), or (c) applies. R.C. 2929.14(C)(4); *Bonnell* at ¶ 22.

{¶ 33} The trial court is not required to recite the statute verbatim or use "talismanic words," but the record must reflect that the court engaged in the required analysis and made the necessary findings. *Bonnell* at ¶ 29, 37. A trial

court's failure to make the findings required by R.C. 2929.14(C)(4) renders the imposition of consecutive sentences contrary to law. *Id.* at ¶ 37.

B. Law and Analysis

{¶ 34} Fay does not contend that the trial court neglected to make the findings that R.C. 2929.14(C)(4) requires. She acknowledges in her brief that "[t]he trial court did make the findings required by the statute," and the record bears that out. At the November 18, 2025 sentencing hearing, the trial court stated that "as far as consecutive findings go, I find that consecutive service is necessary to protect the public from future crime and to punish the conduct and that consecutive sentences are not disproportionate to the seriousness of Ms. Fay's conduct in this case and to the danger that she poses to the public." Tr. 67. The court continued:

> That danger, I find she has no job skills and limited education and almost certainly will have to return to a life of crime if released. And I find that at least two of the multiple offense[s] were committed in this case as part of one or more courses of conduct and the harm caused by the multiple offenses were so great or unusual that no single prison term for any of the offenses committed as part of any of the course of conduct adequately reflects the seriousness of Ms. Fay's conduct.

Id. The trial court thus made each of the three findings required by R.C. 2929.14(C)(4), including the additional finding under R.C. 2929.14(C)(4)(b), and it incorporated those findings, in substantially the statutory language, into its sentencing entry and into the nunc pro tunc entries that followed. The imposition

of consecutive sentences is therefore not contrary to law on the ground that the required findings are absent. *Bonnell* at ¶ 37.

{¶ 35} What remains is Fay's contention under R.C. 2953.08(G)(2)(a) that the record does not support those findings. Under that provision, this court does not ask whether the record supports the findings by clear and convincing evidence; it may disturb the consecutive-sentence order only if it clearly and convincingly finds that the record does not support them.

{¶ 36} Fay first argues that the course-of-conduct finding under R.C. 2929.14(C)(4)(b) lacks record support because, in her view, the only facts placed before the sentencing court concerned her supplying S.B. with the drugs that caused S.B.'s overdose death on or about July 5, 2024. We find that the record is not so narrow. Fay pleaded guilty not only to involuntary manslaughter, but also to engaging in a pattern of corrupt activity and to a trafficking offense. At the sentencing hearing, the State described an ongoing drug operation rather than an isolated sale: Fay began selling drugs after Ferguson was incarcerated in the county jail, and Ferguson directed her by telephone on how to maintain his drug business. Tr. 59-60. A recorded jail call between the two of them discussed S.B.'s death, and Fay acknowledged in that call that S.B. had resumed using narcotics after her release from a drug-treatment program. Tr. 60. The trial court expressly found that Fay took over Ferguson's drug trafficking enterprise while he was in jail and that this led to S.B.'s death. Tr. 65. That the trafficking enterprise and the death

of a person who obtained drugs from it were connected offenses committed as part of one or more courses of conduct is a conclusion the record supports.

{¶ 37} Nor can this court say that the record fails to support the finding that the harm was so great or unusual that no single prison term adequately reflects the seriousness of Fay's conduct. The course of conduct here culminated in the death of a woman who had recently completed a drug-rehabilitation program. The State played a video, admitted as exhibit No. 1, and submitted victim-impact statements as exhibit Nos. 2 through 4 for the sentencing court's consideration. Tr. 61. A death, together with the harm to the victim's family reflected in those statements, is an evidentiary basis on which the R.C. 2929.14(C)(4)(b) finding rests.

{¶ 38} Fay next attacks the trial court's observation that she "has no job skills and limited education and almost certainly will have to return to a life of crime if released," arguing that many people with limited schooling or learning disabilities live law-abiding lives, that she may further her education, and that the court failed to acknowledge her addiction and her potential for rehabilitation. The factual predicate of the court's remark appears in the record. Fay told the Plea Judge that she attended school through the eighth or ninth grade, tr. 16, and the presentence-investigation report, which this court has reviewed under seal, is consistent with the trial court's description. The remark itself was not a statutory finding, but the court's explanation of the danger Fay poses to the public, and R.C. 2929.14(C)(4) obligated the court to make findings, not to articulate reasons for them or to explain why a shorter aggregate term would not serve the purposes

of felony sentencing. In any event, the danger and proportionality findings do not rest on that observation alone. The record before the court showed that Fay assumed operation of a trafficking enterprise at the direction of an incarcerated codefendant and that the enterprise's product killed someone. That is a sufficient basis for the findings that consecutive service is necessary to protect the public from future crime or to punish Fay and that consecutive service is not disproportionate to the seriousness of her conduct and to the danger she poses.

{¶ 39} Fay also argues that the trial court failed to consider mitigating evidence, in particular her severe and untreated addictions, her remorse, and her limited criminal history, and that the aggregate term of 15 to 20.5 years is inconsistent with the direction in R.C. 2929.11(A) that courts use the minimum sanctions necessary to accomplish the purposes of felony sentencing. The record shows that this mitigation was placed squarely before the sentencing court. Defense counsel described Fay's addiction, the increase in her drug dependence after her mother's death, her acceptance of responsibility and genuine remorse, and her limited criminal history, and asked for a five- or six-year sentence. Tr. 63-64. Fay addressed the court and apologized to S.B.'s family, telling the court that S.B. was her friend and that she was sorry. Tr. 64-65. The court had ordered and received a presentence-investigation report, which set out her educational history and her prior record. The sentencing entry states that the court considered all required factors of the law. Fay's argument is in substance that the trial court gave too little weight to this mitigation and too much to the seriousness of the offenses,

but as she herself acknowledges, an appellate court may not substitute its judgment for that of the trial court regarding the weight of the factors set forth in R.C. 2929.11 and 2929.12. *Sampson*, 2026-Ohio-1381, at ¶ 33 (8th Dist.). R.C. 2953.08(G)(2) permits this court to review the R.C. 2929.14(C)(4) findings for record support; it does not permit this court to reweigh the sentencing considerations and arrive at the term it would have imposed.

{¶ 40} Finally, to the extent Fay suggests that the aggregate term is disproportionate when measured against the terms imposed on her codefendants, the proportionality finding required by R.C. 2929.14(C)(4) measures consecutive service against the seriousness of the offender's own conduct and the danger that offender poses to the public. The record here supports that finding as to Fay.

{¶ 41} Having reviewed the sentencing hearing transcript, the presentence-investigation report, and the sentencing entries, this court cannot clearly and convincingly find that the record does not support the trial court's findings under R.C. 2929.14(C)(4), and the imposition of consecutive sentences is not otherwise contrary to law.

{¶ 42} The third assignment of error is overruled.

{¶ 43} 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.

ANITA LASTER MAYS, JUDGE

MICHELLE J. SHEEHAN, A.J., and
DEENA R. CALABRESE, J., CONCUR