

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JASON HEARD,

Defendant-Appellant.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 19 MA 0056**

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Criminal Appeal from the  
Court of Common Pleas of Mahoning County, Ohio  
Case No. 15 CR 1174B

**BEFORE:**

Carol Ann Robb, Cheryl L. Waite, Judges, and Judge Cynthia Westcott Rice, Judge of  
the Eleventh District Court of Appeals, Sitting by Assignment.

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**JUDGMENT:**

Affirmed.

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*Atty. Paul J. Gains*, Mahoning County Prosecutor, *Atty. Ralph M. Rivera*, Assistant  
Prosecuting Attorney, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503,  
for Plaintiff-Appellee and

Atty. John P. Laczko, City Centre One, Suite 975, 100 East Federal Street, Youngstown, Ohio 44503 for Defendant-Appellant.

Dated: September 18, 2020

**Robb, J.**

{¶1} Defendant-Appellant Jason Heard appeals from his resentencing in Mahoning County Common Pleas Court for complicity to commit aggravated murder, three counts of complicity to commit attempted murder, three counts of felonious assault, and an attendant firearm specification. The issue raised in this case is whether the trial court made the appropriate consecutive sentence findings at the resentencing. For the reasons expressed below, the trial court made consecutive sentence findings in compliance with R.C. 2929.14(C). The sentence is affirmed.

Statement of the Case

{¶2} Appellant was convicted of complicity to commit the aggravated murder of Thomas Owens in violation of R.C. 2903.01(A); complicity to commit the attempted murder of Eric Brown, Lottre Haynes, and Tony Brown, all in violation of R.C. 2903.02(A)(D) and R.C. 2923.02(A); felonious assault of Eric Brown, Lottre Haynes, and Tony Brown, all in violation of R.C. 2923.11(A)(2)(D); and attendant firearm specifications in violation of R.C. 2941.145(A). *State v. Heard*, 7th Dist. Mahoning No. 17 MA 0064, 2019-Ohio-1227, ¶ 1-9. He was sentenced to an aggregate sentence of 28 years to life. *Id.* at ¶ 10. He received 20 years to life for the complicity to commit aggravated murder, five years for each count of attempted murder, and three years for each firearm specification. *Id.* The state elected to proceed on the attempted murder convictions instead of the felonious assault convictions. *Id.* The trial court ordered the complicity to commit attempted murder sentences to be served concurrent to each other but consecutive to the complicity to commit aggravated murder sentence. *Id.* The trial court also ordered the sentences for the firearm specifications to run concurrent to each other, but consecutive to the complicity to commit aggravated murder sentence. *Id.*

{¶3} Appellant appealed his conviction. On appeal, this court affirmed the jury verdict, reversed the sentence, and remanded the matter for a new sentencing hearing. *Id.* at ¶ 2, 76. We held the trial court failed to make the statutorily mandated consecutive

sentence findings in the judgment entry and at the sentencing hearing, and thus, remanded the matter for the limited purpose of addressing consecutive sentences. *Id.* at ¶ 71-76.

{¶4} A resentencing hearing was held on May 1, 2019. The trial court sentenced Appellant to the same sentence - an aggregate sentence of 28 years to life. 5/9/19 Resentencing J.E. Appellant timely appeals from that order raising one assignment of error. 5/16/19 Notice of Appeal.

#### Assignment of Error

“The trial court erred in sentencing Appellant and imposing consecutive terms of incarceration after a jury trial and appeal without making the statutorily required findings.”

{¶5} Appellant argues the trial court failed to make the mandated consecutive sentence findings at the sentencing hearing. The state asserts the findings were made at both the sentencing hearing and in the judgment entry.

{¶6} Appellate courts review consecutive sentences using the standard set forth in R.C. 2953.08. *State v. Gwynne*, 158 Ohio St.3d 279, 2019-Ohio-4761, 141 N.E.3d 169, ¶ 16-17. Under R.C. 2953.08(G)(2)(a), a court of appeals may increase, reduce, or otherwise modify a sentence if it clearly and convincingly finds “[t]hat the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant.” *Id.* at ¶ 16.

{¶7} R.C. 2929.14(C)(4) provides that in order to impose consecutive sentences, the trial court must find that consecutive sentences are necessary to protect the public from future crime or to punish the offender, 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 that at least one of the following also 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.

R.C. 2929.14(C)(4)(a), (b), (c).

**{¶8}** As we explained in *Heard*:

A trial court must make the consecutive sentence findings at the sentencing hearing and must additionally incorporate the findings into the sentencing entry. *State v. Williams*, 2015-Ohio-4100, 43 N.E.3d 797, 806, ¶¶ 33-34 (7th Dist.), citing *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37. The court is not required to state reasons in support nor is it required to use any “magic” or “talismanic” words, so long as it is apparent that the court conducted the proper analysis. *Williams* at ¶ 34, citing *State v. Jones*, 7th Dist. No. 13 MA 101, 2014-Ohio-2248, ¶ 6; *State v. Verity*, 7th Dist. No. 12 MA 139, 2013-Ohio-1158, ¶¶ 28-29.

*Heard*, 7th Dist. Mahoning No. 17 MA 0064, 2019-Ohio-1227 at ¶ 74.

**{¶9}** At the resentencing hearing, the trial court made the following statements:

With respect to the findings that are required by the court relative to consecutive sentences in this matter, pursuant to Revised Code 2929.19(B)(2)(b) and Revised Code 2929.14(C)(4), the court makes the following findings: I understand he was on community control, probation, at the time that this offense was committed, which is one of the factors to be considered in 2929.14(C)(4). The harm here caused by your actions is so great or unusual that a single prison term would not adequately reflect the seriousness of the conduct you were convicted of committing, the serious crimes here, murder, complicity to commit murder. And your criminal history demonstrates that consecutive sentences are necessary to protect the public in this matter.

5/1/19 Resentencing Tr. 12.

{¶10} In looking at the findings made by the trial court, the court did not completely track the language of the R.C. 2929.14(C)(4). The statements made by the trial court mimicked the language in R.C. 2929.14(C)(4)(a), (b), and (c); the trial court found all three of these factors applied even though it was only required to find one. However, R.C. 2929.14(C)(4) also requires the finding of the two factors listed before those three factors are set forth. Those two factors are: 1) consecutive sentences are necessary to protect the public from future crime or to punish the offender and 2) consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. The language used by the trial court did not explicitly track these two factors.

{¶11} However, we have explained that the consecutive sentence factors overlap each other and are redundant. *State v. White*, 7th Dist. Mahoning No. 16 MA 0143, 2017-Ohio-7797, ¶ 12-15. There is "a high degree of overlap between the finding that 'consecutive sentences are not disproportionate to the seriousness of the offender's conduct' and the finding that 'no single prison term \* \* \* adequately reflects the seriousness of the offender's conduct.'" *Id.* at ¶ 12, citing *State v. Moore*, 161 Ohio App.3d 778, 2005-Ohio-3311, 832 N.E.2d 85, ¶ 80 (7th Dist.). We have explained that due to the "overlap in the language of the statute, it is theoretically possible for a trial court to make the appropriate findings, even without tracking the precise language of the statute." *White*, citing *Moore*.

{¶12} Here, the trial court made the findings in (a), (b), and (c). By making the (c) finding, that the offender's criminal history demonstrates consecutive sentences are necessary to protect the public from future crime, the trial court also found the first factor that consecutive sentences were necessary to protect the public from future crime. The (b) finding, that the harm caused by Appellant's actions was so great or unusual that a single term would not adequately reflect the seriousness of the conduct, constituted a finding that consecutive sentences are not disproportionate to the seriousness of the offender's conduct. That is part of the second factor. The second factor also includes a finding of the danger the offender poses to the public. That factor is implicit in the finding that it is necessary to protect the public and in factor (b). See *State v. Fields*, 10th Dist. Franklin No. 16AP-417, 2017-Ohio-661, ¶ 20 ("[T]he trial court's statement equates to a

finding that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public even though the trial court employed the language of R.C. 2929.14(C)(4)(b), rather than the specific language of R.C. 2929.14(C)(4).”).

{¶13} Furthermore, statements made by the trial court following its findings regarding factors (a), (b), and (c), indicate the trial court did consider the danger Appellant posed to the public when imposing consecutive sentences:

I had the opportunity to review the facts in this case and they are horrendous. My understanding this was a situation where you held a grudge against the victim in this case. You inadvertently ran into him at the Southern Tavern. After the victim left this location with others, you pursued the victim and hunted him down, essentially; and when you arrived to the place that the victim was, you opened fire on him, killed him in the back seat, and then it's my further understanding that there was a post involvement in this incident on Instagram with a picture of a gun and the words “head shot”, which to me is just so callus, calculated and horrendous that anyone could commit such an offense that I believe consecutive sentences are warranted in this matter.

5/1/19 Resentencing Tr. 12-13.

{¶14} Although it would have been better practice to track the language of the statute, it is discernable from the above statement and the trial court’s findings regarding factors (a), (b), and (c), that it made all the required findings in issuing a consecutive sentence. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29 (“[A]s long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld.”).

{¶15} The trial court is also required to incorporate its finding in the sentencing entry. *Id.* at ¶ 37. In the judgment entry, the trial court stated:

Pursuant to O.R.C. 2929.14(C)(4), the Court finds that a **consecutive sentence** is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the

seriousness of the offender's conduct and to the danger the offender poses to the public.

In addition, the Court further finds that pursuant to O.R.C. 2929.14(C)(4)(a) one or more of the offenses were committed while the Defendant was under specified statutory community control.

In addition, the Court further finds that pursuant to O.R.C. 2929.14(C)(4)(b) the offenses were committed during a course of conduct that was so egregious, callous and calculated and the harm was so great, to wit: intentionally causing the death of another, that a single term does not reflect the seriousness of the Defendant's conduct.

In addition, the Court further finds that pursuant to O.R.C. 2929.14(C)(4)(c) the Defendant's criminal history demonstrates the need to protect the public from future crime by the Defendant.

5/9/19 Resentencing J.E.

{¶16} These statements clearly comply with the mandates set forth by R.C. 2929.14(C).

{¶17} Consequently, the trial court complied with the mandates of R.C. 2929.14(C); consecutive sentence findings were made at the resentencing hearing and in the resentencing judgment entry. The sole assignment of error is meritless and the sentence rendered upon resentencing is affirmed.

Waite, P.J., concurs.

Rice, J., concurs.

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For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**