

[Cite as *State v. Young*, 2015-Ohio-2862.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102202

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHEVARRE YOUNG

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-587786-A

BEFORE: McCormack, J., Celebrezze, A.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: July 16, 2015

ATTORNEY FOR APPELLANT

Patrick E. Talty
21875 Addington Blvd.
Rocky River, OH 44116

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

By: Mahmoud Awadallah
Edward D. Brydle
Assistant County Prosecutors
8th Floor, Justice Center
1200 Ontario Street
Cleveland, OH 44113

TIM McCORMACK, J.:

{¶1} Defendant-appellant, Chevarre Young, appeals his consecutive sentence following a guilty plea. He raises one assignment of error: The trial court committed prejudicial error by imposing consecutive sentences when it did not make the findings required by R.C. 2929.14(C)(4). For the following reasons, we affirm the judgment of the trial court.

{¶2} Young was charged in a multiple-count indictment, along with his codefendant, David Baker. His charges included aggravated murder, murder, attempted murder (three counts), felonious assault (five counts), discharge of a firearm on or near prohibited premises (two counts), intimidation of a crime victim or witness (four counts), and aggravated menacing (four counts). The indictment stems from an incident that occurred on December 18, 2013, wherein Young exited from a known drug house and began firing a gun at a vehicle that was driving slowly down the street. The driver of the vehicle, a 21-year-old female, died of a gunshot wound to the forehead.

{¶3} On October 20, 2014, Young pleaded guilty to aggravated murder (Count 1), with a three-year firearm specification; three counts of felonious assault (Counts 8, 9, 10), each with a three-year firearm specification; and intimidation of a crime victim or witness (Count 13). The trial court sentenced Young as follows: Count 1 — life in prison with parole eligibility at 30 years; Counts 8, 9, and 10 — three years imprisonment

on each count; and Count 13 — three years imprisonment. The court also sentenced Young to three years mandatory imprisonment on the firearm specification in Count 1 and three years mandatory imprisonment on the firearm specification in Counts 8 through 10. The court ordered the sentences in Counts 1, 8, 9, and 10 for the underlying offenses to be served concurrently, the firearm specification in Count 1 to be served prior to and consecutively to the firearm specification in Counts 8, 9, and 10, and the sentence in Count 13 to be served concurrently with all other counts. The total aggregate sentence is 36 years to life.

{¶4} Young contends that the trial court erred in failing to make the findings mandated by R.C. 2929.14(C)(4) when it ordered the firearm specifications to be served consecutively. We find Young’s application of R.C. 2929.14(C)(4) misplaced.

{¶5} We note, initially, that the presumption in Ohio is that sentencing is to run concurrent. *State v. Rodrigues*, 8th Dist. Cuyahoga No. 102507, 2015-Ohio-2281, ¶ 5. Judicial fact-finding is required to overcome this statutory presumption. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 23. Indeed, “[i]n order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry * * * .” *Id.* at ¶ 37.

{¶6} An exception to this general rule, however, concerns sentences for firearm specifications as they relate to their underlying felonies. R.C. 2929.14(C)(1)(a) provides:

If a mandatory prison term is imposed upon an offender * * * 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 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.

{¶7} The trial court was therefore mandated by statute to run Young's three-year firearm specifications consecutively to and prior to the respective underlying felonies. As such, because the Ohio Revised Code requires the imposition of consecutive sentences for firearm specifications attendant to their underlying felony offenses, the trial court is not required to make R.C. 2929.14(C)(4) findings before imposing a consecutive sentence on that particular conviction. *State v. A.H.*, 8th Dist. Cuyahoga No. 98622, 2013-Ohio-2525, ¶ 21.

{¶8} Here, the trial court also ordered the two firearm specifications to be served consecutively to each other. Ordinarily, the trial court is prohibited from imposing more than one prison term on multiple firearm specifications for felonies committed as part of the same act or transaction. R.C. 2929.14(B)(1)(b). The statute, however, notes an exception to this general rule:

If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose on the offender the prison term specified under division (B)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

R.C. 2929.14(B)(1)(g).

{¶9} This court has stated that although the General Assembly did not include the word “consecutive” in R.C. 2929.14(B)(1)(g), it did, in fact, create an exception to the general rule that a trial court may not impose multiple firearm specifications for crimes committed as part of the same transaction. *State v. Vanderhorst*, 8th Dist. Cuyahoga No. 97242, 2013-Ohio-1785, ¶ 10, citing *State v. Isreal*, 12th Dist. Warren No. CA2011-11-115, 2012-Ohio-4876, ¶ 71. The court further explained as follows:

“The mandatory language of the statute (‘the court shall impose’) also indicates the General Assembly’s intention that the defendant serve multiple sentences for firearm specifications associated with the enumerated crimes, such as [aggravated robbery] or felonious assault. Had the legislature intended a per se rule that sentences for firearm specifications must be served concurrent with one another, it could have stated as much. Or, the legislature could have chosen not to codify R.C. 2929.14(B)(1)(g), which serves as an exception to the rule that multiple firearm specifications must be merged for purposes of sentencing when the predicate offenses were committed as a single criminal transaction.”

Vanderhorst at ¶ 10, quoting *Isreal* at ¶ 71; see also *State v. Lawrence*, 8th Dist. Cuyahoga Nos. 100371 and 100387, 2014-Ohio-4797, ¶ 14.

{¶10} Thus, this court has interpreted the language in R.C. 2929.14(B)(1)(g) to be an exception to the general rule that consecutive sentences cannot be imposed on firearm specifications as part of the same transaction. The trial court was therefore mandated by statute to impose the three-year sentences on the firearm specifications associated with the two most serious felonies, the aggravated murder and felonious assault, consecutively.

See *Lawrence*; *Vanderhorst*; *Isreal*. And because the statute requires the imposition of consecutive sentences for firearm specifications under R.C. 2929.14(B)(1)(g), the trial

court is not required to make R.C. 2929.14(C)(4) findings before imposing the multiple and consecutive firearm specifications sentence. *See A.H.*, 8th Dist. Cuyahoga No. 98622, 2013-Ohio-2525, at ¶ 21.

{¶11} Young's sole assignment of error is overruled.

{¶12} Lastly, we note that on April 27, 2015, Young, pro se, filed a supplemental brief, raising additional assignments of error. Young filed his brief after his counsel had filed a brief on appeal, and he did not seek leave of court to file the supplemental brief.

{¶13} It is well settled that a defendant has no right to "hybrid" representation, where he is represented by counsel and acts simultaneously as his own counsel. *State v. Westley*, 8th Dist. Cuyahoga No. 97650, 2012-Ohio-3571, ¶ 14, citing *State v. Thompson*, 33 Ohio St.3d 1, 6, 514 N.E.2d 407 (1987), citing *McKaskle v. Wiggins*, 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984). "Neither the United States Constitution, the Ohio Constitution, nor case law mandates such a hybrid representation." *Thompson*. The defendant may therefore appear pro se or have counsel, but he has no corresponding right to act as co-counsel on his own behalf. *Id.* at 6-7.

{¶14} Accordingly, because Young filed his brief without leave of court and he was represented by counsel on appeal, we will not consider the issues raised in his supplemental brief.

{¶15} Judgment affirmed.

It is ordered that appellee recover of 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.

TIM McCORMACK, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
ANITA LASTER MAYS, J., CONCUR