

[Cite as *State v. Rufus*, 2017-Ohio-5583.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 105026

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**DALLAS RUFUS**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-16-603691-A

**BEFORE:** S. Gallagher, J., Kilbane, P.J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** June 29, 2017

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SEAN C. GALLAGHER, J.:

{¶1} Appellant Dallas Rufus appeals from the trial court’s imposition of consecutive sentences and the denial of his motion for merger of claimed allied offenses of similar import. Upon review, we affirm.

{¶2} Appellant was indicted on one count of aggravated vehicular homicide in violation of R.C. 2903.06(A)(2)(a), a felony of the second degree; one count of aggravated vehicular assault in violation of R.C. 2903.08(A)(2)(b), a felony of the third degree; and one count of failure to stop after an accident in violation of R.C. 4549.02(A), a felony of the third degree. Counts 1 and 2 contained a “furthermore clause” alleging that at the time of the accident appellant was driving under a suspension or cancellation pursuant to R.C. Chapter 4510. Count 3 contained a “furthermore clause” stating that the accident or collision resulted in the death of a person. Following initial proceedings, appellant entered a plea of guilty to all three counts of the indictment.

{¶3} The trial court sentenced appellant to a prison term of seven years on Count 1, four years on Count 2, and 30 months on Count 3. The court ordered Counts 1 and 2 to be served consecutive to one another but concurrent to Count 3, for a total term of incarceration of 11 years. The trial court also imposed a driver’s license suspension on each count.

{¶4} On appeal, appellant raises two assignments of error for our review. Under his first assignment of error, appellant claims that his sentence is contrary to law because

the court did not make the necessary findings and that the record does not support the imposition of consecutive sentences.

{¶5} Pursuant to R.C. 2929.14(C)(4), 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 postrelease 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).

{¶6} The trial court must both make the statutory findings required for consecutive sentences at the sentencing hearing and incorporate those findings into its sentencing journal entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus. Pursuant to R.C. 2953.08(G)(2)(a), an appellate court may “ increase, reduce, or otherwise modify a sentence \* \* \* or may vacate the sentence and remand the matter to

the sentencing court for resentencing” if it “clearly and convincingly” finds that “the record does not support the sentencing court’s findings” under R.C. 2929.14(C)(4).

{¶7} Appellant argues that the trial court failed to make the finding that consecutive sentences were necessary to protect the public or the finding as to the proportionality of the sentence imposed. Appellant further claims the findings are not clearly and convincingly supported by the record.

{¶8} The trial court stated the following when imposing the sentence:

With regard to the sentence. *I do not find that one concurrent sentence is appropriate in this matter.* Although the law presumes a concurrent sentence in certain circumstances, the law does allow for consecutive prison terms to be imposed by the court.

The court recognizes that there were multiple victims involved in this matter. One of those victims is deceased, \* \* \* the other victim \* \* \* received serious injury in this incident.

*\* \* \* I do find that the harm in this matter was so great or unusual that a single term does not adequately reflect the seriousness of the conduct.* And again, *I take in to consideration that there are two victims, one who did not survive this incident and the other one who was seriously injured.*

*\* \* \* I believe that his criminal history shows that a consecutive term is needed to protect the public.* My reasoning for that is as follows: Beginning as early as 2006 the defendant has a history of arrests and criminal convictions.

*\* \* \* Starting in 2014, really earlier with the drug convictions, [it] becomes pretty evident through the defendant’s criminal record that he has a drug and alcohol problem.*

*\* \* \* More troubling, in 2014 an OVI. Not even a year later, another OVI.*

So looking at the record it's clear that he was on a path of destruction. Driving a vehicle when he shouldn't have been because those two OVIs would have had a license suspension.

So not only was he drinking and driving and under the influence of drugs, but the two prior OVI convictions did nothing to wake this defendant up as to his criminal conduct. The one in 2015 he was actually given a year of probation and he violated.

\* \* \* Your behavior is an accident waiting to happen. And that's exactly what happened here.

\* \* \* And when I take into consideration this record, especially the year leading up to this incident, *I do find that consecutive sentences are necessary to punish the offender.*

I understand the comments that are made with regard to the defendant leaving the scene of the accident. And I put weight in the fact that he didn't stop and stay on scene. He also did not turn himself in.

And I do believe that had this not been resolved by way of DNA evidence with the blood on the bottle, that maybe the person who did this, Mr. Rufus, would never have been held accountable for his actions.

Balancing that, is the fact that he did come into the courtroom and he took full responsibility by pleading guilty to the indictment. \* \* \*

\* \* \* *I do find that leaving the scene of an accident, the criminal record, the failure to come forth responsibly as any individual person should do, the fact that there were two victims in this matter, all require the court to impose a consecutive sentence.*

(Emphasis added.)

{¶9} A trial court need not give a “talismanic incantation of the words of the statute” when imposing consecutive sentences, “provided that the necessary findings can be found in the record and are incorporated in the sentencing entry.” *Bonnell*, 140 Ohio

St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, at ¶ 37. The trial court found that consecutive sentences are necessary to punish the appellant and are needed to protect the public. Although the court did not use the specific statutory language for its proportionality finding, the court found that one concurrent sentence was not appropriate in the matter and discussed the severity of appellant's conduct, which caused the death of one victim and serious injury to another; appellant's leaving the scene of the accident and failure to come forth; and the pattern of behavior exhibited by appellant's criminal history. The court also found that the offenses involved two victims and that the harm was so great or unusual that a single term does not adequately reflect the seriousness of the conduct. Additionally, the court found that the offender's criminal history, which included prior drug-related offenses and OVI offenses, demonstrated that a consecutive term is needed to protect the public.

{¶10} Our review reflects that the trial court made all the requisite findings for imposing consecutive sentences and that the findings were supported by the record.

{¶11} Appellant also argues the court was required to consider certain mitigating factors enumerated R.C. 2929.12(C), such as in committing the offense, he did not expect to cause physical harm. R.C. 2929.12(C) only requires that the sentencing court consider relevant mitigating factors and does not require the trial court to make any findings on the record. Here, the trial court considered the presentence investigation report and the mitigation of penalty report, letters submitted to the court, victim impact statements, statements on behalf of appellant, defense counsel's statement in mitigation, and

appellant's statement to the court. The court was informed of the circumstances of the accident, including that appellant did not intend to cause physical harm, but aptly recognized appellant's pattern of behavior was "an accident waiting to happen." There is nothing to suggest that the court did not consider mitigating factors at the time of sentencing.

{¶12} Appellant's first assignment of error is overruled.

{¶13} Under his second assignment of error, appellant claims that the trial court erred by denying his motion for merger of offenses as allied offenses pursuant to R.C. 2941.25. At sentencing, defense counsel argued that there was a single act, underlying Counts 1 and 2, but conceded a separate animus on Count 3. Appellant claims that he committed one act with a single animus, which involved driving his vehicle while under a driver's license suspension and recklessly causing the death of one person and serious physical harm to another.

{¶14} Appellant's convictions for aggravated vehicular homicide and aggravated vehicular assault related to two separate victims. Under Ohio law, "two or more offenses of dissimilar import exist within the meaning of R.C. 2941.25(B) when the defendant's conduct constitutes offenses involving separate victims[.]" *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, ¶ 26. As explained in *Ruff*, "[w]hen a defendant's conduct victimizes more than one person, the harm for each person is separate and distinct, and therefore, the defendant can be convicted of multiple counts." *Id.*



Therefore, the offenses were not allied offenses of similar import and were not subject to merger. The second assignment of error is overruled.

{¶15} 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.

SEAN C. GALLAGHER, JUDGE

MARY EILEEN KILBANE, P.J., and  
ANITA LASTER MAYS, J., CONCUR