

[Cite as *State v. Rouse*, 2018-Ohio-3189.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
Nos. 106939 and 107333

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**TARISHA ROUSE**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
SENTENCE VACATED;  
REMANDED FOR RESENTENCING

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case Nos. CR-17-619210-A and CR-17-623173-A

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**BEFORE:** Blackmon, J., McCormack, P.J., and E.T. Gallagher, J.

**RELEASED AND JOURNALIZED:** August 9, 2018

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PATRICIA ANN BLACKMON, J.:

{¶1} Tarisha Rouse (“Rouse”) appeals from the trial court’s imposition of a 30-month prison sentence as a result of two felony convictions and assigns the following error for our review:

I. The trial court erred by sentencing Tarisha Rouse to an excessive prison term of thirty months.

{¶2} Having reviewed the record and pertinent law, we vacate Rouse’s sentence and remand the matter for resentencing. The apposite facts follow.

{¶3} On January 24, 2018, Rouse pled guilty to one count of attempted carrying concealed weapons, a fifth-degree felony, in Cuyahoga C.P. No. CR-17-619210-A, and one count of aggravated assault, a fourth-degree felony, in Cuyahoga C.P. No. CR-17-623173-A. On February 15, 2018, the court sentenced Rouse to the maximum prison term of 12 months for the fifth-degree felony and the maximum prison term of 18 months for the fourth-degree felony. The court ran these sentences consecutively for a total of 30 months in prison. It is from this sentence that Rouse appeals.

#### **Felony Sentencing Standard of Review**

{¶4} R.C. 2953.08(G)(2) provides, in part, that when reviewing felony sentences, the appellate court’s standard is not whether the sentencing court abused its discretion; rather, if this court “clearly and convincingly” finds that (1) “the record does not support the sentencing court’s findings under” R.C. Chapter 2929 or (2) “the sentence is otherwise contrary to law,” then we may conclude that the court erred in sentencing. *See also State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231.

{¶5} A sentence is not clearly and convincingly contrary to law “where the trial court considers the purposes and principles of sentencing under R.C. 2929.11 as well as the seriousness and recidivism factors listed in R.C. 2929.12, properly applies post-release control, and sentences a defendant within the permissible statutory range.” *State v. A.H.*, 8th Dist. Cuyahoga No. 98622, 2013-Ohio-2525, ¶ 10.

{¶6} Pursuant to R.C. 2929.11(A), the two overriding purposes of felony sentencing are “to protect the public from future crime by the offender and others,” and “to punish the offender using the minimum sanctions that the court determines accomplish those purposes \* \* \*.” Additionally, the sentence imposed shall be “commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact on the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.” R.C. 2929.11(B).

{¶7} Furthermore, in imposing a felony sentence, “the court shall consider the factors set forth in [R.C. 2929.12(B) and (C)] relating to the seriousness of the conduct [and] the factors provided in [R.C. 2929.12(D) and (E)] relating to the likelihood of the offender’s recidivism \* \* \*.” R.C. 2929.12. However, this court has held that “[a]lthough the trial court must consider the principles and purposes of sentencing as well as the mitigating factors, the court is not required to use particular language or make specific findings on the record regarding its consideration of those factors.” *State v. Carter*, 8th Dist. Cuyahoga No. 103279, 2016-Ohio-2725, ¶ 15.

{¶8} In the instant case, Rouse pled guilty to attempted carrying concealed weapons after “shooting a gun off into the air.” Furthermore, the court found that Rouse committed the aggravated assault at issue while she was “capiased,” when she stabbed the victim during an argument. Evidence in the record shows that Rouse was in “a sudden fit of passion,” which was

caused by the victim. Rouse drove the victim to the hospital after the stabbing, and he required emergency surgery. The court further found that “stabbing an individual, it’s not acceptable, nor shooting a gun off in the air at 2:00 in the morning, or anytime in the morning.”

{¶9} Upon review, we find that the court sentenced Rouse within the permissible statutory range, properly applied postrelease control, and properly considered the factors under the felony sentencing statutory scheme.

### **Consecutive Sentences**

{¶10} Additionally, “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 \* \* \*.” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37. Pursuant to R.C. 2929.14(C)(4), the court must find consecutive sentences are “necessary to protect the public from future crime or to punish the offender”; “not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public”; and at least one of the following three factors:

- (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction \* \* \*, 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.

{¶11} On appeal, Rouse argues, and the state concedes pursuant to Loc.App.R. 16(B), that the trial court did not make the requisite findings on the record before imposing consecutive sentences. Rouse's sole assigned error is sustained as to consecutive sentences. Pursuant to *State v. Beasley*, Slip Opinion No. 2018-Ohio-493, we vacate Rouse's sentence and remand the case for the limited purpose of resentencing.

{¶12} Sentence vacated and cause remanded to the trial court for further proceedings consistent with this opinion.

It is ordered that appellant recover of appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas 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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PATRICIA ANN BLACKMON, JUDGE

TIM McCORMACK, P.J., and  
EILEEN T. GALLAGHER, J., CONCUR  
KEY WORDS:

Consecutive sentences, conceded error. Case remanded for resentencing after trial court failed to make statutory findings required for consecutive sentences.