[Cite as *State v. Chesler,* 2015-Ohio-711.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2014-G-3181**
- vs -	:	
RICHARD S. CHESLER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Geauga County Court of Common Pleas, Case No. 13 C 000096.

Judgment: Affirmed.

James R. Flaiz, Geauga County Prosecutor, and *Craig A. Swenson,* Assistant Prosecutor, Courthouse Annex, 231 Main Street, Suite 3A, Chardon, OH 44024 (For Plaintiff-Appellee).

Jay F. Crook, Shryock, Crook & Associates, LLP, 30601 Euclid Avenue, Wickliffe, OH 44092 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Richard S. Chesler, appeals his sentence, following his guilty plea to aggravated theft, in the Geauga County Court of Common Pleas. At issue is whether the trial court erred in imposing appellant's 30-month prison sentence and whether his trial counsel was ineffective. For the reasons that follow, we affirm.

{¶2} The statement of facts that follows is derived from information presented during appellant's sentencing hearing. Between 2004 and 2012, appellant, a resident of

Novelty, Geauga County, Ohio, was employed as a bookkeeper by a company called The Catholic Tour, LLC, a company that specializes in organizing pilgrimages to the Holy Land. Appellant was the son-in-law of the sole owner of the company, James Adair, and the husband of Mr. Adair's daughter.

{¶3} In July 2012, Mr. Adair discovered that several checks written on the company's checking account between 2008 and 2011 were signed and issued by appellant, made payable to him, and endorsed for cashing by him, all without permission or authorization. Mr. Adair also discovered that the company ledger did not accurately reflect these checks as the ledger showed they were issued to suppliers and entities other than appellant, who should have received, but did not receive, these checks. The total amount of the theft resulting from appellant's unauthorized use of company checks between 2008 and 2011 was $326,948.

{¶4} Mr. Adair confronted appellant about his theft and appellant admitted he stole the funds. Appellant agreed to a repayment plan to reimburse the company for the money he stole. However, appellant failed to comply with the plan. Mr. Adair and the company are now facing I.R.S. and Ohio Department of Taxation sanctions due to appellant's theft.

{¶5} On August 29, 2012, Mr. Adair filed a theft report with the Geauga County Sheriff's Office. Mr. Adair submitted to the Sheriff's Office copies of checks appellant improperly issued and cashed along with the company's ledger documenting the theft.

{¶6} Appellant was indicted in a three-count indictment in which he was charged with engaging in a pattern of corrupt activity, a felony of the second degree, in violation of R.C. 2923.32(A)(1) (Count One); aggravated theft, a felony of the third degree, in violation of R.C. 2913.02(A)(1) (Count Two); and forgery, a felony of the third

degree, in violation of R.C. 2913.31(A)(2)(C)(1)(b)(ii) (Count Three). The indictment alleged appellant's theft occurred between March 1, 2008 and December 31, 2011. Appellant pled not guilty.

{¶7} Subsequently, the parties entered a written plea agreement pursuant to which appellant agreed to plead guilty to Count Two, aggravated theft, a felony of the third degree. Appellant also agreed to pay restitution in the amount of $326,948, the amount of the theft. In exchange for his plea, the state agreed that at sentencing it would seek leave to dismiss Counts One and Three; recommend that the court impose a sentence of community control with 90 days in jail; and not oppose work release. The parties signed the agreement and filed it with the court.

{¶8} At the change-of-plea hearing, appellant's counsel advised the court that the written plea agreement accurately reflected the parties' agreement.

{¶9} Appellant told the court that he had discussed the plea agreement with his attorney and that he understands it. He said that he had been well represented and that he had enough time to talk to his attorney.

{¶10} Appellant acknowledged that by pleading guilty, he was saying that he committed aggravated theft; that he accepted responsibility for committing this crime; that he had no defenses; and that he waived any defenses. Appellant said that no one had made any promises or threats to him or offered him any inducement to get him to plead guilty. He said his guilty plea was his own "free and voluntary act."

{¶11} The court advised appellant that aggravated theft is a felony of the third degree and that if he was sentenced to prison, the maximum sentence would be 36 months.

{¶12} Further, the court advised appellant that by pleading guilty, he would be waiving his constitutional rights, including his right to a jury trial; his right to have the state prove his guilt beyond a reasonable doubt at a trial at which he could not be compelled to testify against himself and, if he chose not to testify, such refusal could not be held against him; his right to confront the state's witnesses; and his right to subpoena witnesses. Appellant waived these rights and pled guilty. The court accepted his plea; found him guilty of aggravated theft; and ordered a pre-sentence investigation.

{¶13} At appellant's sentencing, the court asked him if he had anything to say and appellant said he did not. His attorney said that appellant stole these funds from his father-in-law for whom he was working at the time. Counsel said that appellant stole the money over an extended period of time, and that, although the business had an accountant, appellant's scheme was such that it went undetected for a long time. Counsel said that appellant does not have a drug problem; he simply stole these funds to supplement his income. Counsel said that appellant is remorseful for his actions; admits he was wrong for what he did; and wants to correct the wrong by repaying the money he stole. Counsel said that after discovering appellant's theft, appellant entered an agreement with Mr. Adair to reimburse him for the money he had stolen, but that appellant has not complied with this agreement because he has been unable to hold a job.

{¶14} The prosecutor said that as part of the plea agreement, the state agreed to recommend community control with 90 days in jail with work release in order to allow appellant to work so he can pay restitution, but, since then, appellant has lost his job.

The prosecutor said that as part of the plea agreement, appellant agreed to pay restitution in the amount of $326,948 to Mr. Adair.

{¶15} James Adair testified that appellant's theft has had a devastating impact on him, his business, and his family. He said the amount that appellant agreed to pay, i.e., $326,948, was based on his theft between 2008 and 2011. Mr. Adair said he later discovered that appellant stole additional funds from the company in 2004, 2005, and 2012, which were not included in the initial calculation, and that the total amount of his theft was closer to $500,000. He said that appellant was the company's bookkeeper and that, instead of paying money owed by the company to its creditors, suppliers, insurance company, the I.R.S., and the Ohio Department of Taxation, appellant wrote checks to himself on the company's checking account through July 2012, when his theft was discovered and he discharged appellant. Mr. Adair said that appellant was in charge of the company's accounting software. Appellant made entries showing he paid the I.R.S., the state of Ohio, and other entities the amounts the company owed to them, but, in fact, appellant made the checks payable to himself. Appellant used these stolen funds to pay off his own credit cards.

{¶16} Mr. Adair said the company's insurer is owed $70,000, which appellant did not pay, as a result of which their insurer cancelled their coverage. He said his company's credit rating has dropped dramatically due to tax liens placed on his home by the I.R.S. and the Ohio Department of Taxation due to appellant's failure to pay (and theft of) amounts owed to them.

{¶17} Mr. Adair said he and his wife had $350,000 in a pension fund. They are both in their seventies and planned to retire soon. However, Mr. Adair had to use this money to pay back the company's creditors. As a result, he and his wife no longer have

a pension. Further, Mr. Adair said his daughter divorced appellant after his theft was discovered. He said that because appellant has failed to make his support payments as ordered by the court, Mr. Adair and his wife have been required to support their daughter and appellant's two young daughters.

{¶18} While appellant's counsel conceded that appellant victimized Mr. Adair, counsel disputed the amount of the theft referenced by Mr. Adair over and above the amount appellant agreed to repay, i.e., $326,948.

{¶19} The court said that, according to the plea agreement, the parties accepted $326,948 as the amount stolen by appellant and that this amount represents the amount of the loss in this case and the amount owed in restitution. The court dismissed Counts One and Three, and ordered appellant to pay $326,948 to Mr. Adair as restitution.

{¶20} The court said it considered the purposes and principles of felony sentencing in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12, and provided the reasons that follow for its sentence. (1) Appellant engaged in an organized pattern of criminal conduct by repeatedly embezzling from his employer. (2) Appellant held a position of trust and breached the duty of loyalty he owned to his employer. (3) Appellant's course of conduct went on for years, and the agreed amount of the theft was "tremendous." (4) These thefts were not necessary to support appellant's family. Appellant was making enough money to support them. He stole these funds for his own use. (5) Appellant used an elaborate scheme to commit these thefts, which the court described as "sinister." (6) Appellant is a repeat offender in that in 2003, he was convicted in Geauga County of embezzling $4,500 from a church for which he was working at the time. While appellant was still on probation for that prior

offense, he began stealing from his father-in-law. (7) Appellant admitted his involvement in this case only after he was caught, and his expression of remorse was "tepid."

{¶21} In view of the foregoing circumstances, the court rejected the parties' sentencing recommendation of community control and a jail sentence. The court sentenced appellant to 30 months in prison. The court explained this was "about six months for each year of continuing theft that was verified."

{¶22} Appellant appeals the trial court's sentence, asserting two assignments of error. For his first assigned error, he alleges:

{¶23} "The trial court abused its discretion in basing the sentence of Mr. Chesler on his belief of Mr. Chessler's [sic] Guilt [sic] of additional alleged crimes to which Mr. Chesler did not plead, was not charged, and to which no correlation can be had in any of the dismissed counts of the indictment."

{¶24} In reviewing felony sentences, this court has applied two seemingly distinct standards. On the one hand, this court has stated it reviews felony sentences pursuant to the two-prong approach set forth in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, ¶26. Under the first prong, appellate courts "examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law." *Id*. "If this first prong is satisfied, the trial court's decision in imposing the term of imprisonment is reviewed under the abuse-of-discretion standard." *Id*. The term "abuse of discretion" is one of art, connoting judgment exercised by a court, which does not comport with reason or the record. *State v. Underwood*, 11th Dist. Lake No. 2008-L-113, 2009-Ohio-2089, ¶30.

{¶25} Post-H.B. 86, however, this court has also applied the standard set forth under R.C. 2953.08(G)(2). *State v. Cornelison*, 11th Dist. Lake No. 2013-L-064, 2014-Ohio-2884, ¶35. That statutory provision provides:

> **{¶26}** The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:
>
> **{¶27}** (a) That 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;
>
> **{¶28}** (b) That the sentence is otherwise contrary to law.

{¶29} Our use of the foregoing ostensibly different standards of review may initially appear inconsistent. In practice, however, there is no real distinction between the two standards. The point of retaining *Kalish* for reviewing general felony sentences is merely to underscore that the trial court has discretion to enter sentence within the statutory range. Accordingly, the analysis employed under either standard will inevitably be the same. *See State v. Grega*, 11th Dist. Ashtabula No. 2014-A-0002, 2014-Ohio-5179, ¶9. Nevertheless, because H.B. 86 functioned to revive the standard of review set forth under R.C. 2953.08(G), we shall employ this standard in all felony sentence appeals *regarding statutory findings and questions of law*. *See Grega, at ¶10.*

See also State v. White, 1st Dist. Hamilton No. C-130114, 2013-Ohio-4225, ¶8, citing 2011 Am.Sub.H.B. No. 86, Section 1.

{¶30} Appellant does not dispute that his sentence was within the applicable statutory range pursuant to R.C. 2929.14(A)(3)(b) or that the court considered the purposes and principles of felony sentences in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12 in imposing his sentence. Nor does appellant dispute that the court, although not required to do so, listed several reasons for imposing his sentence.

{¶31} Instead, appellant argues the trial court erred in relying on Mr. Adair's testimony that appellant committed his crimes over a five-year period, rather than the three-year period alleged in the indictment, and in sentencing him to 30 months by giving him six months for each of the five years of his theft. Appellant argues his sentence should only have been based on three years of theft as alleged in the indictment so that, following the trial court's logic, he should only have been sentenced to 18 months (i.e., 6 months times 3). He thus asks this court to modify his sentence from 30 to 18 months. However, appellant's argument is flawed for several reasons.

{¶32} First, the indictment alleges a time frame that includes *four*, not three, years. Appellant argues the period of theft as alleged in the indictment (March 1, 2008 to December 31, 2011) is 31 months. Appellant's math is obviously incorrect as this time period is in fact 46 months. Moreover, the parties agreed that $326,948 was the amount of the theft and that this amount was stolen during the time frame referenced in the indictment. Thus, this was the amount of "verified" theft to which the trial court alluded as the basis for the trial court's sentence. As a result, if the court's sentence

was based on a mathematical formula of six months times the number of years of theft, as appellant argues, his sentence would have been 24, not 18, months.

{¶33} Further, according to Mr. Adair's testimony, appellant committed his theft during seven years, not five years, as appellant argues. Thus, if the court had relied on Mr. Adair's testimony, as appellant contends, the court would have sentenced appellant to 42 months. By sentencing appellant to 30 months, the court clearly did not rely on Mr. Adair's testimony regarding appellant's additional years of theft in imposing appellant's sentence.

{¶34} In reviewing appellant's sentence as a whole, the court sentenced him to a definite term of 30 months. The court's comment that the 30-month sentence was "*about* six months" for each year of verified theft was simply an estimate as to the number of months the court imposed on appellant for each year of theft to arrive at his 30-month sentence. Since appellant was sentenced to 30 months in prison for four years of theft, the sentence was actually based on 7.5 months for each year of theft, which, consistent with the court's estimate, was "about six months" for each year of verified theft.

{¶35} Moreover, contrary to appellant's argument, the trial court never stated that appellant's sentence was based, even in part, on its belief that appellant was guilty of a "higher, dismissed charge." This court rejected such practice as an abuse of discretion in *State v. Fisher*, 11th Dist. Lake No. 2002-L-020, 2003-Ohio-3499, ¶25. There is nothing in the record indicating that the court based appellant's sentence on its belief (1) that appellant was guilty of any of the dismissed counts; (2) that appellant stole more than $326,948; or (3) that appellant's theft extended beyond the time period alleged in the indictment. Because the trial court did not rely on Mr. Adair's testimony

about appellant's additional thefts in imposing his sentence, the court did not violate this court's holding in *Fisher.*

{¶36} We therefore hold that the sentence was not clearly and convincingly contrary to law and that the trial court did not err in imposing appellant's sentence.

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

{¶38} For appellant's second assignment of error, he contends:

{¶39} "Appellant was deprived of effective assistance of counsel in counsel's failure to object to any defect in venue and the failure to object to the statements of Mr. Adair in either the pre-sentence report or at the sentencing hearing that made contained [sic] allegations of additional criminal activity with no relationship to the charges for which Mr. Chessler [sic] was indicted, the charges to which he had pled, and /or [sic] to previous information provided by Mr. Adair to the prosecutor's office."

{¶40} Appellant argues his counsel was ineffective in not objecting to any defect in venue and in not objecting to Mr. Adair's testimony that appellant also stole from the company in three years that are not referenced in the indictment. We do not agree.

{¶41} The standard of review for ineffective assistance of counsel is whether the representation of trial counsel fell below an objective standard of reasonableness and whether the defendant was prejudiced as a result of the deficient performance. The defendant must show that counsel's performance was deficient and that the deficient performance prejudiced the defendant so as to deprive him of a fair trial. *Strickland v. Washington*, 466 U.S. 668 (1984). To prove prejudice in the context of a guilty plea, the defendant must demonstrate there is a reasonable probability that, but for his counsel's error, he would not have plead guilty and, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985).

{¶42} Further, a guilty plea represents a break in the chain of events that preceded it in the criminal process. Thus, *a defendant who admits his guilt waives the right to challenge the propriety of any action taken by the court or counsel prior to that point in the proceedings* unless it affected the knowing and voluntary nature of the plea. *State v. Madeline*, 11th Dist. Trumbull No. 2000-T-0156, 2002 Ohio App. LEXIS 1348, *10-*11 (Mar. 22, 2002). This waiver applies to a claim of ineffective assistance of counsel, unless the alleged conduct caused the plea not to be knowing and voluntary. *Id*. at *11; *State v. DelManzo*, 11th Dist. Lake No. 2009-L-167, 2010-Ohio-3555, ¶35. Appellant does not dispute that his guilty plea was voluntarily entered.

{¶43} First, appellant argues his attorney was ineffective in not challenging venue. "*Venue is neither a jurisdictional issue nor a material element of a criminal offense.*" (Emphasis sic.) *State v. McCartney*, 55 Ohio App.3d 170 (9th Dist.1988), citing *State v. Loucks*, 28 Ohio App.2d 77 (4th Dist.1971). To the contrary, "[v]enue is a personal privilege. It is a fact which the state must prove beyond a reasonable doubt *unless waived by the accused*." (Emphasis added.) *McCartney, supra*, citing *State v. Headley*, 6 Ohio St.3d 475, 477 (1983). Further, a defendant's guilty plea precludes him from challenging venue and results in a waiver of his right to have the state prove venue. *McCartney, supra*; *State v. Calhoun*, 11th Dist. Geauga No. 96-G-1971, 1997 Ohio App. LEXIS 1336, *6 (Apr. 4, 1997).

{¶44} Here, by pleading guilty, appellant waived the right to assert any alleged ineffectiveness of counsel that occurred before appellant pled guilty. *Madeline, supra.* Because appellant's counsel could have, but failed to challenge venue before appellant pled guilty, appellant waived any claim of ineffective assistance based on his counsel's failure to assert such challenge.

{¶45} Further, since appellant waived any challenge to venue by pleading guilty, his attorney had no duty to challenge venue. Thus, counsel's failure to do so did not result in ineffective assistance. In addition, there is no evidence that if counsel had challenged venue, appellant would not have pled guilty and, instead, would have insisted on going to trial. As a result, there is no evidence of prejudice in this regard.

{¶46} In any event, even if appellant had not waived the issue, his challenge to venue, asserted for the first time on appeal, lacks merit. In support of his venue argument, he refers to a document attached to his brief allegedly provided by the Secretary of State's Office showing Mr. Adair's address as being in Beachwood, Ohio, rather than Geauga County. However, this document is not in the record and is therefore not properly before us. And, although appellant asks us to take judicial notice of this document, he fails to cite any authority that would allow us to do so, in violation of App.R. 16(A)(7).

{¶47} Further, appellant argues that trial counsel's failure to object to venue amounted to cumulative error because his attorney's failure to object to venue resulted in appellant being sentenced by a court that relied on the allegations of additional criminal conduct that occurred in years outside of the time frame alleged in the indictment. However, as discussed below, the cumulative error doctrine applies to multiple errors committed by *the trial court*, not trial counsel.

{¶48} In *State v. DeMarco*, 31 Ohio St.3d 191 (1987), paragraph two of the syllabus, the Supreme Court of Ohio recognized the doctrine of cumulative error. Pursuant to this doctrine, "a conviction will be reversed where the cumulative effect of errors in a trial deprives a defendant of the constitutional right to a fair trial even though each of *numerous instances of trial court error* does not individually constitute cause for

reversal." (Emphasis added.) *Accord State v. Garner*, 74 Ohio St.3d 49, 64 (1995). The doctrine is not applicable unless the record reveals numerous instances of *trial court error*. *Id*.; *State v. Webb*, 70 Ohio St.3d 325, 335 (1994).

{¶49} Appellant fails to cite any authority for the proposition that the cumulative error doctrine applies to failings of trial counsel as opposed to multiple errors committed by the trial court. Moreover, as noted above, the trial court did *not* base its sentence on Mr. Adair's testimony that appellant stole from the company in years and in amounts not referenced in the indictment and the parties' plea agreement. We thus decline appellant's invitation to apply the cumulative error doctrine here.

{¶50} For his second ineffective-assistance claim, appellant argues his trial counsel was ineffective in not objecting to Mr. Adair's testimony at sentencing that he recently discovered appellant also stole funds in three years not referenced in the indictment, making the total amount of the theft closer to $500,000. However, as noted above, appellant's trial counsel did in fact challenge this aspect of Mr. Adair's testimony and the court sustained this challenge by rejecting Mr. Adair's contention that appellant had stolen closer to $500,000 in years not referenced in the indictment. Thus, trial counsel was not ineffective in this regard. Further, there is nothing in the record showing that, but for counsel's alleged failure to object, appellant would not have pled guilty, but, rather, would have gone to trial. Thus, appellant has failed to demonstrate prejudice.

{¶51} We therefore hold that appellant failed to demonstrate trial counsel was ineffective with respect to either of the two issues asserted by appellant.

{¶52} Appellant's second assignment of error is overruled.

{¶53} For the reasons stated in this opinion, the assignments of error lack merit. It is the order and judgment of this court that the judgment of the Geauga County Court of Common Pleas is affirmed.

THOMAS R. WRIGHT, J., concurs,

COLLEEN MARY O'TOOLE, J., dissents with a Dissenting Opinion.

COLLEEN MARY O'TOOLE, J., dissents with a Dissenting Opinion.

{¶54} I respectfully dissent.

{¶55} The majority holds that the trial court did not abuse its discretion in imposing a 30-month prison sentence upon appellant. For the following reasons, I disagree.

{¶56} Regarding this standard, the term "abuse of discretion" is one of art, connoting judgment exercised by a court which neither comports with reason, nor the record. *State v. Ferranto*, 112 Ohio St. 667, 676-678 (1925). An abuse of discretion may be found when the trial court "applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact." *Thomas v. Cleveland*, 176 Ohio App.3d 401, 2008-Ohio-1720, ¶15 (8th Dist.)

{¶57} The PSI indicates this is appellant's first felony conviction. Appellant scored 13 on the Ohio Risk Assessment System which indicates a "Low" risk needs level. "[O]ffenders should be provided with supervision and treatment levels that are commensurate with their risk levels." *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders*, Christopher T. Lowenkamp,

Assistant Director, The Corrections Institute, University of Cincinnati, and Edward J. Latessa, Professor and Head, Division of Criminal Justice, University of Cincinnati. "'[R]isk' refers to the probability of reoffending. A low-risk offender is one with a relatively low probability of reoffending (few risk factors)[.]" *Id.* "[M]eta-analyses and individual studies provide inconvertible evidence that more intense correctional interventions are more effective when delivered to higher-risk offenders. A related finding is that these interventions can [actually] *increase* the failure rates of low-risk offenders." (Emphasis added.) *Id.*

{¶58} As a low-risk offender, the record reveals appellant entered into a plea agreement with the state. The record also reveals that the parties agreed to a recommended sentence which included community control, 90 days in jail, and restitution. Nevertheless, the trial judge instead greatly increased the punishment on this low-risk offender and sentenced appellant to 30 months in prison. The trial judge explained that this was "about six months for each year of continuing theft that was verified."

{¶59} This writer emphasizes there is nothing in this record to support such a sentence which was handed down by the trial court on this low-risk offender. In fact, the trial judge's "explanation" in support of a 30-month sentence is unfounded. The trial court improperly relied upon contradictory allegations of additional criminal activity and added or stacked on two additional six month terms. Besides the 90-day agreed to prison sentence by the parties, the trial judge's 30-month sentence was not only excessive but an abuse of his discretion. Furthermore, meta-analyses and individual studies have proven that such intense and lengthy measures on low-risk offenders are not only ineffective but actually *increase* the failure rates on these types of offenders.

{¶60} In addition, in dealing with minimum sanctions, H.B. 86 amended R.C. 2929.11 which now states in part:

{¶61} "(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The 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 without imposing an unnecessary burden on state or local government resources." (Emphasis added.)

{¶62} A longer sentence, when the record does not support it, amounts to an undue burden on our already overcrowded prison system pursuant to the principles and purposes of sentencing under R.C. 2929.11.

{¶63} Based on the facts presented, because I believe the trial court abused its discretion in imposing a longer sentence on this low-risk offender than that which was agreed upon by the parties and not supported by the record, I respectfully dissent.