

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Burnett*, Slip Opinion No. 2016-Ohio-127.]

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SLIP OPINION NO. 2016-OHIO-127

THE STATE OF OHIO, APPELLANT, v. BURNETT, APPELLEE.

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Court of appeals' judgment affirmed.

(No. 2014-1942—Submitted November 17, 2015—Decided January 19, 2016.)

CERTIFIED by the Court of Appeals for Clark County, No. 2013-CA-98,
2014-Ohio-4246.

{¶ 1} The judgment of the court of appeals is affirmed.

O'CONNOR, C.J., and PFEIFER, LANZINGER, FRENCH, and O'NEILL, JJ.,
concur.

KENNEDY, J., concurs in judgment only.

O'DONNELL, J., dissents.

KENNEDY, J., concurring in judgment only.

{¶ 2} In *State v. South*, Slip Opinion No. 2015-Ohio-3930, I dissented from the majority’s conclusion that a trial court has discretion to sentence an offender for an underlying third-degree-felony offense of operating a vehicle while under the influence (“OVI”) only to the prison terms specified in R.C. 2929.14(A)(3)(b). It was my opinion that based on the statutory language of R.C. 2929.14(B)(4), it is within a trial court’s discretion to impose an additional prison term of any duration as set forth in R.C. 2929.14(A)(3)(a) and (b) for the underlying OVI conviction for a felony of the third degree. *Id.* at ¶ 44 (Kennedy, J., concurring in part and dissenting in part). Because the majority opinion in *South* is controlling law, I respectfully concur in judgment only.

D. Andrew Wilson, Clark County Prosecuting Attorney, and Ryan A. Saunders, Assistant Prosecuting Attorney, for appellant.

Getty Law Office, L.L.C., and Jennifer S. Getty, for appellee.
