

**COURT OF COMMON PLEAS
CLARK COUNTY, OHIO**

STATE OF OHIO,

Plaintiff,

CASE NO. 2005 CR 253

-vs-

TAYLOR BOWSHIER,

Defendant.

_____ /

DEFENDANT’S MOTION TO CORRECT ILLEGAL SENTENCE

1. Defendant, TAYLOR BOWSHIER, (“Mr. Bowshier”), by and through undersigned counsel, hereby moves this Honorable Court to vacate his convictions and sentences entered in this court on September 13, 2005.

INTRODUCTION

2. Mr. Bowshier is incarcerated based on the application of an illegal sentence. Specifically, the sentencing court failed to follow the statutory mandates for imposing consecutive prison terms pursuant to either R.C. 2929.14(E)(4) or R.C. 2929.14(C)(4).

3. This motion is timely and proper. “No court has the authority to impose a sentence that is contrary to law. *State v. Fischer*, 128 Ohio St.3d 92 2010-Ohio-6238. Furthermore, a motion to correct illegal sentence is an “appropriate vehicle for raising the claim that a sentence is facially illegal at any time.” *Fischer* at 92. *See also State v. Harris*, 132 Ohio St.3d 318, 320, 2012-Ohio-1908; *State v. Hicks*, 2nd Dist. No. 2012 CA 09, 2012-Ohio-4972; *State v. Moore*, 135 Ohio St.3d 151, 2012-Ohio-5479.

4. Generally, “if an appellate court determines that a sentence is clearly and convincingly contrary to law, it may remand for resentencing *** [and] where a sentence is void because it does not contain a statutorily mandated term, the proper remedy is, likewise, to resentence the defendant.” *Fischer*, at 92 (citations omitted) *citing State v. Beasley* 14 Ohio St.3d 74, 75 (1984).

5. This failure to abide by the direction provided by the Ohio legislature has resulted in Mr. Bowshier’s sentences being contrary to law, illegal and thus necessitating his sentence being vacated.

PRELIMINARY STATEMENT

6. Taylor Bowshier will be referred to as “Mr. Bowshier.” The Court of Common Pleas for Clark County, Ohio, will be referred to as “the Court”.

7. The following exhibits are attached to this motion and incorporated herein:

Exhibit A: Plea Disposition

Exhibit B: Judgment Entry of Conviction, Warrant for Removal

STATEMENT OF THE CASE AND FACTS

8. Mr. Bowshier was convicted upon his pleas of guilty and sentenced as follows:

- Eleven (11) months on Count 1, Trafficking in Cocaine, a violation of Revised Code Section 2925.03, with a term of one (1) year mandatory on the gun specification.
- One (1) year on Count 5, Trafficking in Crack Cocaine, a violation of Revised Code Section 2925.03.
- One (1) year on Count 7, Having Weapons Under Disability, a violation of revised Code Section 2923.13.
- Two (2) years mandatory on Count 10, Trafficking in Crack Cocaine, a violation of Revised Code Section 2925.03.
- Nine (9) years mandatory on Count 12, Trafficking in Crack Cocaine, a

violation of Revised Code Section 2925.03.

- Nine (9) years mandatory on Count 14, Trafficking in Crack Cocaine, a violation of Revised Code Section 2925.03, with a term of one (1) year mandatory on the gun specification.

9. Mr. Bowshier was sentenced to both concurrent and consecutive sentences as follows:

- Sentence imposed in Count 1 shall be served concurrently with the sentences imposed in Count 12 and concurrently with all the other counts.
- Sentence imposed in Count 5 shall be served consecutively with the sentences imposed in Counts 7, 10 and 14.
- Sentence imposed in Count 7 shall be served consecutively with the sentences in Count 5, 10 and 14.
- Sentence imposed in Count 10 shall be served consecutively with the sentence imposed in Counts 5, 7 and 14.
- Sentence imposed in Count 12 shall be served concurrently with the sentence imposed in Count 1.
- Sentence imposed in Count 14 shall be served consecutively with the sentences imposed in Counts 5, 7 and 10.

10. The aggregate total of Mr. Bowshier's sentences was fifteen (15) years.

11. At the sentencing, at no time did the Court make the requisite findings necessary for applying consecutive sentences pursuant to R.C. 2929.14(E)(4). *See* Exhibit A. Additionally, the Court failed to provide its reasons for applying consecutive sentences as required under R.C. 2929.19(B)(2). *See* Exhibit A.

12. On September 28, 2005, the Judgment Entry of Conviction and Warrant for Removal was filed by the Court. *See* Exhibit B. The judgment contained no reference to the requisite findings necessary for applying consecutive sentences pursuant to R.C. 2929.14(E)(4). *See* Exhibit B. Additionally, the Court failed to provide its reasons for applying consecutive

sentences as required under R.C. 2929.19(B)(2). *See* Exhibit B.

13. Mr. Bowshier is currently incarcerated in Warren Correctional Institution in Lebanon, Ohio, pursuant to the judgment of conviction complained of herein. The expiration of his stated term is currently set as July 11, 2020.

ARGUMENT

MR. BOWSHIER IS SERVING AN ILLEGAL SENTENCE BECAUSE THE TRIAL COURT IMPOSED CONSECUTIVE PRISON TERMS WITHOUT MAKING THE FINDINGS REQUIRED BY R.C. 2929.14(E)(4) AND PROVIDING THE RELATED REASONS PURSUANT TO R.C. 2929.19(B)(2) AS WELL AS FAILING TO MAKE THE APPROPRIATE FINDINGS REQUIRED BY R.C. 2929.14(C)(4).

14. The Ohio Supreme Court has continued to find the General Assembly’s vision in drafting statutes to be the ultimate direction for the sentencing court, and “[any] attempt by a court to disregard statutory requirements * * * renders the attempted sentence a nullity or void.” *Fischer*, at 95 citing *State v. Beasley*, 14 Ohio St.3d 74, 75 (1984). The Ohio Supreme Court has recognized that:

[J]udges are not imperial. We recognize that our authority to sentence in criminal cases is limited by the people through the Ohio Constitution and by our legislators through the Revised Code. Judges have no inherent power to create sentences. Rather, judges are duty-bound to apply sentencing laws as they are written. [T]he only sentence which a trial court may impose is that provided for by statute. A court has no power to substitute a different sentence for that provided for by statute or one that is either greater or lesser than that provided for by law.

Fischer, at 98. “Although the interests in finality of a sentence are important, they cannot trump the interests of justice, which require a judge to follow the letter of the law in sentencing a defendant. *Id.* at 92.

15. The Ohio Supreme Court has recently begun to expound upon the ideas of an illegal sentence doctrine and has recognized that “in the modern era, in which we have a more sophisticated understanding of individual rights, we have not so severely limited the notion of void judgments to only those judgments that arise from jurisdictional cases.” *Fischer*, at 97. The Ohio Supreme Court has also held that the “historic, narrow view does not adequately address the constitutional infirmities of a sentence imposed without statutory authority.” *Id.*

16. “When a statute directs a court to make findings before imposing a particular sentence, a failure to make those findings is ‘contrary to law’.” *State v. Venes*, 8th Dist. No. 98682 at 3, 2013-Ohio-1891. The Ohio Supreme Court has recognized that Ohio is “unique in having a rule that sentences of imprisonment shall be served concurrently.” *State v. Foster*, 109 Ohio St.3d 1 at 21, 2006-Ohio-856, 845 N.E.2d 470. The Revised Code sections 2929.14(C)(4) and 2929.41(A), which, by virtue of H.B. No. 86, revive the previous R.C. 2929.14(E)(4) and R.C. 2929.41(A), set forth presumptions in favor of concurrent sentencing and specific judicial fact-finding requirements for imposing consecutive prison terms.

17. In the case of Mr. Bowshier, the trial court acted contrary to law and illegally in not making specific findings of fact that were supported by the Court’s reasons for the findings when applying consecutive sentences. This resulted in Mr. Bowshier receiving an illegal sentence.

A. When Sentencing Mr. Bowshier, the Sentencing Court Failed to Follow the Mandatory Statutory Guidelines as Directed by R.C. 2929.14(E)(4) and R.C. 2929.19(B)(2), and this Resulted in an Illegal Sentence.¹

18. The Ohio General Assembly has mandated that multiple sentences run concurrently unless certain criteria is met. This approach is outlined in R.C. 2929.41(A) and states:

Except as provided in division (B) of this section, division (C) of section 2929.14, or division (D) or (E) of section 2971.03 of the Revised Code, a prison term, jail term, or sentence of imprisonment **shall be served concurrently with any other prison term, jail term, or sentence of imprisonment imposed by a court of this state, another state, or the United States.** Except as provided in division (B)(3) of this section, a jail term or sentence of imprisonment for misdemeanor shall be served concurrently with a prison term or sentence of imprisonment for felony served in a state or federal correctional institution.

(emphasis added). R.C. 2929.14(E)(4) is identical to the current statute, R. C. 2929.14(C)(4), and states:

If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court **may** require the offender to serve the prison terms consecutively **if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and 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 if the court also finds any of the following:**
(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 post-release control for a prior offense.

¹ The current sentencing law in Ohio has increased the potential punishment for a first-degree felony from ten (10) years to eleven (11) years. R.C. 2929.14(A). Additionally, a sentence imposed under the current guidelines threatens a higher sentence because “it is arguably easier to impose consecutive sentences today than it was under former R.C. 2929(E)(4) because the revived version did away with the requirement that the court justify its findings by giving reasons for making those findings.” *State v. Venes*, at 4 citing *State v. Goins*, 8th Dist. No. 98256 at 2, 2013-Ohio-263.

(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(E)(4) (emphasis added). In addition to the findings that need to be stated, the court is required to "give reasons to support those findings at the sentencing hearing." *State v. Simons*, 2nd Dist. No. 2003-CA-29 at 2, 2004-Ohio-6061 citing *State v. Comer*, 99 Ohio St.3d 463, 793 N.E.2d 473, 2003-Ohio-4165.

When stating its reasons, a court also must connect each reason to the finding the reason supports. In other words, "[t]he court cannot merely pronounce causes that objectively may be its reasons. The court must also identify which of those causes are the particular reasons for each of the statutory findings the court made.

Id. The previous statute specifically states that:

The court **shall** impose a sentence and **shall** make a finding that gives its reasons for selecting the sentence imposed in any of the following circumstances:

(c) If it imposes consecutive sentences under section 2929.14 of the Revised Code, its reasons for imposing the consecutive sentences.

R.C. 2929.19(B)(2) (emphasis added).

19. In the case of Mr. Bowshier, not only did the court fail to make the appropriate findings, the court additionally failed to provide reasons for those findings, thus leading to the imposition of an illegal sentence.

20. In *State v. Byrd*, 2nd Dist. No. 03-CA-08, 2004-Ohio-4369, the defendant appealed from consecutive sentences imposed after his negotiated plea of guilty, and argued that the trial court failed to make the requisite findings and provide its reasons as mandated by the

Ohio legislature. *State v. Byrd*, at 1. The Second District Court of Appeals held that the trial court failed to make the third finding required by statute; the harm caused by the offenses was so great or unusual that no single prison term for any of the offenses committed as part of the course of conduct adequately reflects the seriousness of the offender's conduct. *Id.* Additionally, the Second District reasoned that it was possible the trial court intended to make the finding, "but the finding does not expressly appear in the record." *Id.* at 4.

21. The Second District also held that the trial court failed to state its reasons for making the findings that it did. *Id.*

Furthermore, the reasons for the imposition of consecutive sentences are not set forth in the record, beyond the trial court's conclusory statement that the victim suffered great harm, and that her suffering will continue. The trial court made it clear that the harm being referred to is the emotional harm resulting from the offenses, rather than any physical harm. We assume that most, if not all, victims of rape suffer serious emotional harm, and that the emotional suffering continues long after the offense. We understand the statute to require that the trial court set forth a reason for selecting these particular offenses for the imposition of consecutive sentences, finding something about the commission of these particular offenses that causes greater harm, or more unusual harm, than harm ordinarily resulting from the commission of the offenses. In our view, the trial court has failed to set forth, in the record, its reasons for so finding.

Id. Not only did the trial court fail to state the bases for all of the findings, the one reason given was unable to reach the standard that the Second District has determined the statute to demand and the sentence was reversed. *Id.* at 5.

22. Here, like *Byrd*, the court failed to make the requisite findings on the record. Additionally, the court never provided reasons that led it to the application of consecutive sentences. This absence of factual findings as required by statute, renders Mr. Bowshier's sentence illegal and void.

23. Additionally, in *State v. Hutchins*, 8th Dist. No. 81578, 2003-Ohio-1956, the defendant appealed his conviction for sexual battery and argued that the court of common pleas erred in ordering consecutive sentences. *State v. Hutchins* at 1. The Eighth District Court of Appeals held the trial court erred and reversed the application of consecutive sentences. *Id.* The Court of Appeals pointed to the trial court's findings which stated:

Now, consecutive sentences. The Court must make a finding by law these consecutive sentences are necessary to protect the public, and I'll point out that the Bellview area, especially. Punish the offender not disproportionate to the conduct and the danger he poses and the harm is so great or unusual that a single term does not adequately reflect the seriousness of his conduct, and his criminal history shows that consecutive terms are needed to protect the public ***

Id. at 2. The Court of Appeals examined the Ohio legislature's desire for concurrent sentencing as well as the findings that must be made and the reasons that must be provided to support a decision to apply consecutive sentences. *Id.* at 3. The Court of Appeals analyzed the trial court's findings and held that the "court attempted to parallel the statutory language," *Id.*, but it only made two (2) of the three (3) required findings and two (2) of the optional findings as provided by statute. *Id.* The Court of Appeals held:

Even if we accept that these findings are adequate, however (a conclusion we do not reach), the court did not give reasons in support of its findings as required by R.C. 2929.19(B)(2)(c). 'Reasons are different from findings. Findings are the specific criteria enumerated in [R.C. 2929.14(E)(4)] which are necessary to justify [consecutive] sentences; reasons are the trial court's bases for its findings***.' The common pleas court did not disclose the bases for its findings, so we must reverse the imposition of consecutive sentences and remand for further consideration of that issue.

Id. (citations and quotations omitted).

24. In reversing, the Court of Appeals held that two (2) out of the three (3) required findings were insufficient, and further faulted the lower court for failing to provide any bases or reasons for the findings that it did make. This resulted in a sentence that was contrary to the statutory direction and contrary to law. The Court of Appeals has continued in the vein of other like cases in determining that without specific, statutorily guided language outlining findings bolstered by a court's reasons for determining the consecutive sentences necessary, the sentence becomes illegal and void.

25. Here, the Court: (1) failed to make any findings, (2) failed to provide reasons and (3) failed to abide by the direction set forth by the statute. Nowhere in the record can one find language that comports to the requirements of the statute. In fact, during the plea disposition, there was a forfeiture discussion concerning the state of Mr. Bowshier's mother's home. *See* Exhibit A at 10. During the conversation, the Court attempted to communicate to Mr. Bowshier its understanding of the State's forfeiture intentions and related to Mr. Bowshier the extent of its knowledge of the case:

THE COURT: ***
I don't know. To be totally honest with you,
I don't know other than - - the indictment
here, **I don't know the facts of the case** and
so I - - I have not made any - -

See Exhibit A at 10-11. (emphasis added). The Court is specifically referring to its inability to answer questions concerning forfeiture proceedings, but it is also admitting that it has not undertaken any research or investigation that would lend itself to making consecutive sentences findings, much less, provide reasons or bases for those findings. There are no findings or reasons to be found in the plea disposition. Indeed, the plea disposition does not include any

language that could be argued to resemble the statutory findings required under R.C. 2929.14(E)(4) and reasons pursuant to R.C. 2929.19(B)(2)(c).

26. The Court further failed to abide by the statutory guidelines when entering the Judgment Entry of Conviction. In the opening paragraph, the Court stated that it “has considered the record, oral statements, any victim impact statement and presentence report prepared, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors [sic] Ohio Revised Code Section 2929.12.” *See* Exhibit B at 1. This does not qualify as making the appropriate statutory findings. At no other location in the judgment is anything mentioned that can be remotely linked to the statutory requirements. *See* Exhibit B.

27. The Court’s failure to make the appropriate findings and provide reasons for those findings on the record make Mr. Bowshier’s sentence contrary to law and illegal.

B. Even If this Court Uses the Present Mandatory Statutory Guidelines, as Governed by R.C. 2929.14(C)(4), the Sentencing Court Still Failed to Make the Requisite Findings, and Mr. Bowshier’s Sentence is Still Contrary to Law and Illegal.

28. Although the legality of Mr. Bowshier’s sentence should be governed by the statute that was in effect when the sentence took place, the Court still failed to abide by the current statute, and Mr. Bowshier’s sentence is illegal.

29. “[R]egardless of what the trial judge might say during sentencing regarding the purposes and goals of criminal sentencing, compliance with R.C. 2929.14(C)(4) requires *separate and distinct* findings in addition to any findings relating to purposes and goals of criminal sentencing.” *State v. Venes*, 8th Dist. No. 98682 at 4, 2013-Ohio-1891.

30. The designation of forcing the court to make specific findings “means the court must ‘engage in the required analysis and select the appropriate statutory criteria’ before

ordering sentences to be served consecutively.” *Id.* The Ohio legislature is clear in its desire for concurrent sentencing. It is expressly directed unless the trial judge makes certain findings during sentencing. As stated above, these requirements were not followed in this case.

31. In *State v. Venes*, 8th Dist. No. 98682, 2013-Ohio-1891, the defendant alleged that the “court had no authority to order consecutive sentences and that if it did, it failed to make the requisite findings necessary to impose sentences consecutively.” *State v. Venes*, at 1. The Court of Appeals in *Venes* agreed with the defendant and held the sentencing court failed to comply with the statute, R.C. 2929(C)(4). *Id.* at 2. During sentencing, the trial court stated that:

The court has reviewed for purposes of sentencing, and the need to protect the public, [sic] the court finds that sentencing you on any less than four counts of this indictment would seriously demean the crime involved here, which is cyber-porn of children and the court will impose the sentence that I imposed originally on this case.

I see no reason to deviate downward and I will not deviate upward even based on the diagnosis of pedophilia because I believe that the court's sentence is ample to cover that diagnosis.

* * *

Counts one, two, and three consecutive. And eight years consecutive on each count for a total of 24 years.

All other counts will be eight years on each count concurrent to each other and to counts one, two, and three.

Id. at 4. The *Venes* court held that this did not constitute “*separate and distinct* findings in addition to any findings related to purposes and goals of criminal sentencing.” *Id.* Additionally, the *Venes* court expressed its disdain for having to “examine words or phrases scattered throughout a sentencing transcript and piece them together to decide whether the court made the required findings.” *Id.* The State had pointed to different findings found throughout the record and on many separate pages of the sentencing transcript in order to show specific findings were made. *Id.* The *Venes* court held that:

This alone [was] proof that the court did not make separate and distinct findings on the record relative to the imposition of

consecutive sentences. If the word “findings” is to have any meaning at all, it means nothing less than the court must ‘engage[] in the required analysis and select[] the appropriate statutory criteria’ before ordering sentences to be served consecutively.

Id. citing State v. Edmonson, 86 Ohio St.3d 324, 326 (1999).

32. The Court in *Venes* attempted to piece together findings from language found throughout the applicable documents and held that it was inappropriate because that should not be the manner in which a trial court comports to the statute. Here, even if it was appropriate to piece together finding scattered throughout the transcript, a reviewing court would be unable to because there are no findings.

33. In *State v. Battle*, 8th Dist. No. 98294, 2013-Ohio-816, the Court of Appeals held that the trial court failed to make the appropriate findings in order to apply consecutive sentences. *State v. Battle*, at 3. The *Battle* court noted the two findings made by the trial court:

Here, the court found that appellant “had seven different burglaries * * * that went on over a period of several months,” which included entering into homes while occupants were present. The court also made note of appellant's juvenile record. However, the court did not address any other findings required under R.C. 2929.14(C)(4). Appellant makes much of his lack of an adult criminal record, but he was 18 years old. The trial court indicated appellant had serious juvenile adjudications. Appellant's prior juvenile criminal history qualifies as an appropriate finding under R.C. 2929.14(C)(4)(c). Further, appellant's course of criminal conduct, spanning several weeks and seven different home invasions, can constitute an appropriate finding under R.C. 2929.14(C)(4)(b). However, the court did not address any other findings. Nor is there evidence in the record demonstrating a reasoned consideration of these factors.

Id. The trial court did in fact make several findings for why it delivered consecutive sentences, but the *Battle* court held that “[o]ther than the two findings above, the only evidence that the trial court considered R.C. 2929.14(C)(4) was a statement that it considered ‘all of the factors relevant to sentencing ***.’ This is not sufficient to demonstrate that ‘the court has engaged in

the required analysis and has selected the appropriate statutory criteria.” *Id. citing State v. Goins*, 8th Dist. No. 98256 at 2, 2013-Ohio-263. *See also State v. Farnsworth*, 10th Dist. No. 12 CO 10 at 4, 2013-Ohio-1275 (holding that the trial court erred in not expressing its findings that the seriousness of the offense required consecutive sentences, even though the facts were substantially in favor of such a finding); *State v. Esmail*, 7th Dist. No. 11 CO 35 at 4, 2013-Ohio-2165 (holding that the trial court failed to make sufficient findings when only the protection of the public, punishment of the offender and citing to H.B. 86 were included in the record); *State v. Upkins*, 3rd Dist. No. 17-12-13 at 2, 2012-Ohio-6114 (holding that the trial court’s failure to provide findings required by statute made the imposition of consecutive sentences contrary to law).

34. Here, the Court need not examine language to see if it is sufficient to satisfy the statute. Unlike the court in *Battle*, there is no language to analyze and determine whether or not it is sufficient. There is no language, and this makes Mr. Bowshier’s sentence, per se illegal.

35. The Court failed to make any findings and it failed to abide by the direction set forth by the statute. The only difference between the original statute and the statute now controlling the application of consecutive sentences in Ohio is the removal of the requirement that the sentencing court provide reasons for its findings. Even with the removal of the requirement to provide reasons, the Court still failed to follow the direction of the statute, and Mr. Bowshier’s sentence is contrary to law.

CONCLUSION

36. The Court failed to make the appropriate findings, and additionally, it failed to provide reasons. Whether the consecutive sentences applied to Mr. Bowshier are analyzed under the previous statutory structure or under the current statutory structure, the failure to follow the statutorily mandated sentencing procedure before applying consecutive sentences to Mr. Bowshier was in contradiction to the mandates of the Ohio General Assembly, contrary to law and the result of which was the imposition of an illegal sentence.

PRAYER FOR RELIEF

WHEREFORE, the Defendant, TAYLOR BOWSHIER, respectfully requests that this Court enter an Order:

- A. Vacating and ordering that all sentences imposed on September 13, 2005, run concurrently with each other, and;
- B. Granting such other and further relief as this Court may deem just and proper.

Shannon M. Treynor, Esquire
Of-Counsel for Defendant
Ohio Bar No. ?
BROWNSTONE, P.A.
400 North New York Ave., Ste. 215
Winter Park, FL 32789
(P) 407-388-1900
(F) 407-622-1511

**IN THE COURT OF COMMON PLEAS
CLARK COUNTY, OHIO**

STATE OF OHIO,

Plaintiff,

CASE NO. 2005 CR 253

-vs-

TAYLOR BOWSHIER,

Defendant.

_____ /

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been served by Certified

Mail/Personal Service/Ordinary U.S. mail to:

Clark County Prosecutors Office
50 East Columbia Street
Springfield, OH 45502

This the ____ day of _____, 2013.

Shannon M. Treynor, Esquire