

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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|----------------------|---|-------------|-----------|
| STATE OF OHIO, | : | APPEAL NOS. | C-160204 |
| | | | C-160205 |
| Plaintiff-Appellee, | : | | C-160211 |
| | | | C-160212 |
| vs. | : | TRIAL NOS. | B-1504760 |
| | | | B-1505557 |
| CHRISTOPHER HALL, | : | | B-1505695 |
| | | | B-1505783 |
| Defendant-Appellant. | : | | |

JUDGMENT ENTRY.

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Christopher Hall appeals the judgment of the trial court sentencing him to a total of five years' imprisonment for several drug offenses. Hall asserts, in a sole assignment of error, that the trial court erred to his prejudice by imposing excessive consecutive sentences.

Hall was charged with 13 drug-related offenses in four separate indictments in September and October 2015. The dates of the offenses ranged between January 2015 and October 2015.

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Hall pleaded guilty to six offenses in four cases, and was sentenced to a total of five years' incarceration, as follows:

| Case Number | Offense | Revised Code Section | Sentence of Incarceration | |
|--------------------|--------------------------------------------------------------------------------------------------------------|-------------------------------------------------|-------------------------------------------------------------------------|-----------------------------------------|
| B-1504760 | Count 1: Trafficking in Heroin | 2925.03(A)(1) | 12 months | Concurrent with: B-1505783 |
| B-1505557 | Count 1: Possession of Heroin | 2925.11 | 12 months | Consecutive to: B-1505695 and B-1505783 |
| B-1505695 | Count 1: Possession of Heroin | 2925.11(A) | 12 months | Consecutive to: B-1505557 and B-1505783 |
| B-1505783 | Count 2: Trafficking in Heroin Count 4: Trafficking in Heroin Count 6: Aggravated Trafficking in Drugs | 2925.03(A)(1) 2925.03(A)(2) 2925.03(A)(2) | 18 months 36 months 18 months (concurrent with each other) | Consecutive to: B-1505557 and B-1505695 |

The remaining charges in the cases numbered B-1505557, B-1505695, and B-1505783 were dismissed. In each case, the trial court ordered Hall to pay court costs, suspended his driver's license for two years, and credited him with 78 days served.

At Hall's sentencing hearing, Hall apologized for his "disregard to authority," took responsibility for his actions, and requested help to overcome his drug addiction. Defense counsel requested that the court sentence Hall to an inpatient treatment program. The state suggested a mid-range sentence of four to five years' incarceration considering Hall's history and the circumstances surrounding the offenses.

The trial court discussed thoroughly its sentencing considerations, including the purposes of felony sentencing outlined in R.C. 2929.11 and the seriousness and recidivism factors described in R.C. 2929.12. The court found that consecutive sentences were necessary to protect the public and to punish Hall, and that the

sentences were not disproportionate to the seriousness of Hall's conduct and to the danger that Hall posed to the public. The court noted that Hall "was actually awaiting trial with regard to those offenses or other offenses at the time that he was charged in those cases and arrested and committed these offenses." The court recognized that Hall had previous drug related offenses, had received unfavorable termination of prior community control sanctions, and had completed treatment at River City Correctional Center twice. The court also noted that Hall had been released from prison in May 2014 and had four new cases as of December 2015. The court found that Hall's criminal history showed a "clear need" to protect the public.

In his appeal, Hall argues that the trial court erred to his prejudice by imposing excessive consecutive sentences. Hall requests that this court reduce his sentence, "as there is nothing in the record indicating [that] he deserved a sentence significantly more severe than that imposed on other similar drug offenders for crimes committed by defendants with worse criminal records who also caused injury to victims." Hall's argument is not persuasive.

We may increase, reduce, modify, or vacate and remand a sentence if we clearly and convincingly find that either the record does not support the trial court's findings or that the sentence is otherwise contrary to law. R.C. 29523.08(G); *see State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 11 (1st Dist.). There is a statutory presumption in favor of concurrent sentences, but the trial court may overcome this presumption by making the statutory, enumerated findings set forth in R.C. 2929.14(C)(4). *See* R.C. 2929.41(A); *State v. Simmons*, 2014-Ohio-3695, 19 N.E.3d 517, ¶ 114 (1st Dist.); *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 23. A "talismanic incantation of the words of the statute" are not

required, so long as “the necessary findings can be found in the record.” *Bonnell* at ¶ 37.

Here, the trial court made the necessary findings pursuant to R.C. 2929.14(C)(4). These findings were supported by the record. Therefore, Hall’s sentences are not clearly and convincingly contrary to law. Hall’s sole assignment of error is overruled.

We note that, at the sentencing hearing, the trial court made the findings that Hall was awaiting trial and that his criminal history showed a clear need to protect the public. In the cases numbered B-1505557 and B-1505695, Hall was awaiting trial. But in the case numbered B-1505783, Hall was not awaiting trial and it is unclear from the record whether he was on postrelease control at the time of those offenses. The trial court, however, made the finding to support consecutive sentences at the sentencing hearing—“[t]he offender’s criminal history shows a clear need to protect the public”—but had failed to make this finding a part of the judgment entry in the case numbered B-1505783 as is required. *See Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, at syllabus. This failure does not render the sentence contrary to law, as the clerical omission may be corrected through a nunc pro tunc entry to reflect what actually occurred at the sentencing hearing. *State v. Jacquillard*, 1st Dist. Hamilton No. C-140001, 2014-Ohio-4394, ¶ 9. We therefore remand the cause for a nunc pro tunc entry correcting the omission of the one consecutive sentencing finding from the trial court’s judgment entry in the case numbered B-1505783. The trial court’s judgments are affirmed in all other respects.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

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HENDON, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on November 30, 2016
per order of the court _____.

Presiding Judge