

IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY, OHIO

STATE OF OHIO

*

CASE NO. : CR

-v-

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**JUDGMENT ENTRY
OF SENTENCING**

Defendant

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* * * * *

On _____, a sentencing hearing was held pursuant to R.C. 2929.19, notice having been given to all parties. Defendant was present in person, was represented by counsel _____, was given an opportunity to speak and to present witnesses and was afforded all rights pursuant to Crim.R. 32. Assistant Prosecuting Attorney _____ was present for the State of Ohio.

The Court has considered the record, oral statements, any victim impact statement, the presentence report, the purposes and principles of sentencing under R.C. 2929.11, the seriousness and recidivism factors relevant to the offense and offender pursuant to R.C. 2929.12, and the need for deterrence, incapacitation, rehabilitation and restitution. The Court is guided by the overriding purposes of felony sentencing, including protection of the public from future crime by the offender and others and punishment of the offender, using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. R.C 2929.11

The Court finds that the defendant has been convicted [upon his/her plea of guilty][by a jury after a jury trial] [by the Court after a bench trial][by the Court after defendant's plea of no contest] of:

Count One: _____, a violation of R.C. _____, a felony of the _____ degree;

Count Two: _____, a violation of R.C. _____, a felony of the _____ degree;

Count Three: _____, a violation of R.C. _____, a felony of the _____ degree;

Count Four: _____, a violation of R.C. _____, a felony of the _____ degree:

Count Five: _____, a violation of R.C. _____, a felony of the _____ degree:

[Continue as needed]

The Court finds that Counts _____, _____, _____, and _____ DO/DO NOT merge under *State v. Ruff, 2015-Ohio-995* and R.C. 2941.25 for purposes of final conviction and sentence. [IF MERGER] The State elected to proceed on Count _____ and therefore a final conviction and sentence is hereby entered on Count[s] _____ only.

The Court finds that a mandatory prison term **is/is not** required by divisions (F) or (G) of R.C. 2929.13, R.C. 2929.14(G) or R.C. _____ on Count[s] _____.

(Consider in All cases)

The Court further finds the following factors apply regarding the offender, the offense or the victim, pursuant to R.C. 2929.12(B), (C), (D), (E) & (F):

2929.12(B) All of the following apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is **more serious** than conduct normally constituting the offense:

_____(1) The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim.

_____(2) The victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense.

_____(3) The offender held a public office or position of trust in the community, and the offense related to that office or position.

_____(4) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.

_____(5) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.

_____(6) The offender's relationship with the victim facilitated the offense.

_____(7) The offender committed the offense for hire or as a part of an organized criminal activity.

_____(8) In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.

_____(9) The offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, and the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.

2929.12(C) All of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is **less serious** than conduct normally constituting the offense:

_____(1) The victim induced or facilitated the offense.

_____(2) In committing the offense, the offender acted under strong provocation.

_____(3) In committing the offense, the offender did not cause or expect to cause physical harm to any person or property.

_____(4) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

2929.12(D) All of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is **likely to commit future crimes**:

_____ (1) At the time of committing the offense, the offender was under release from confinement before trial or sentencing, under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or under post-release control pursuant to section 2967.28 or any other provision of the Revised Code for an earlier offense or had been unfavorably terminated from post-release control for a prior offense pursuant to division (B) of section 2967.16 or section 2929.141 of the Revised Code.

_____ (2) The offender previously was adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has a history of criminal convictions.

_____ (3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has not responded favorably to sanctions previously imposed for criminal convictions.

_____ (4) The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse.

_____ (5) The offender shows no genuine remorse for the offense.

_____ THE DEFENDANT'S ORAS SCORE IS _____ WHICH INDICATES A LOW/MEDIUM/HIGH RISK OF REOFFENDING.

2929.12(E) All of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is **not likely to commit future crimes**:

_____ (1) Prior to committing the offense, the offender had not been adjudicated a delinquent child.

_____ (2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense.

_____ (3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years.

_____ (4) The offense was committed under circumstances not likely to recur.

_____ (5) The offender shows genuine remorse for the offense.

(F) The Court considers the offender's **military service** record and whether the offender has an **emotional, mental, or physical condition that is traceable to the offender's service in the armed forces** of the United States and that was a contributing factor in the offender's commission of the offense or offenses.

The Court further finds that the defendant was born on _____.

(Consider in Non-violent F5's and F4's and Div. B Drug Offenses)

Defendant has been convicted of or pleaded guilty to a felony of the fourth or fifth degree that is not an offense of violence.

(i) The offender previously **has/has not** been convicted of or pleaded guilty to a felony offense.

(ii) The most serious charge against the offender at the time of sentencing **is/is not** a felony of the fourth or fifth degree.

(iii) The court made a request of the department of rehabilitation and correction and the department, within a forty-five-day period, provided the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court.

(iv) The offender previously **has/has not** been convicted of or pleaded guilty to a misdemeanor offense of violence that the offender committed within two years prior to the offense for which sentence is being imposed.

Therefore, R.C. 2929.13(B)((1)(a) does / does not require the Court to sentence the offender to a community control sanction of at least one year's duration.

(Consider in Non-violent F5's and F4's and Div. B Drug Offenses where the Court decides to impose prison)

Notwithstanding R.C. 2929.13(B)(1)(a), the Court is exercising its discretion under R.C. 2929.13(B)(1)(b) to impose a prison sentence upon the defendant because the following apply:

____ (i) The defendant committed the offense while having a firearm on or about the offender's person or under the defendant 's control.

____ (ii) The defendant caused physical harm to another person while committing the offense.

____ (iii) The defendant violated a term of the conditions of bond as set by the court.

____ (iv) The court made a request of the department of rehabilitation and correction pursuant to division (B)(1)(c) of this section, and the department, within the forty-five-day period specified in that division, did not provide the court with the name of, contact information for, and program details of any community control sanction of at least one year's duration that is available for persons sentenced by the court.

_____ (v) The offense is a sex offense that is a fourth or fifth degree felony violation of any provision of Chapter 2907. of the Revised Code.

_____ (vi) In committing the offense, the defendant attempted to cause or made an actual threat of physical harm to a person with a deadly weapon.

_____ (vii) In committing the offense, the defendant attempted to cause or made an actual threat of physical harm to a person, and the defendant previously was convicted of an offense that caused physical harm to a person.

_____ (viii) The defendant held a public office or position of trust, and the offense related to that office or position; the defendant 's position obliged the defendant to prevent the offense or to bring those committing it to justice; or the defendant 's professional reputation or position facilitated the offense or was likely to influence the future conduct of others.

_____ (ix) The defendant committed the offense for hire or as part of an organized criminal activity.

_____ (x) The defendant at the time of the offense was serving, or the offender previously had served, a prison term.

_____ (xi) The defendant committed the offense while under a community control sanction, while on probation, or while released from custody on a bond or personal recognizance.

FOR FELONIES OF FIFTH DEGREE ONLY.

- **TCAP APPLIES to 10 largest counties and all voluntarily participating counties**

R.C. 2929.34(B)(3)(c)

No person sentenced by the court of common pleas of a target county or of a voluntary county to a prison term that is twelve months or less for a felony of the fifth degree shall serve the term in an institution under the control of the department of rehabilitation and correction. The person shall instead serve the sentence as a term of confinement in a facility of a type described in division (C) or (D) of this section.

- **TCAP Does Not Apply BECAUSE....**

R.C. 2929.34(B)(3)(d)

(i) The felony of the fifth degree was an offense of violence, as defined in section 2901.01 of the Revised Code, a sex offense under Chapter 2907. of the Revised Code, a violation of section 2925.03 of the Revised Code, or any offense for which a mandatory prison term is required.

(ii) The person previously has been convicted of or pleaded guilty to any felony offense of violence, as defined in section 2901.01 of the Revised Code.

- (iii) The person previously has been convicted of or pleaded guilty to any felony sex offense under Chapter 2907. of the Revised Code.
- (iv) The person's sentence is required to be served concurrently to any other sentence imposed upon the person for a felony that is required to be served in an institution under the control of the department of rehabilitation and correction.

(Consider in all cases)

The Court further finds that, after considering the factors set forth in R.C. 2929.12, a prison term **is/is not** consistent the purposes and principles of sentencing set forth in R.C. 2929.11 and the defendant **is/is not** amenable to an available community control sanction.

The Court further finds that a combination of community control sanctions **would/would not** demean the seriousness of the defendant's conduct and its impact on the victim, that a sentence of imprisonment **is/is not** commensurate with the seriousness of the defendant's conduct and its impact on the victim and that a prison sentence **does/does not** place an unnecessary burden on the state governmental resources.

(Consider in F2's and F1's and "In Favor" drug offenses)

The Court finds that pursuant to R.C. 2929.13(D), it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing under R.C. 2929.11.

(Consider only if you want to give community control to an F2 or F1 or "In Favor" drug offender)

Notwithstanding the presumption established under R.C. 2929.13(D), the Court finds:

- (1) _____ A community control sanction or a combination of community control sanctions would adequately punish the defendant and protect the public from future crime, because the applicable factors under R.C. 2929.12 indicating a lesser likelihood or recidivism outweigh the applicable factors under that section indicating a greater likelihood of recidivism.
- (2) _____ A community control sanction or combination of community control sanctions would not demean the seriousness of the offense, because one or more factors under R.C. 2929.12 that indicate the defendant's conduct was less serious than conduct normally constituting the offense are applicable and they outweigh the applicable factors under that section that indicate that the defendant's conduct was more serious than conduct normally constituting the offense.

[INSERT APPROPRIATE FINDING IS OFFENDER IS SUBJECT TO AN ADDITIONAL PENALTY FOR POSSESSION OR USE OF A FIREARM][See R.C. 2929.14(D)(1)(a)]

[USE IF COMMUNITY CONTROL IS GRANTED]

IT IS HEREBY ORDERED that defendant serve a stated term of

_____ years of Community Control with APA / IPS under **Count One** for the violation of R.C. _____,

_____ years of Community Control with APA / IPS under **Count Two** for the violation of R.C. _____,

_____ years of Community Control with APA / IPS under **Count Three** for the violation of R.C. _____,

_____ years of Community Control with APA / IPS under **Count Four** for the violation of R.C. _____,

_____ years of Community Control with APA / IPS under **Count Five** for the violation of R.C. _____,

[continue as needed]

It is further ORDERED that the following conditions of community control be imposed as to each count for which community control is the sentence:

- _____ That defendant be remanded to the Allen County Jail for a period of _____(____) days;
- _____ That the defendant be referred to the Western Ohio Regional Treatment & Habilitation (W.O.R.T.H.) Center; and if accepted that defedant enter and successfully complete said program;
- _____ That the defendant enter and successfully complete the PATHFINDER HOUSE Program as directed by the _____ (A.P.A. / I.P.S.). The defendant may/may not be released directly to his probation officer to enter the PATHFINDER HOUSE Program after he/she serves at least _____days in the Allen County Jail and a bed becomes available at PATHFINDER.

- _____ That the defendant comply with the following Non-residential sanctions:
 - Random Urinalysis and/or breathalyzer or other test for use of drugs or alcohol
 - DO NOT USE ILLEGAL DRUGS OR ALCHOLIC BEVERAGE OR PRESCRIPTION DRUGS WITHOUT A VALID PRESCRIPTION AND KNOWLEDGE OF PROBATION OFFICER**
 - Obtain and Maintain Employment
 - Successfully complete any and all counseling or treatment recommended by probation officer
 - Obtain GED
 - Perform _____hours community service by _____ and pay \$25.00 deposit to provide workers compensation coverage while performing community service.
 - Pay a FINE of \$ _____
 - FIREARM**
 - _____ IS **FORFEITED TO** _____ **FOR USE OR DESTRUCTION ACCODING TO LAW.**
 - Pay RESTITUTION in the amount of \$ _____ to _____ \$ _____ to _____ **RESTITUTION SHALL BE PAID BEFORE COURT COSTS.**

Other _____

[includes: assessed cost of any drug and alcohol treatment or counseling as per probation dept.; restitution to victim/law enforcement]

_____ (Othersanctions) _____

_____ That the defendant comply will all of the rules and regulations now and hereafter set forth by _____ (A.P.A. / I.P.S.).

It is ORDERED that during the period of community control, the defendant must abide by the law and must not leave the State of Ohio without the permission of the Court or the defendant’s probation officer.

IT IS FURTHER ORDERED that the terms of community control are to be served

- Concurrently**
- Consecutively.**

[Anytime community control sanction is imposed]

The Court hereby notifies the defendant that if the conditions of the Community Control Sanctions herein imposed are violated, the Court may impose a longer time under the same sanction, may impose a more restrictive sanction or may impose a prison term of

- _____ **years on Count One;**
- _____ **years on Count Two;**
- _____ **years on Count Three;**
- _____ **years on Count Four;**
- _____ **years on Count Five;**

And the prison terms imposed for a violation of community control can be ordered served

- consecutive
 - concurrent
- to each other.

[If placed on IPS]

Pursuant to R.C. 2951.021, the Court hereby ORDERS that a "County Probation Service Fee" of \$20.00 per month, plus poundage, be charged to the defendant placed on Community Control with the Allen County Adult Probation Department (IPS). The same shall be paid by the defendant to the Clerk of this Court on or before the last Friday of each month that he/she is on probation supervision. Said fee is to commence two (2) weeks after defendant obtains employment.

It is further ORDERED that if the I.P.S. Unit finds it appropriate, the defendant's community control shall be transferred to the Adult Parole Authority for the remainder of his/her term.

[USE IF DEFENDANT IS SENTENCED TO PRISON]

IT IS HEREBY ORDERED that defendant serve a stated term of

_____ in prison under Count One for the violation of R.C._____, which **is/is not** a mandatory term pursuant to R.C. 2929.13(F), 2929.14(D)(3) or 2925,

_____ in prison under Count Two for the violation of R.C._____, which **is/is not** a mandatory term pursuant to R.C. 2929.13(F), 2929.14(D)(3) or 2925,

_____ in prison under Count Three for the violation of R.C._____. which **is/is not** a mandatory term pursuant to R.C. 2929.13(F), 2929.14(D)(3) or 2925.

_____ in prison under Count Four for the violation of R.C._____. which **is/is not** a mandatory term pursuant to R.C. 2929.13(F), 2929.14(D)(3) or 2925.

_____ in prison under Count Five for the violation of R.C._____. which **is/is not** a mandatory term pursuant to R.C. 2929.13(F), 2929.14(D)(3) or 2925.

[continue as needed]

IT IS FURTHER ORDERED that defendant pay a fine of \$_____ on Count One; that defendant pay a fine of \$_____ on Count Two; that defendant pay a fine of \$_____ on Count Three; \$_____ on Count Four, *[etc]*

[Consecutive or not]

The prison term imposed in Count _____ is to be served **concurrently** to the term imposed in Count _____, pursuant to R.C. 2929.14(E).

OR

The prison term imposed in Count _____ is to be served **consecutive** to the term imposed in Count _____.

[If consecutive sentences are imposed]

The Court has decided that the offender shall serve the prison terms consecutively, pursuant to **R.C. 2929.14(C)(4)**, because 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 the Court also finds the following:

_____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.

_____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.

_____The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

POSTRELEASE CONTROL:

As part of this sentence, defendant is advised that upon the completion of the prison term, the defendant is subject to (1) postrelease control that is **discretionary / mandatory**, (2) the duration of the postrelease-control period is **THREE (3) / FIVE (5) Years**, and (3) the Adult Parole Authority (APA) will administer the postrelease control pursuant to the statute governing postrelease control and that any violation by the offender of the conditions of postrelease control will subject me to the consequences set forth in that statute. *State v. Grimes*, 2017-Ohio-2927.

As authorized by law, the Adult Parole Authority may increase or reduce restrictions imposed by the parole board. If the defendant violates the terms of POST RELEASE CONTROL, the parole board may return the offender to prison for a maximum period of nine months for each violation, but the total period of additional prison time imposed by the parole board for violations while under POST RELEASE CONTROL shall not exceed one-half (1/2) of the defendant's stated prison term. **As part of post-release control, defendant shall comply with any drug/alcohol treatment and/or monitoring.** If the defendant is convicted of a felony committed while under POST RELEASE CONTROL, the court having jurisdiction over the new felony may return the defendant to prison under this case for an additional period of time as authorized by law and any prison term for the new felony may be served consecutively with the extension of prison time in this case. If the court imposes additional prison time in this case, the defendant shall be credited with any additional prison time imposed by the parole board for the same violation.

The additional periods of time imposed by another court because of a felony committed while under POST RELEASE CONTROL in this case or by the parole board for violations in this case while on POST RELEASE CONTROL are part of the sentence in this case.

(Consider risk reduction sentence [discretionary])

Pursuant to R.C. 2929.143, the court recommends that the offender serve a risk reduction sentence under section 5120.036 of the Revised Code because the Court determines that a risk reduction sentence is appropriate, and all of the following apply:

- (1) The offense for which the offender is being sentenced is not aggravated murder, murder, complicity in committing aggravated murder or murder, an offense of violence that is a felony of the first or second degree, a sexually oriented offense, or an attempt or conspiracy to commit or complicity in committing any offense otherwise identified in this division if the attempt, conspiracy, or complicity is a felony of the first or second degree.
- (2) The offender's sentence to the term of incarceration does not consist solely of one or more mandatory prison terms.
- (3) The offender agrees to cooperate with an assessment of the offender's needs and risk of reoffending that the department of rehabilitation and correction conducts under section 5120.036 of the Revised Code.
- (4) The offender agrees to participate in any programming or treatment that the department of rehabilitation and correction orders to address any issues raised in the assessment described in division (A)(3) of this section.

The offender is notified that an offender who is serving a risk reduction sentence is not entitled to any earned credit under section 2967.193 of the Revised Code.

[In all cases]

Defendant is ORDERED to pay _____ as restitution to _____ . **RESTITUTION SHALL BE PAID BEFORE COURT COSTS**

[if restitution ordered] Pursuant to Admin. Code 5120:1-41(C)(3) that the Parole Board shall monitor the restitution order.

Defendant is ORDERED to pay all costs of prosecution. Judgment is hereby entered against defendant for court costs.

If the defendant fails to pay that judgment or fails to timely make payments towards that judgment under a payment schedule approved by the court, the court may order the defendant to perform community service in an amount of not more than forty hours per month until the judgment is paid or until the court is satisfied that the defendant is in compliance with the approved payment schedule. R.C. 2947.23

If the court orders the defendant to perform the community service, the defendant will receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed will reduce the judgment by that amount.

DEFENDANT'S RIGHT TO HAVE A DRIVER'S LICENCE IS SUSPENDED FOR: _____.

[PUT IN ENTRIES FOR SEX OFFENDERS]

Defendant is a Tier _____ Sex Offender and has been given written and oral Notice of his/her responsibilities to Register as a Sex Offender.

_____ Defendant has been sentenced to a prison term or to a community residential sanction in a jail or community-based correctional facility, therefore it is ORDERED that defendant shall submit to a DNA specimen collection procedure administered by the director of rehabilitation and correction or the chief administrative officer of the jail or other detention facility in which the person is serving the term of imprisonment.

Or

_____ Defendant has been sentenced to probation or community control, therefore it is ORDERED that defendant shall submit to a DNA specimen collection procedure administered by the chief administrative officer of the probation department or the adult parole authority.

Defendant is ORDERED conveyed to the custody of the Ohio Department of Rehabilitation and Correction forthwith. Credit is granted for _____ days as of this date because of time spent in custody in this case prior to sentence together with future custody days while defendant awaits transportation to the appropriate institution.

IT IS SO ORDERED.

Dated: _____

JEFFREY L. REED, Judge

**cc: Attorney for Defendant
Prosecutor**