

[Cite as *State v. Wheeler*, 2004-Ohio-7036.]

[Please also see errata at 2005-Ohio-1141 & 2005-Ohio-1142.]

**IN THE COURT OF APPEALS
THIRD APPELLATE DISTRICT
AUGLAIZE COUNTY**

STATE OF OHIO

PLAINTIFF-APPELLEE

CASE NO. 2-04-16

v.

TYSON D. WHEELER

OPINION

DEFENDANT-APPELLANT

STATE OF OHIO

PLAINTIFF-APPELLEE

CASE NO. 2-04-17

v.

TYSON D. WHEELER

OPINION

DEFENDANT-APPELLANT

**CHARACTER OF PROCEEDINGS: Criminal Appeals from Common Pleas
Court**

JUDGMENTS: Judgments Reversed and Cause Remanded

DATE OF JUDGMENT ENTRIES: December 27, 2004

ATTORNEYS:

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BRYANT, J.

{¶ 1} Defendant-appellant Tyson D. Wheeler (“Wheeler”) brings this appeal from the judgment of the Court of Common Pleas of Auglaize County.

{¶ 2} On October 19, 2003, the police received a call that “suspicious” activities were occurring at the residence of Mr. and Mrs. Robert Wheeler, who were on vacation. The police investigated and determined that the couple’s grandson was staying in the home and driving their vehicle without their permission. Mr. and Mrs. Wheeler requested that Wheeler be removed from the premises. Wheeler was arrested and charged with burglary, a third degree felony, and unauthorized use of a motor vehicle, a first degree misdemeanor. On February 20, 2004, Wheeler entered a negotiated guilty plea to one count of fourth degree burglary and the unauthorized use of a motor vehicle in case no. 2003-CR-139. Wheeler remained free on bond until sentencing.

{¶ 3} On April 19, 2004, the sentencing hearing was scheduled, but Wheeler failed to appear. A bench warrant was issued for his arrest. Wheeler was subsequently charged with failure to appear, a fourth degree felony, and was

arrested in Allen County. On May 23, 2004, Wheeler appeared for sentencing on the original convictions. Wheeler also entered a guilty plea to the charge of failure to appear charge in case no. 2004-CR-53 and was sentenced on that offense as well. The trial court ordered Wheeler to serve 12 months in prison for the burglary concurrent with six months in prison for the unauthorized use of the motor vehicle in case no. 2003-CR-139. Then the trial court imposed a 17 month prison term for the failure to appear conviction and ordered the sentence in case no. 2004-CR-53 be served consecutive to that in case no. 2003-CR-139. Wheeler appeals from this judgment and raises the following assignment of error.

The trial court's ordering that the sentences of [Wheeler] are to be served consecutively to each other was unsupported by the record and was contrary to law.

{¶ 4} Wheeler's sole assignment of error claims that the trial court erred in imposing the sentence ordered.

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
* * * .**

{¶ 5} R.C. 2929.14(E)(4). If the trial court imposes consecutive sentences under R.C. 2929.14, it must state its reasons for imposing consecutive sentences on the record. R.C. 2929.19

{¶ 6} In this case, the trial court reviewed the pre-sentence investigation and listened to the testimony of Wheeler at the sentencing hearing. In support of the sentences, the trial court made the following findings.

He's failed to respond favorably in the past to sanctions imposed for criminal convictions; been sent to the W.O.R.T.H. Center and violated and has demonstrated no remorse for the offense; recidivism likely factors outweigh the recidivism unlikely factors; Court further finds that the relationship with the victim facilitated the offense; no physical harm to persons or property was expected or caused. * * *

*** * * He's demonstrated a repeat fashion (sic) lack of responsibility, lack of respect for authority, lack of living up to his obligation. Court further finds that CONSECUTIVE service is necessary to adequately punish the offender and that the Defendant's criminal history demonstrates that consecutive services are necessary to protect the public from future crime by the offender. The offense was committed while he was awaiting trial or sentencing on a felony case. For this seventeen (17) months in Case 2004-CR-53 is ORDERED run CONSECUTIVELY to the twelve (12) months in 2003-CR-139.**

*** * ***

You've been given repeated opportunities to step up to the plate and meet your responsibilities and repeatedly you've blown it off.

Sentencing Tr. 35-36. The trial court made all of the required findings to impose consecutive sentences and stated its reasons for doing so on the record. However,

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the trial court did not make the required findings or state its reasons on the record for imposing the maximum sentence for the failure to appear. Thus, the trial court erred in imposing the maximum sentence and the assignment of error is sustained.

{¶7} The judgment of the Court of Common Pleas of Auglaize County is reversed and the cause is remanded for further proceedings.

*Judgment Reversed and
Cause Remanded.*

CUPP and ROGERS, J.J., concur.

/jlr