

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

STATE OF OHIO,	:	APPEAL NO. C-150216
	:	TRIAL NO. B-1402381
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
JARRED SHEARER,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Jarred Shearer appeals his convictions and aggregate sentence for three counts of aggravated robbery, one count of felonious assault, and the accompanying firearm specifications. After he pleaded guilty to the charges, the trial court sentenced him to an aggregate sentence of 11 years in prison.

In his first assignment of error, Shearer argues that because the aggravated robberies and felonious assault were committed as part of a single crime spree, they were allied offenses subject to merger under R.C. 2941.25.

Because Shearer did not raise his allied-offenses argument in the trial court, he has waived all but plain error. *See State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 3.

The record reflects that Shearer committed the first aggravated robbery on March 25, 2014, against Dawod Riad Dawod. He committed a second aggravated robbery against Dhillip James on March 26, 2014. On March 28, 2014, he committed a third aggravated robbery against Sergeant Scott Owens, and felonious assault against Detective David Hubbard. Because all of these offenses were committed against separate victims, they are not allied offenses of similar import. *See* R.C. 2941.25(B); *see also*, *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, paragraph two of the syllabus. Thus, the trial court could properly have convicted and sentenced Shearer for each of the four offenses, and there is no plain error. We, therefore, overrule Shearer's first assignment of error.

In his second assignment of error, Shearer argues the trial court erred in imposing firearm specifications for each of the four offenses and ordering them to be served consecutively. Shearer first argues that the trial court should not have sentenced him on each of the firearm specifications, because the aggravated robbery and felonious assault offenses were allied offenses that should have merged. But we held under the first assignment of error that the offenses do not merge. Thus, the trial court did not err in imposing a sentence for the firearm specifications relating to each offense.

Shearer next argues that even if the aggravated robbery offenses and the felonious assault offense were not allied, the trial court erred in stating that it was required by law to impose the one-year firearm specifications for the aggravated robbery of Dawod on March 25, 2014, and the aggravated robbery of James on March 26, 2014, and to order them to be served consecutively. He relies on R.C. 2929.14(B)(1)(g) which provides in pertinent part:

If an offender * * * pleads guilty to two or more felonies, if one or more of those felonies are * * * aggravated robbery [and] felonious assault * * * and if the offender pleads guilty to a specification of the type described under R.C. 2929.14(B)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose upon the offender the prison term specified under R.C. 2929.14(B)(1)(a) of this section for each of the two most serious specifications of which the offender * * * pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

Shearer argues that under R.C. 2929.14(B)(1)(g), the trial court was obligated to impose the three-year firearm specifications for the March 28, 2014 aggravated robbery and felonious assault, because they carried the most serious firearm specifications, but it had discretion to impose the remaining one-year firearm specifications. Shearer's argument, however, ignores R.C. 2929.14(B)(1)(b), which prohibits trial courts from imposing more than one prison term upon an offender for a firearm specification for felonies committed as part of the same act or transaction except as provided in R.C. 2929.14(B)(1)(g). Thus, Ohio appellate courts have read R.C. 2929.14(B)(1)(g) as an exception to R.C. 2929.14(B)(1)(b). *See State v. Israel*, 12th Dist. Warren No. CA2011-11-115, 2012-Ohio-4876, ¶ 73; *State v. Young*, 8th Dist. Cuyahoga No. 102202, 2015-Ohio-2862, ¶ 4-10. Because the aggravated robberies that carried the one-year firearm specifications were not committed as part of the same act or transaction, Shearer's reliance on R.C. 2929.14(B)(1)(g) is misplaced.

Shearer, furthermore, ignores R.C. 2929.14(C)(1)(a), which requires the trial court to order Shearer to serve a mandatory prison term imposed for a firearm specification “consecutively to any other mandatory prison term [imposed for a firearm specification] * * * [and] consecutively and prior to any prison term imposed for the underlying felony.” *See State v. Webb*, 9th Dist. Summit No. C.A. No. 27424, 2015-Ohio-2380, ¶ 33-35; *State v. Love*, 4th Dist. Hocking No. 13CA16, 2014-Ohio-1603, ¶ 22-27; *State v. Ellis*, 2015-Ohio-2120, 36 N.E.3d 722, ¶ 62 (5th Dist.). As a result, we overrule his second assignment of error.

In his third assignment of error, Shearer contends that his guilty plea was not knowing, voluntary, and intelligent because he lacked the competency necessary to enter a valid plea. He asserts that because he was only 17 years old, had only completed schooling through the tenth grade, was taking prescription medication for schizophrenia, and had admitted to being involved with drugs and alcohol, that he lacked the competence necessary to enter a valid plea.

Shearer’s claim of incompetence, however, is belied by the record. At the plea hearing, the trial court asked Shearer whether he understood the nature of the charges against him, the maximum penalties, and all the Crim.R. 11 rights he would be waiving by pleading guilty. *See State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 7 and 13. Shearer responded affirmatively on each occasion. The fact that Shearer was mentally ill and was taking medication for his illness did not automatically negate his competence or invalidate his plea. *See R.C. 2945.37(F); State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, 855 N.E.2d 48, ¶ 71; *State v. Madhi*, 89 Ohio St.3d 323, 329, 731 N.E.2d 645 (2000). The trial court specifically asked Shearer if the medication affected his ability to understand the proceedings,

and Shearer replied that it did not. *See State v. Mink*, 101 Ohio St.3d 350, 2004-Ohio-1580, 805 N.E.2d 1064, ¶ 57; *see also State v. Ferguson*, 108 Ohio St.3d 451, 2006-Ohio-1502, 844 N.E.2d 806, ¶ 44-46.

Shearer's counsel did not file a suggestion of incompetency or seek to have Shearer's competency evaluated prior to the plea hearing, and neither Shearer's counsel nor the assistant prosecutor raised any issue about Shearer's competency during the plea hearing. Furthermore, Shearer, upon questioning by the court, stated that he and his counsel had discussed the plea form in detail prior to the plea hearing, and that he understood the nature and implications of his plea and the rights he was waiving. Shearer, moreover, effectively communicated with his counsel during the plea proceedings. Because Shearer has not demonstrated that his guilty pleas were made unknowingly, involuntarily, or unintelligently, we overrule the third assignment of error. The judgment of the trial court is affirmed.

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

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

To the clerk:

Enter upon the journal of the court on December 16, 2015

per order of the court _____.
Presiding Judge