

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

STATE OF OHIO,	:	APPEAL NOS. C-240199
		C-240200
Plaintiff-Appellee,	:	TRIAL NOS. C/23/CRB/10979
		C/23/CRB/10916B
vs.	:	
TIMOTHY TEBBENKAMP,	:	
		<i>JUDGMENT ENTRY</i>
Defendant-Appellant.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, Loc.R. 11.1(C)(1), and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Defendant-appellant Timothy Tebbenkamp entered guilty pleas to violating a protection order, see R.C. 2919.27, and telecommunications harassment, see R.C. 2917.21(B). The trial court imposed a 180-day jail term for each offense and ordered that the terms be served consecutively. Tebbenkamp now appeals, arguing in a single assignment of error that the trial court erred by failing to merge the offenses for purposes of sentencing because the offenses are allied offenses of similar import.

The Ohio Supreme Court has held that convictions do not merge under R.C. 2941.25(B) “if any one of the following is true: (1) the conduct constitutes offenses of dissimilar import, (2) the conduct shows that the offenses were committed separately, or (3) the conduct shows that the offenses were committed with separate animus.” *State v. Ruff*, 2015-Ohio-995, ¶ 13. Additionally, and notably, the defendant bears the

OHIO FIRST DISTRICT COURT OF APPEALS

burden of demonstrating that offenses should merge under R.C. 2941.25(B). *State v. Washington*, 2013-Ohio-4982, ¶ 18.

At Tebbenkamp’s guilty-plea hearing, he waived a reading of the facts. While the State provided some facts surrounding one of the text messages and the voicemail, the circumstances surrounding the remaining messages were not presented to the trial court. The trial court, after considering Tebbenkamp’s argument that the offenses were allied, declined to merge the offenses, stating, “They’re separate acts going on there . . . the violation was making the actual contact and the telecommunication was like continuing to contact after being told not to or making alarming messages.”

After reviewing the record, which is sparse on facts and circumstances surrounding the offenses, we conclude that Tebbenkamp has not sustained his burden of demonstrating a basis for merging these offenses under the fact-intensive inquiry set forth in *Ruff*. Thus, we cannot say that the trial court erred by failing to merge these offenses for purposes of sentencing. Accordingly, we overrule his single assignment of error, and affirm the trial court’s judgment.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

ZAYAS, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on 12/31/2024 per order of the court.

By: _____
Administrative Judge