

IN THE SUPREME COURT OF OHIO

ORIGINAL

STATE OF OHIO
Plaintiff

Vs.

TONY CONNIN
Defendant

: This case originated in Lucas Co.
: Common Pleas, case no.'s CR11-2537 and
: CR11-2183, and was appealed to 6th Dist.
: Appeals Court, case no. L-11-1312.

: Supreme Court Case No. _____
: **13-0075**

MEMORANDUM IN SUPPORT OF JURISDICTION BY *TONY CONNIN*

By:

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FILED
MAR 29 2013
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
MAR 29 2013
CLERK OF COURT
SUPREME COURT OF OHIO

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EXPLANATION OF WHY THIS CASE CONSTAINS A SUBSTANTIAL CONTITUTIONAL QUESTION AND WHY IT IS ONE OF GREAT PUBLIC INTEREST:

The Trial Court in this case blatantly and obviously violated Appellant's constitutional rights. The Trial Court refused to acknowledge the fact that Appellant is not a risk for recidivism, and did not fit any of the categories to substantiate maximum consecutive sentences. The trial judge even completely ignored report and recommendations of court appointed counselors in this case, who were charged with deciding what would be the best action to take.

This is why Appellant is asking this Honorable Court to review this case. The manifest injustices being done here are outrageous, and if they are allowed to stand, those same injustices could be repeated to anyone with legal problems in Appellant's county. The trial court must not be allowed to just make mistakes and commit outright violations of constitutional rights without fear of reprimand or repercussions.

The question here is, if a constitutional right is violated, what is there that can be done about it? Should it just be swept under the rug? Or should a spotlight be shined upon it, and the injustice corrected as swiftly as possible? Is this not a justice system? Then the answer should be obvious.

If these wrongs are not corrected, then a manifest injustice will be allowed to prevail. This would go against the very fabric of what this system is built upon. Appellant is sure that, once this Honorable Court reviews this case in detail, it will see that what Appellant is saying here is obvious. Appellant is aware that this Court receives thousands of cases a year, but he is sure that this one stands out, just for the sheer blatant disregard for the law and the constitution which permeates this case.

Appellant pleads with this Court to accept this case. Appellant thanks this Court for its time and consideration in this matter.

Respectfully Submitted,


TONY CONNIN, #655-818

STATEMENT OF THE CASE AND FACTS:

STATEMENT OF THE CASE:

On August 4th, 2011, the Lucas County Grand Jury filed an original indictment charging Appellant Tony Elwood Connin (hereinafter "Appellant") as follows: seven counts of Gross Sexual Imposition, felonies of the third degree; seven counts of Rape (four ESP, three F1); and a single count of Unlawful Sexual Conduct with a Minor, a felony of the third degree, in the case identified as CR02001102183. A warrant was issued for Appellant.

On August 9th, 2011, Appellant and his retained trial counsel were present in Court for arraignment on the charges. Appellant was arraigned on the charges, and Appellant was released on his own recognizance as to the felonies of the third degree. Actual bond was set at \$100,000.00, no 10% allowed, as to each of the first four Rape counts, and further set at \$25,000.00, no 10%, as to each of the remaining Rape counts.

The matter was scheduled for trial to commence on September 13th, 2011.

On August 22nd, 2011, State moved the Court for a Pre-Trial inspection of various agency records and a Request for Immunity concerning the production of 911 tapes from the Toledo Police Division, and filed appurtenant subpoenas. The Court subsequently granted the request concerning immunity and scheduled a hearing concerning the in-camera inspection of certain records.

Appellant's counsel requested discovery, and State complied with the discovery requests on August 25th, 2011. The record reveals that State subsequently supplemented the discovery disclosures.

On September 16th, 2011, the Court held a hearing concerning the request for an in-camera inspection of records from the Lucas County Children Services Board. Disclosable documents were presented to defense counsel and State. Any remaining documents were sealed by the Court, and not

further disclosed. The matter was scheduled for trial.

On September 13th, 2011, the trial date was vacated at the request of Appellant, and re-scheduled for September 27th, 2011.

On September 27th, 2011, State filed an information, identified as Lucas County case number CR0201102537, charging Appellant with two counts of Rape, felonies of the first degree, and a single count of Unlawful Sexual Conduct with a Minor, a felony of the third degree. Appellant was arraigned on the charges.

On that same date, Appellant entered a plea of guilty, orally and in writing, to the charges filed in the information, CR0201102537. Appellant entered guilty pleas to the following: the offense of Rape, in violation of O.R.C. §2907.02(A)(2)&(B), a felony of the first degree; Rape, as to the second count, in violation of O.R.C. §2907.02(A)(2)&(B); and Unlawful Sexual Conduct with a Minor, in violation of O.R.C. §2907.04(A)&(B)(3), a felony of the third degree. The pleas were accepted by the Court, and Appellant was referred for evaluation by the Pretrial/Presentence Department and the Court Diagnostic and Treatment Center. Bond was set at \$75,000.00, no 10% allowed, as to each of the Rape counts and \$50,000.00, no 10% allowed, on the remaining count, for a total bond of \$200,000.00. The matter was scheduled for sentencing hearing to be conducted on November 7th, 2011.

Also, on September 27th, 2011, Appellant requested that the matters contained in case number CR0201102183 be rescheduled and continued for a Pre-Trial conference on November 7th, 2011, and the trial court granted the request.

On November 7th, 2011, both cases pending in Lucas County Common Pleas Court were continued for further disposition and sentencing on November 21st, 2011.

On November 21st, 2011, Appellant's sentencing hearing was held in case number

CR0201102537. Appellant was sentenced as follows: 10 years in prison as to count 1 of the information; 10 years in prison as to count 2; and 5 years as to count 3. Appellant was ordered to serve the sentences for Rape as to count 1 and 2 consecutively. The sentence as to count 3 was ordered to be served concurrently with the first two counts, for a total incarceration term of 20 years. Appellant was notified of reporting duties. Further, Appellant was ordered to pay the costs of the action, and was advised of the appellate rights under O.R.C. §2953.08.

Also on that date, State entered a nolle prosequi as to Lucas County case number CR0201102183.

On December 14th, 2011, the judgment entry evidencing the sentencing of Appellant was filed and journalized as matter of the record.

On December 15th, 2011, counsel was appointed for Appeal, and a timely notice of Appeal was filed on December 20th, 2011. That appeal was denied on October 26th, 2012, and this time appeal of that decision to the Supreme Court is currently being filed.

STATEMENT OF THE FACTS:

Appellant entered a plea of guilty to three counts contained in the information filed by State on September 27th, 2011, in Lucas County case number CR0201102537. The only facts on the record are those stated by the trial court judge at the time of the entrance of the pleas. The judge stated:

[THE COURT]:.... "In the first two counts are charging felonies of the first degree, the charges of rape, and they differ in terms of the time period. So I'm not going to read each count because some of the language is the same, but the first count charges that you on or between the 25th day of November, 2008, and the 24th day of November, 2009, and the second count charges that a day later between the time period of November 25th, 2009, and the 24th of November in 2010, that while in Lucas County, Ohio, you did knowingly engage in sexual conduct with another, when the offender purposely compelled the other person to submit by force or threat of force, in violation of 2907.02(A)(2) and (B) of the Ohio Revised Code, and other than the time frame, the elements of the offense are the same as to the first two counts...
...The third count charges that you, who were 18 years of age or older, on or between the

25th day of November in 2010, and the 24th day of April 2011, also in Lucas County, Ohio, did knowingly engage in sexual conduct with another, not the spouse of the offender, when the offender knew that the other person was 13 years of age or older, but less than 16 years of age, or that the offender was reckless in that regard, and that the offender was ten years or more older than that person. That charge is the offense of unlawful sexual conduct with a minor..." (Tr. 09-27-2011, pp. 14-15).

ARGUMENT IN SUPPORT OF EACH PROPOSITION OF LAW

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW NUMBER ONE: "THE TRIAL COURT ERRED IN IMPOSING MAXIMUM SENTENCES AND CONSECUTIVE SENTENCES AND THE SENTENCES ARE CONTRARY TO LAW"

In the present case, the trial court erred at the time of sentencing both by imposing maximum sentences and imposing consecutive sentences as to the two counts of Rape. The imposition of those sentences was contrary to law and unsupported by the record.

The trial court violated the terms and guidelines offered by O.R.C. §2953.08 by imposing two consecutive terms for the convictions for the two felonies underlying this matter. While the penalties pronounced at the time of sentencing appear to fall within the individual statutory penalties for the crimes as alleged, the trial court clearly ignored any matter of mitigation as to the imposition of the maximum sentence on any count. The record reflects that the Appellant had no previous felony history as an adult, no history of more than one alleged victim, and no history of any sexual offense. Appellant could not be considered an habitual sex offender and there is no evidence that any drugs or alcohol were involved in the commission of the alleged incidents. Although there is some evidence of depression by Appellant, there is no history of mental illness or other disability, and no testimony offered at the time of the plea indicated that cruelty or threats of cruelty were involved. The trial court judge further disregarded the recommendations of the court-appointed psychologist, Dr. Mark S. Pittner, Ph.D., in the Court Diagnostic and Treatment report submitted that made specific findings that

Appellant is unlike the typical sex offender (Tr. Sentencing, 11-21-2011, p. 19) and that Appellant was an appropriate candidate for therapy and continued self-examination concerning his character (Tr. Sentencing, 11-21-2011, p. 20). Dr. Pittner urged the Court to exercise leniency in sentencing (Tr. Sentencing, 11-21-2011, p. 20).

The overriding purposes of felony sentencing are to protect the public from future crimes by the O.R.C. §2929.12(D) offender and others, and to punish the offender. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, and making restitution to the victims of the offense. St. V. Nichols, 195 Ohio App.3d 323, 2011 Ohio 4671, 2011 Ohio App.LEXIS 3877; O.R.C. §2929.11(A). A court that imposes a sentence for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing as set forth in O.R.C. §§2929.11 and 2929.12(A). Although St. V. Foster, 109 Ohio St.3d 1, 2006 Ohio 856, 845 N.E.2d 470, eliminated judicial fact finding, courts have not been relieved of the obligation to consider the overriding purposes of felony sentencing, the seriousness and recidivism factors, or the relevant considerations set forth in O.R.C. §§2929.11, 2929.12 and 2929.13. St. V. Hairston, 118 Ohio St.3d 289, 2008 Ohio 2338, ¶25, 888 N.E.2d 1073; St. V. Nichols, supra, ¶15.

Appellate courts review felony sentencing using a two-step procedure under the guidelines of St. V. Kalish, 120 Ohio St.3d 23, 2008 Ohio 4912, ¶4, 896 N.E.2d 124. "The first step is to 'examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law.'" St. V. Stevens, 179 Ohio App.3d 97, 2008 Ohio 5775, ¶4, 6900 N.E.2d 1037 and St. V. Nichols, supra, ¶16, quoting Kalish at ¶4. "If this step is satisfied, the second step requires that the trial court's decision be reviewed under an 'abuse of discretion standard.'" Id. Generally, an abuse of discretion is an "appellate court's

standard for reviewing a decision that is asserted to be grossly unsound, unreasonable, illegal or unsupported by the evidence.” St. V. Money, 2010 Ohio 6223, ¶13; St. V. Nichols, supra, ¶16; St. V. Kaigler, 6th Dist. No. L-10-1230, 2011-Ohio-5304, ¶14. Under Ohio law, it is well established that an abuse of discretion “connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” Blakemore V Blakemore, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). In the felony sentencing context, an abuse of discretion can be found if the sentencing court unreasonably or arbitrarily weighs the factors in O.R.C. §§2929.11 and 2929.12. St. V. Nichols, supra, ¶16 citing St. V. Jordan, 2010 Ohio 3456, ¶12.

O.R.C. §2929.12 includes factors to be considered in weighing the seriousness of an offender’s conduct and those factors to be considered in weighing the likelihood of the offender’s recidivism. The Court may also consider any other factors that are relevant to achieving the purposes and the principles of sentencing. St. V. Nichols, supra, ¶17, citing St. V. Saunders, Greene App. No. 2009 CA 82, 2011 Ohio 391, ¶11.

Some scholars have suggested that all sentencing courts should consider stating its specific findings concerning sentences as implied by O.R.C. §2929.14(E)(4)***** It has been noted that St. V. Foster, supra, found both O.R.C. §§2929.14(E)(4) and 2929.19(B)(2)(c) to be unconstitutional. O.R.C. §2929.14(E)(4) has been re-enacted by the legislature, while O.R.C. §2929.18(B)(2)(c) has not. “An in court explanation [of sentencing matters] gives counsel the opportunity to correct obvious errors” and “encourages judges to decide how the statutory factors apply to the facts of the case;” whereas, “[i]f these important findings and reasons were not given until the journal entry there is the danger that they might be viewed as after-the-fact justifications.” St. V. Comer, 99 Ohio St.3d 463;

In the present case, it is clear that the trial court judge chose to ignore the proper factors to O.R.C. §2929.12(D) consider under the felony sentencing statutes, and chose to proceed in a fashion that is clearly and convincingly contrary to law. The trial court judge admitted that he did not understand the impact of the Court Diagnostic and Treatment Center's report (Tr. Sentencing, 11-21-2011, p. 30). The judge indicated that he recognized that the Appellant was amendable to the initial phases of rehabilitation (Tr. Sentencing, 11-21-2011, pp. 30-31). While the judge asserted on the record that he considered the seriousness of the offense and the potential for recidivism, there is nothing on the record to support the remarks (Tr. Sentencing, 11-21-2011).

The record reflects that the Court did not consider the appropriate factors in fashioning a sentence, and, as a consequence, the sentence was contrary to law and must be reversed and vacated.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW NUMBER TWO: "THE TRIAL COURT ABUSED ITS DISCRETION IN IMPOSING THE SENTENCES"

If this Court were to conclude that Appellant's first assignment of error is not well-taken, it must consider whether the trial court abused its discretion in imposing the sentences that it did. St. V. Money, supra; St. V. Nichols, supra, ¶19. O.R.C. §2929.12(A) mandates that, in exercising its "discretion, the court shall consider the factors set forth in divisions (B) and (C) this section relating to the seriousness of the conduct and the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism and, in addition, may consider any other factors that are relevant to addressing those purposes and principles of sentencing." The Court did not fully elaborate on which, if any O.R.C. §2929.12(D) factors that it considered in fashioning the sentence for the Appellant. Appellant does, however, recognize that the Court does not have to pursuant to St. V.

Foster, supra., para. seven of the syllabus. The Court apparently considered matters outside the record, including letters, comments and allegations concerning offenses to which Appellant did not plead guilty to (Tr. Sentencing 11-21-2011, pp. 32-35). In this context, this Court must direct its attention to the seriousness of the offense, the remorse of the Appellant, the potential for rehabilitation, and the potential for recidivism.

O.R.C. §2929.12(B) factors are considerable in length. A review of those that do not exist in this case include: a) evidence that the injury to the victim was exacerbated because of the physical or mental condition of the victim; b) that the victim suffered diagnosed psychological or economic harm; c) Appellant held a position of public trust; d) that Appellant was obligated by his profession to prevent such occurrences; e) that Appellant used his professional occupation to facilitate the offense; f) that Appellant committed any offense for hire; and g) that there is any evidence that the offenses alleged were motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion. In this matter, nothing on the record or any investigative report would justify any conclusion otherwise. While there is no doubt that the alleged offenses were serious, this Court cannot conclude that they were not “*more serious than conduct normally constituting the offense*” as contemplated by O.R.C. §2929.12(B). Any psychological effect on the victim does not fall within the statutory definition of “*physical harm.*” St. V. Dawson (1984) 16 Ohio App.3d 443, 16 Ohio Bar 515, 476 N.E.2d 382; St. V. Nichols, supra, ¶28.

Further, a court “*shall consider*” all of the following factors that apply to the alleged offender, and any other 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, was under post-release control for an earlier offense, or had been unfavorably terminated

from post-release control for a prior offense; 2) the offender previously was adjudicated a delinquent child or had a history of criminal convictions; 3) the offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child or 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 he has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse; and 5) the offender shows no genuine remorse of the offense. See O.R.C. §2929.12(D).

With respect to Appellant's likelihood of committing future crimes, several of the statutory factors are inapplicable because Appellant had no felony criminal history as an adult, and it would appear that any juvenile offenses were unrelated in nature and that Appellant was sufficiently rehabilitated as a juvenile. There is no evidence of drug or alcohol abuse by Appellant. The record reflects that he was recommended as a good candidate for treatment by the Court Diagnostic and Treatment report. The record reflects remorse being expressed by Appellant and by comments made by the Prosecutor (Tr. 11-21-2011 Sentencing, p. 16, 21). There do not appear to be present any of the statutory factors indicating a likelihood of committing future crimes.

According to O.R.C. §2929.12(E), the factors indicating that an offender is not likely to commit future crimes include: 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 offenses, 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; and 5) the offender shows genuine remorse for the offense.

Appellant in the present case has generally led a law-abiding life, without any significant

incident since he was approximately 16 years of age. His remorse makes it less like that he would commit future offenses, and the circumstances concerning the sole victim are not likely to occur again in the future. Other than the juvenile delinquency findings, a minor matter with the system, "all other factors are present in this case.

While a trial court has discretion to impose any sentence within the authorized statutory range, in exercising its discretion, it is nonetheless required to consider the statutory policies and factors that apply to every felony offense. St. V. Nichols, supra, ¶34. Insofar as few, if any, of the statutory factors applied to suggest that the current offense was more serious than conduct normally constituting the offense, and there were no statutory or non-statutory factors tending to show that Appellant is likely to commit future crimes, and most of the statutory factors would show that he would not commit future crimes, this Court, like the Appellate Court reviewing the conviction in St. V. Nichols, supra, would be hard-pressed to deduce the trial court's basis for imposing maximum consecutive sentences in this case.

The sentencing judge should consider every convicted person as an individual and every case as a unique study in the human failing that sometimes mitigate, sometimes magnify, the crime and punishment to ensure justice. St. V. Nichols, supra, ¶36, citing Pepper V. U.S. (2011) US 131 S.Ct. 1229, 1240, 179 L.Ed.2d 196, further citing Koon V. U.S., 518 US 51, 55, 58 S.Ct. 59, 82 L.Ed. 43. The sentencing court must take in to account the circumstances of the offense as well as the character and propensities of the offender. Pennsylvania ex. Rel. Sullivan V. Ashe, (1937) 302 US 51, 55, 58 S.Ct. 5159, 82 L.Ed.43.

The current case is significantly different from this Court of Appeals recent ruling concerning the appropriateness of sentencing in St. V. Miltz., (Sixth Dist. Court of Appeals, Lucas County, Case No L-10-1339, decided February 24th, 2012). In Miltz, this Court recognized that while there is no

mandate for judicial fact finding, the Court recognized that a sentencing court is to *consider* the statutory factors as recited in O.R.C. §§2929.11 and 2929.12. In Miltz, this Court of Appeals ratified the sentencing court's conduct *because* there existed a number of statutory factors: that defendant had a significant history of multiple misdemeanor and felony convictions, that defendant suffered from certain mental issues, and the trial court made findings on the record concerning specific threats. Additionally, that defendant had previously been convicted of a sex offense. This Court cannot now say that the current matter satisfies its own analysis outlined in Miltz since it specifically cited the statute in its reasoning.

While this trial court recited that it had considered the factors of the sentencing statutes, merely reciting those phrases are not sufficient to make a sentence lawful. The listing of factors that the court "*shall consider*" is not merely a regurgitation of meaningless words. The trial court abused its discretion in sentencing Appellant as it did, and the matter must be vacated, reversed and returned to the trial court for proper proceedings.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW NUMBER THREE: "THE STATE FAILED TO PROVE ALL ESSENTIAL ELEMENTS OF THE OFFENSES"

The conviction of Appellant for the counts of Rape and Unlawful Sexual Conduct with a Minor must be reversed as the record failed to produce legally sufficient evidence to support the convictions. At the time of the plea, there was insufficient evidence to prove penetration, for or threat of force, stimulation or sexual satisfaction, sexual conduct, or the identification of the alleged victim, and consequently the verdicts fail as a matter of law. See St. V. Hawn (2000), 138 Ohio App.3d 449, 471. The trial court judge only recited the language as contained in the information and provided no guidance or further factual information that would justify a guilty finding (Tr., Plea, 09-2702911, pp. 13-15).

“An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” St. V. Jenks (1991), 61 Ohio St.3d 259, para. 2 of the syllabus.

Further, while a guilty plea admits the facts set forth in the indictment, the trial court must determine that the defendant understands the nature of the charges that he enters into as part of the plea. Under the totality of the circumstances, the defendant must subjectively understand the implications of his plea and the rights that he is waiving. St. V. Greathouse, 158 Ohio App.3d 135, 2004-Ohio-3402. In the present case, there is no description of the offenses as charged that meet the statutory definitions of Rape or Unlawful Sexual Conduct. Crim.R.11(C)(2)(a) requires the trial court before it may accept a guilty plea or no contest plea to determine that a defendant understands the nature of the charges. Here this Trial Court did not outline or define what, if anything, constituted “Rape” or “Unlawful Sexual Conduct.” The activity complained of is specifically defined in O.R.C. §2907.01, but there is no evidence to the effect that “sexual conduct”, the underlying term for the offenses in all three counts, was ever established. In fact, the later dialogue between the judge and Appellant at the time of sentencing revealed the confusion on behalf of Appellant as to the true nature of the charges against him (Tr. Sentencing, 11-21-2011, pp. 31-32). The judge should have made further inquiry at the time of the plea and the time of sentencing, yet he failed to do so.

This Court should determine that evidence and facts recited were insufficient as a matter of law, and the matter should be reversed and remanded for appropriate action. A judgment or acquittal must

be entered for Appellant.

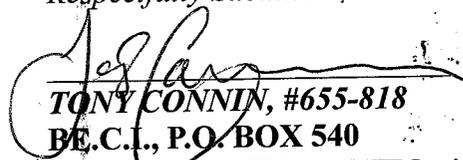
ARGUMENT IN SUPPORT OF PROPOSITION OF LAW NUMBER FOUR: "THE INFORMATION CHARGING APPELLANT IS DEFECTIVE AND FAILS TO STATE the ADEQUATE MENS REA"

In the present case, there is a substantial error in the processing of the information that charges Appellant, and the subsequent proofs that the State of Ohio must provide at the time of trial. There was no provision and no proof of the requisite state of mind, or *mens rea* that State must prove as an essential element of any count that was alleged. Appellant in the present case was charged with both Rape and Unlawful Sexual Conduct with a Minor. The judge, accepting the plea, found him guilty of all three counts, but the information does not address the issue of the requisite intent required to commit any crime. Recently, the Supreme Court of Ohio found that when an indictment fails to charge a *mens rea* element of a crime, the result is structural error, and the error may be raised at the appellate level, even though not raised at the trial court level. *St. V. Colon, 118 Ohio St.3d 26, 885 N.E.2d 917, 2008-Ohio-1624.* It is essential that the culpable mental state of the perpetrator be charged and proven at the time of a plea or trial. Such failure is especially exacerbated when there are multiple or cumulative errors in a plea such as the case before the bar.

CONCLUSION:

For the foregoing reasons, the sentencing decision of the trial court should be reversed and the charges as alleged be dismissed, and Appellant should be acquitted, or alternatively, the sentencing decision and other findings of the trial court should be reversed and remanded for new proceedings.

Respectfully Submitted,


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2012 OCT 26 A 8:00

FILED
COURT OF APPEALS
2012 OCT 26 A 8:00

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio
Appellee
v.
Tony Elwood Connin
Appellant

Court of Appeals No. L-11-1312
Trial Court No. CR0201102537

DECISION AND JUDGMENT

Decided: **OCT. 26 2012**

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

George J. Conklin, for appellant.

PIETRYKOWSKI, J.

{¶ 1} Tony Elwood Connin appeals his convictions and sentences in the Lucas County Court of Common Pleas on two counts of rape, both violations of R.C. 2907.02(A)(2) and (B) and first degree felonies, and one count of unlawful sexual conduct with a minor, a violation of R.C. 2907.04(A) and (B)(3) and a third degree felony. Appellant pled guilty to the charges on September 27, 2011.

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JOURNAL ID: 8016822

2012 Ohio 4989, *; 2012 Ohio App. LEXIS 4380, **

State of Ohio, Appellee v. Tony Elwood Connin, Appellant

Court of Appeals No. L-11-1312

COURT OF APPEALS OF OHIO, SIXTH APPELLATE DISTRICT, LUCAS COUNTY

2012 Ohio 4989; 2012 Ohio App. LEXIS 4380

October 26, 2012, Decided

PRIOR HISTORY: [**1]

Trial Court No. CR0201102537.

DISPOSITION: Judgment affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant appealed his convictions and sentences by the Lucas County Court of Common Pleas (Ohio) on two counts of rape in violation of R.C. 2907.02(A)(2) and (B), and one count of unlawful sexual conduct with a minor, a violation of R.C. 2907.04(A) and (B)(3).

Defendant argued, inter alia, that the trial court erred in imposing maximum sentences and consecutive sentences and the sentences are contrary to law.

OVERVIEW: Defendant pled guilty to the charges. The appellate court held that a valid guilty plea waived defendant's right to challenge his conviction on the grounds of insufficiency of the evidence. Appellant waived his right to an indictment and agreed to proceed on criminal charges brought by information. Defendant argued that the information was defective because it failed to set forth the requisite state of mind, mens rea, to commit the charged offenses. The wording of the information tracked the criminal statutes on both the charges of rape under R.C. 2907.02(A)(2) and (B) and charge of unlawful sexual conduct with a minor under R.C. 2907.04(A) and (B)(3). The informations added the word "knowingly." The wording of the information met or exceeded the mens rea requirements. Defendant's sentences were not contrary to the overriding principles of R.C. 2929.11 and sentencing factors under R.C. 2929.12. The trial court's inquiry was an appropriate effort to assure, before proceeding to sentence, that defendant understood the nature of the charges to which he had pled guilty and did not now deny guilt. There was no abuse of discretion by the trial court in that line of inquiry.

OUTCOME: The judgment of the trial court was affirmed.

CORE TERMS: sentence, sentencing, rape, felony, sexual conduct, offender's, maximum, wording, sexual, degree felonies, pled guilty, consecutive sentences, seriousness, guilty pleas, mens rea, sentencing factors, abuse of discretion, child victim, well-taken, overtiding, recidivism, knowingly, criminal charges, convincingly, imprisonment, indictment, abused, tracks, sex, assignments of error
LexisNexis® Headnotes Hide

[Criminal Law & Procedure > Guilty Pleas > General Overview](#)

HN1 A valid guilty plea operates as a conviction and requires no factual findings or verdict to support it. [More Like This Headnote](#)

[Criminal Law & Procedure > Guilty Pleas > Waiver of Defenses](#)

HN2 A valid guilty plea waives a defendant's right to challenge his conviction on the grounds of insufficiency of the evidence. [More Like This Headnote](#)

[Criminal Law & Procedure > Accusatory Instruments > Indictments > Contents > Requirements](#)

HN3 An indictment that charges an offense by tracking the language of the criminal statute is not defective for failure to identify a culpable mental state when the statute itself fails to specify a mental state. [More Like This Headnote](#)

[Criminal Law & Procedure > Sentencing > Appeals > Standards of Review > General Overview](#)

HN4 The Ohio Supreme Court sets forth a two-step analysis to be employed in reviewing felony sentences on appeal. First, appellate courts are required to examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. Second, if the first prong is satisfied, the appellate court reviews the decision imposing sentence under an abuse of discretion standard. More Like This Headnote

Criminal Law & Procedure > Sentencing > Appeals > Standards of Review > Abuse of Discretion

HN5 A trial court's application of the principles and purposes of felony sentencing under R.C. 2929.11 and sentencing factors under R.C. 2929.12, in selecting a sentence within the authorized statutory range of sentence, is reviewed for error on appeal under an abuse of discretion standard. More Like This Headnote

Criminal Law & Procedure > Sentencing > Appeals > Standards of Review > Abuse of Discretion

HN6 An abuse of discretion implies that the trial court's attitude is unreasonable, arbitrary or unconscionable. More Like This Headnote

Criminal Law & Procedure > Criminal Offenses > Classifications > Felonies

Criminal Law & Procedure > Sentencing > Guidelines > General Overview

HN7 See R.C.
2929.11(A).

Criminal Law & Procedure > Criminal Offenses > Classifications > Felonies

Criminal Law & Procedure > Sentencing > Guidelines > General Overview

Criminal Law & Procedure > Sentencing > Imposition > Factors

HN8 R.C. 2929.12 sets forth a non-exhaustive list of factors to consider in felony sentencing including factors relating to the seriousness of the conduct and factors relating to the likelihood of recidivism. R.C. 2929.12(A). Under the statute, a sentencing court may consider factors not listed in the statute where relevant to the principles and purposes of felony sentencing. More Like This Headnote

Criminal Law & Procedure > Sentencing > Imposition > Findings

HN9 A sentencing court is not required to use any specific language to demonstrate that it considered the applicable seriousness and recidivism factors under R.C. 2929.12. Where a trial court fails to put on the record its consideration of R.C. 2929.11 and 2929.12, it is presumed that the court gave proper consideration of those statutes. More Like This Headnote

Criminal Law & Procedure > Sentencing > Imposition > Factors

HN10 It is longstanding Ohio law that a sentencing court is not limited to consideration of prior convictions alone in determining sentence. Sentencing courts are to acquire a thorough grasp of the character and history of the defendant before it. Consideration of arrests for other crimes comes within that function. Ohio recognizes that sentencing courts may consider at sentencing charges that were reduced or dismissed under a plea agreement. More Like This Headnote

Criminal Law & Procedure > Sentencing > Guidelines > Adjustments & Enhancements > Vulnerable Victims

Criminal Law & Procedure > Sentencing > Imposition > Factors

HN11 R.C. 2929.12(B)(1) identifies age as a seriousness factor where 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 age of the victim. Age is not an element of an R.C. 2907.02(A)(2) rape offense. R.C. 2929.12(B)(6) provides that the fact that the offender's relationship with the victim facilitated the offense is also a seriousness factor. More Like This Headnote

COUNSEL: Julia R. Bates, Lucas County Prosecuting Attorney, and Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

George J. Conklin, for appellant.

JUDGES: Mark L. Pietrykowski, J., Arlene Singer, P.J., Thomas J. Osowik, J. CONCUR.

OPINION BY: Mark L. Pietrykowski

OPINION

DECISION AND JUDGMENT

PIETRYKOWSKI, J.

[*P1] Tony Elwood Connin appeals his convictions and sentences in the Lucas County Court of Common Pleas on two counts of rape, both violations of R.C. 2907.02(A)(2) and (B) and first degree felonies, and one count of unlawful sexual conduct with a minor, a violation of R.C. 2907.04(A) and (B)(3) and a third degree felony. Appellant pled guilty to the charges on September 27, 2011.

[*P2] The guilty pleas were pursuant to a plea agreement. Appellant waived his right to a grand jury and agreed to proceed by information on the criminal charges. The trial court entered a nolle prosequi on criminal charges brought under an earlier indictment.

[*P3] The trial court sentenced appellant on December 15, 2011. The court ordered appellant to serve ten years in prison on each rape count and to serve five years in prison on the unlawful sexual conduct with a minor count. The court ordered [*P2] that the sentences on the two rape counts be served consecutively to each other and the sentence on the unlawful sexual conduct with a minor count be served consecutively to those sentences, for a total aggregate prison sentence of 20 years.

[*P4] Appellant asserts four assignments of error on appeal:

1. Defendant's First Assignment of Error: The trial court erred in imposing maximum sentences and consecutive sentences and the sentences are contrary to law.
2. Defendant's Second Assignment of Error: The trial court abused its discretion in imposing the sentences.
3. Defendant's Third Assignment of Error: The state failed to prove all essential elements of the offenses.
4. Defendant's Fourth Assignment of Error: The information charging the appellant is defective and fails to state the adequate mens rea.

[*P5] We consider the challenges to appellant's convictions under the third and fourth assignments of error first.

Sufficiency of Evidence Supporting Convictions

[*P6] In Assignment of Error No. 3, appellant argues that there is insufficient evidence in the record to support appellant's convictions and that this court should reverse the trial court judgment of conviction and enter a judgment of acquittal [*P3] on each count. The state argues that appellant is barred by his guilty pleas from challenging his convictions based upon sufficiency of the evidence. We agree.

[*P7] The Ohio Supreme Court has recognized that HN1a, a valid guilty plea operates as a conviction and requires no factual findings or verdict to support it:

Unlike a plea of no contest, which requires a trial court to make a finding of guilt, *State v. Bird* (1998), 81 Ohio St.3d 582, 584, 1998 Ohio 606, 692 N.E.2d 1013, a plea of guilty requires no

finding or verdict. *Kercheval v. United States* (1927), 274 U.S. 220, 223, 47 S.Ct. 582, 71 L.Ed. 1009 ("A plea of guilty differs in purpose and effect from a mere admission or an extrajudicial confession; it is itself a conviction. Like a verdict of a jury it is conclusive. More is not required; the court has nothing to do but give judgment and sentence"). See also *State v. Bowen* (1977), 52 Ohio St.2d 27, 28, 6 O.O.3d 112, 368 N.E.2d 843. *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, ¶ 15, holding modified on other grounds, *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph one of syllabus.

[*P8] HN2A valid guilty plea waives a defendant's right to challenge his conviction [**4] on the grounds of insufficiency of the evidence. *State v. Hill*, 8th Dist. No. 90513, 2008-Ohio-4857, ¶ 6; *State v. Siders*, 78 Ohio App.3d 699, 701, 605 N.E.2d 1283 (11th Dist.1992).

[*P9] We find appellant's Assignment of Error No. 3 not well-taken.

[*P10] Appellant waived his right to an indictment and agreed to proceed on criminal charges brought by information. In Assignment of Error No. 4, appellant argues that the information was defective because it fails to set forth the requisite state of mind, mens rea, to commit the charged offenses. Appellant relies on the Ohio Supreme Court decision in *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, 885 N.E.2d 917 ("Colon I") in making this argument.

[*P11] In response, the state argues that the Ohio Supreme Court's decision in *State v. Horner*, 126 Ohio St.3d 466, 2010-Ohio-3830, 935 N.E.2d 26, now controls on this issue. Under *Horner*, HN3 "[a]n indictment that charges an offense by tracking the language of the criminal statute is not defective for failure to identify a culpable mental state when the statute itself fails to specify a mental state." *Id.* at paragraph one of the syllabus. The state contends that the wording of the information tracks the criminal [**5] statutes on both the charges of rape under R.C. 2907.02(A)(2) and (B) and charge of unlawful sexual conduct with a minor under R.C. 2907.04(A) and (B)(3).

[*P12] The wording of the rape charges in the information alleges that on specified time periods appellant did "knowingly engage in sexual conduct with another when the offender purposely compelled the other person to submit by force or threat of force" in violation of R.C. 2907.02(A)(2) and (B) and is punishable as a first degree felony under R.C. 2907.02(B). In our view, this language meets or exceeds the mens rea requirements under *Horner*. The information adds the word "knowingly" and otherwise tracks the wording of the statute.

[*P13] Similarly, the wording of the unlawful sexual conduct with a minor charge, inserts the word "knowingly" to allege that appellant did "knowingly engage in sexual conduct" but otherwise tracks the wording of R.C. 2907.04(A) and (B)(3).

[*P14] We conclude that the wording of the information meets or exceeds the mens rea requirements under *Horner*. Accordingly, we find appellant's Assignment of Error No. 4 not well-taken.

Sentencing

[*P15] Under Assignments of Error Nos. 1 and 2, appellant argues that the trial court erred with [**6] respect to sentence. HN4The Ohio Supreme Court decision in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, sets forth a two-step analysis to be employed in reviewing felony sentences on appeal. First, appellate courts are required to "examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law." *Id.* at ¶ 26. Second, if the first prong is satisfied, the appellate court reviews the decision imposing sentence under an abuse of discretion standard. *Id.* Claim that Sentences were Clearly and Convincingly Contrary to Law

[*P16] Under Assignment of Error No. 1, appellant argues trial court error under the first prong of the *Kalish* analysis. Appellant contends that the trial court judgment is clearly and contrary to law in its imposition of maximum and consecutive sentences.

Imposition of Maximum Sentences

[*P17] The version of R.C. 2929.14(A)(1) in effect at the time of the rape offenses charged under

Counts 1 and 2 of the information set a statutory range of sentences for first degree felonies of imprisonment from a minimum of three to a maximum ten years. The version [**7] of R.C. 2929.14(A)(3) in effect at the time of the unlawful sexual conduct with a minor offense charged in Count 3 set a statutory range of sentence for third degree felonies of imprisonment for a minimum of one to a maximum of five years. The trial court imposed the maximum sentences of imprisonment under existing law on all three counts.

[*P18] Appellant does not dispute that the sentences are within the range of sentences authorized by statute. Appellant argues that his sentences are contrary to law under the Kalish analysis because they are contrary to the overriding principles of felony sentencing under R.C. 2929.11 and sentencing factors under R.C. 2929.12. Under Kalish, however, HN5, a trial court's application of the principles and purposes of felony sentencing under R.C. 2929.11 and sentencing factors under R.C. 2929.12, in selecting a sentence within the authorized statutory range of sentence, is reviewed for error on appeal under an abuse of discretion standard. Kalish, ¶ 17.

[*P19] In Assignment of Error No. 2, appellant asserts an abuse of discretion as to his sentences. We will consider appellant's claims that the trial court erred as to sentence in its application of R.C. 2929.11 and 2929.12 [**8] in our consideration of the Assignment of Error No. 2.

[*P20] In Assignment of Error No. 1, appellant also raises the fact that 2011 Am.Sub.H.B. No. 86 took effect on September 30, 2011 and reinstates the requirement of judicial fact-finding before a court imposes consecutive sentences in a felony case. As sentencing in this case occurred on November 21, 2011, the parties agree that the statutory enactment applies. Appellant does not contend, however, that the trial court failed to make the required findings of fact under R.C. 2929.14(C)(4) before the court imposed consecutive sentences.

[*P21] We find appellant's argument that the trial court imposed sentences that are clearly and convincingly contrary to law is without merit. We find appellant's Assignment of Error No. 1 not well-taken.

Claimed Abuse of Discretion in Sentencing

[*P22] Appellant argues under Assignment of Error No. 2 that the trial court abused its discretion with respect to sentencing. HN6. An abuse of discretion implies that the trial court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 5 Ohio B. 481, 450 N.E.2d 1140 (1983).

R.C. 2929.11(A) provides:

HN7A court that sentences an offender for a felony shall [**9] be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

[*P23] HN8R.C. 2929.12 sets forth a non-exhaustive list of "factors to consider in felony sentencing" including factors relating to the seriousness of the conduct and factors relating to the likelihood of recidivism. R.C. 2929.12(A). Under the statute, a sentencing court may consider factors not listed in the statute where relevant to the principles and purposes of felony sentencing. Id.

[*P24] HN9A sentencing court is not required to use any specific language to demonstrate that it considered the applicable seriousness and recidivism factors under R.C. 2929.12. *State v. Arnett*, 88 Ohio St.3d 208, 215, 2000 Ohio 302, 724 N.E.2d 793 (2000); [**10] *State v. Warren*, 6th Dist. No. L-07-1057, 2008-Ohio-970, ¶ 9; *State v. Braxton*, 10th Dist. No. 04AP-725, 2005-Ohio-2198, ¶ 27. The

Ohio Supreme Court has recognized that where a trial court fails to put on the record its consideration of R.C. 2929.11 and 2929.12, it is presumed that the court gave proper consideration of those statutes. Kalish, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, at ¶ 18, fn. 4.

[*P25] While 2011 Am.Sub.H.B. No. 86 reinstated the requirement that trial courts make statutorily mandated findings of fact before imposing consecutive sentences, the statute nevertheless does not require trial courts to state their reasons for imposing consecutive sentences. State v. Owens, 5th Dist. No. 11CA104, 2012-Ohio-4393, ¶ 37; State v. Walker, 8th Dist. No. 97648, 2012-Ohio-4274, ¶ 84.

[*P26] Prior to sentencing, the trial court ordered preparation of a presentence investigation report (PSI). It also referred appellant to the Court Diagnostic and Treatment Center for a general presentence evaluation. The trial court stated at sentencing that it had reviewed a PSI report and a report by Dr. Mark S. Pittner, Ph.D., a clinical psychologist at the Court Diagnostic and Treatment Center, [**11] on appellant.

[*P27] These materials demonstrate that appellant lived with the child victim and her mother for ten or more years and that appellant engaged in oral sex, digital penetration, and other sexual contact with the child victim on a recurring basis for years. Appellant pled guilty to rape offenses that occurred during the period of time that the child was 11 and 12 years of age. He pled guilty to an unlawful sexual conduct with a minor charge that occurred when the child was age 13. The child victim reported that appellant had threatened to abuse her friends if she did not submit to appellant's sexual demands.

[*P28] Appellant argues first that the trial court "considered matters outside the record, including letters, comments, and allegations concerning offenses to which the Appellant did not plead guilty." Appellant cited this court to pages of the sentencing hearing transcript in support of the claim.

[*P29] The cited portion of the sentencing hearing transcript includes a discussion of letters from third parties to the trial court, sent on appellant's behalf, with recommendations as to sentence. These letters and a similar statement by appellant to Dr. Pittner were discussed by the trial court [**12] and appellant at the hearing. The trial court stated that the letters and a prior statement by appellant contained the same misconception as to the nature of appellant's convictions. The trial court stated that the letters included statements that appellant pled guilty just to spare his family and the victim of any more pain and that his actions were more like gross sexual imposition rather than rape.

[*P30] The court reviewed the claims and appellant's own prior similar statement with appellant and explained that proof of sexual intercourse was not required for a conviction of rape under R.C. 2907.02(A)(2) and (B). See definition of sexual conduct in R.C. 2907.01(A).

[*P31] The court stated:

I know that at one point you had said – and I forget if you said it in open court or in another letter – that you thought you are really more guilty of just gross sexual imposition.

Well, under the laws of the State of Ohio, digitally penetrating the vagina of a child is a form of rape. All right. Performing oral sex on a young child is a type of rape. All right.

So when I hear your statements and when I hear – I have a letter here saying that he accepted a plea deal that he is not completely guilty of just to [**13] spare his family and the victim any more pain. That's not right, is it?

That's not true.

[*P32] In our view, the trial court's inquiry was an appropriate effort to assure, before proceeding to sentence, that appellant understood the nature of the charges to which he had pled guilty and did not now deny guilt. We find no abuse of discretion by the trial court in this line of inquiry.

[*P33] Under this assignment of error, appellant also objects to consideration of "allegations concerning offenses to which the Appellant did not plead guilty." Appellant has not identified any specific allegation to which he objects. We therefore must consider the issue in general terms.

[*P34] HN10It is longstanding Ohio law that a sentencing court is not limited to consideration of prior

convictions alone in determining sentence. We recently reviewed the issue in the decision of *State v. Degens*, 6th Dist. No. L-11-1112, 2012-Ohio-2421, ¶ 19:

The Ohio Supreme Court has recognized that sentencing courts are "to acquire a thorough grasp of the character and history of the defendant before it." *State v. Burton*, 52 Ohio St.2d 21, 23, 368 N.E.2d 297 (1977). Consideration of arrests for other crimes comes within that function. *Id.* Ohio [**14] recognizes that sentencing courts may consider at sentencing charges that were reduced or dismissed under a plea agreement. *State v. Robbins*, 6th Dist. No. WM-10-018, 2011-Ohio-4141, ¶ 9; *State v. Banks*, 10th Dist. Nos. AP-1065, 10AP-1066, and 10AP-1067, 2011-Ohio-2749, ¶ 24; *State v. Johnson*, 7th Dist. No. 10 MA 32, 2010-Ohio-6387, ¶ 26.

[*P35] We find appellant's objections to the materials considered by the trial court at sentencing to be without merit.

[*P36] The central argument of appellant under Assignment of Error No. 2 is the claim that the trial court abused its discretion as to sentence on the basis that the sentences imposed by the court are contrary to the overriding purposes of felony sentencing under R.C. 2929.11 and sentencing factors under R.C. 2929.12.

[*P37] Appellant argues that no R.C. 2929.12(B) factors exist on which to conclude the offenses are more serious than conduct normally constituting the offense. As to risks of recidivism, appellant argues that the court failed to consider that Dr. Pittner of the Court Diagnostic and Treatment Center identified him as a good candidate for sex offender treatment in that he is "amenable to therapy and open to examining his own inappropriate [**15] behavior." Appellant argues that it is undisputed that he has shown remorse and that he has no adult criminal felony record, Appellant was age 31 at the time of sentencing. Appellant argues that there are no factors presented showing a risk of recidivism.

[*P38] The state argues that the victim was very young, the abuse occurred over a substantial period of her life, and her relationship with appellant facilitated the offense. The state argues that the psychological impact of sexual abuse on children is well recognized and that these facts demonstrate the existence of factors supporting treatment of the offenses as more serious than conduct normally constituting the offense of rape under R.C. 2907.02(A)(2).

[*P39] HN11R.C. 2929.12(B)(1) identifies age as a seriousness factor where "[t]he physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical * * * age of the victim." Age is not an element of an R.C. 2907.02(A)(2) rape offense. R.C. 2929.12(B)(6) provides that the fact that "[t]he offender's relationship with the victim facilitated the offense" is also a seriousness factor.

[*P40] The trial court stated that it considered the [**16] seriousness of appellant's conduct including its effect on the young child victim. The court also stated under R.C. 2929.11 there is a need to punish appellant for his actions and to deter appellant and others from engaging in such conduct in the future.

[*P41] In our view the trial court acted within its discretion in imposing maximum and consecutive sentences in this case. We find no abuse of discretion of the trial court as to sentence in its application of the principles and purposes of felony sentencing under R.C. 2929.11 and sentencing factors under R.C. 2929.12.

[*P42] We find appellant's Assignment of Error No. 2 not well-taken.

[*P43] We conclude that justice has been afforded the party complaining and affirm the judgment of the Lucas County Court of Common Pleas. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

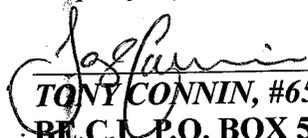
Mark L. Pietrykowski, J.

Arlene Singer , P.J.
Thomas J. Osowik , J.
CONCUR.

PROOF OF SERVICE

I, Tony Connin, do hereby Certify that, per Be.C.I. Policy for mailing documents that do not fit in a standard embossed envelope, I delivered, on this the 3 day of Dec, 2012, to a Be.C.I. Employee, a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF JURISDICTION BY TONY CONNIN**, addressed to the Lucas County Prosecutor's Office, to be mailed by regular U.S. Mail.

Respectfully Submitted,



TONY CONNIN, #655-818
BE.C.I., P.O. BOX 540
ST. CLAIRSVILLE, OHIO, 43950