

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	<b>OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2010-L-151</b>
JEFFREY A. YORK,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 10 CR 000513.

Judgment: Affirmed.

*Charles E. Coulson*, Lake County Prosecutor, and *Teri R. Daniel*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

*R. Paul LaPlante*, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Jeffrey A. York, appellant herein, appeals the judgment entered by the Lake County Court of Common Pleas sentencing him to an aggregate term of 15 years imprisonment. For the reasons below, we affirm.

{¶2} On August 31, 2010, appellant was indicted on the following counts: count 1, rape, a felony of the first degree, in violation of R.C. 2907.02(A)(1)(b); count 2, gross sexual imposition, a felony of the third degree, in violation of R.C. 2907.05(A)(4); count

3, rape, a felony of the first degree, in violation of R.C. 2907.02(A)(1)(b); count 4, gross sexual imposition, a felony of the third degree, in violation of R.C. 2907.05(A)(4); count 5, gross sexual imposition, a felony of the third degree, in violation of R.C. 2907.05(A)(4); count 6, endangering children, a felony of the third degree, in violation of R.C. 2919.22(B)(2); count 7, endangering children, a felony of the third degree, in violation of R.C. 2919.22(B)(3); count 8, endangering children, a felony of the third degree, in violation of R.C. 2919.22(B)(1); count 9, gross sexual imposition, a felony of the fourth degree, in violation of R.C. 2907.05(A)(1); count 10, gross sexual imposition, a felony of the fourth degree, in violation of R.C. 2907.05(A)(1); count 11, endangering children, a misdemeanor of the first degree, in violation of R.C. 2919.22(B)(1); count 12, endangering children, a misdemeanor of the first degree, in violation of R.C. 2919.22(B)(1); count 13, endangering children, a misdemeanor of the first degree, in violation of R.C. 2919.22(B)(1); count 14, aggravated menacing, a misdemeanor of the first degree, in violation of R.C. 2903.21; count 15, domestic violence, a misdemeanor of the first degree, in violation of R.C. 2919.25(A); count 16, domestic violence, a misdemeanor of the first degree, in violation of R.C. 2919.25(A); count 17, domestic violence, a misdemeanor of the first degree, in violation of R.C. 2919.25(A); count 18, domestic violence, a misdemeanor of the first degree, in violation of R.C. 2919.25(A); and, finally, count 19, domestic violence, a misdemeanor of the first degree, in violation of R.C. 2919.25(A). Appellant waived his right to be present at his arraignment and pleas of “not guilty” were entered on his behalf.

{¶3} On October 21, 2010, appellant withdrew his pleas of “not guilty” and entered pleas of “guilty” on the following counts: count 2, gross sexual imposition, in

violation of R.C. 2907.05(A)(4); count 4, gross sexual imposition, in violation of R.C. 2907.05(A)(4); and count 7, endangering children, in violation of R.C. 2919.22(B)(3). The remaining counts in the indictment were dismissed at the state's request.

{¶4} At the plea hearing, factual bases for the crimes were set forth. With respect to the child endangering, appellant admitted he built a small room in his home, approximately four feet by ten feet, and locked his stepdaughter ("the victim") in the room for lengthy periods of time. The victim had no access to a bathroom or any means of egress in the event of a fire or other immediate danger that might necessitate an exit. Appellant also admitted to an incident in which he struck the victim in the face with a toy riding horse, which caused her pain and injury. Regarding the gross sexual imposition ("GSI") charges, appellant admitted he had sexual conduct with the victim when she was either six or seven years old; namely, appellant admitted he "put her on top of him and had his penis touching her vagina, and him on top of her with his penis touching her vagina."

{¶5} The trial court subsequently accepted appellant's plea. A presentence investigation report was ordered; appellant also had a psychological evaluation. After considering victim impact statements, statements offered in mitigation from appellant and various other supporting materials, as well as arguments from defense and the prosecution, appellant was sentenced to serve a prison term of five years on each count, to run consecutively, for an aggregate term of 15 years imprisonment. Appellant was also classified as a Tier II sex offender. He now appeals assigning the following error:

{¶6} “The trial court erred by sentencing the defendant-appellant to the maximum, consecutive term of imprisonment.”

{¶7} In *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, the Supreme Court of Ohio established a two-step analysis for an appellate court reviewing a felony sentence. In the first step, we must consider whether the trial court “adhered to all applicable rules and statutes in imposing the sentence.” *Id.* at 25. “As a purely legal question, this is subject to review only to determine whether it is clearly and convincingly contrary to law, the standard found in R.C. 2953.08(G).” *Id.* Next, we consider, with reference to the general principles of felony sentencing and the seriousness and recidivism factors set forth in Sections 2929.11 and 2929.12, whether the trial court abused its discretion in selecting the defendant’s sentence. See *id.* at 27.

{¶8} With respect to the first prong of *Kalish*, the Supreme Court did not specifically offer guidance as to the “laws and rules” an appellate court must consider to ensure the sentence clearly and convincingly conforms with Ohio law. *State v. Burrell*, 11th Dist. No. 2009-P-0033, 2010-Ohio-6059, at ¶17. Consequently, if the sentence falls within the statutory range for the felony of which a defendant is convicted, it will be upheld as clearly and convincingly consistent with the law. *Id.*, citing *Kalish*, *supra*, at ¶15; see, also, *State v. Gooden*, 9th Dist. No. 24896, 2010-Ohio-1961, at ¶48. If the sentence is within the purview of the applicable “laws and rules,” we then consider whether the trial court acted within its discretion in fashioning the sentence at issue.

{¶9} Under his sole assignment of error, appellant does not assert his sentence was contrary to law. Rather, appellant contends the trial court failed to give proper consideration to all relevant statutory factors under R.C. 2929.12. In particular,

appellant argues the trial court failed to give careful and substantial deliberation to his explanations for the child endangerment charges. According to appellant, his explanations add a context to the circumstances of his crimes which render his actions less serious than conduct normally constituting the offense as well as demonstrate he is not likely to commit future crimes under various factors set forth under R.C. 2929.12(C) and (E). To wit, appellant asserts the “time out room” was designed as a disciplinary tool to use as an alternative to spanking the victim. And, in any event, he never intended to cause the victim serious physical or psychological harm in the course of his disciplinary practices.

{¶10} With respect to the GSI charges, appellant points out that, after the episodes, he went to the victim, apologized, and told her it would not happen again. Appellant underscores he never inappropriately touched the girl again. Appellant further contends he is remorseful for his conduct and any embarrassment or pain it caused the victim. In appellant’s view, these factors, given proper consideration, render the crimes less serious. Further, given his scant criminal record and modest, relatively isolated lifestyle, appellant maintains the trial court failed to give adequate weight to the low likelihood of recidivism.

{¶11} Prior to sentencing appellant, the trial court stated it had considered the record, including all statements, the victim impact statements, the PSI, the drug and alcohol and psychological evaluations, appellant’s statements, and the statements of appellant’s counsel. The court stated it had considered the overriding purposes of felony sentencing of protecting the public from future crime and punishing the offender. The court stated it considered the separate recommendations of the parties and, in so

doing, had reasonably calculated the sentence to achieve the purposes of felony sentencing. The court also stated it considered all relevant factors, including the seriousness and recidivism factors under R.C. 2929.12. Prior to pronouncing its sentence, the court observed:

{¶12} “There is a lot of interest in this case, and the interest in the case is unusually high compared to other gross sexual imposition cases that we get in this court. However, those weren’t the original charges. And I think the seriousness of the original charges is a big factor in precipitating the huge community attention to the situation. There’s a lot of innuendo and emotions on both sides that fuels that interest. Especially with the ability to make anonymous comments on the internet. This case is not about [the defendant’s] eccentricity. It’s not about his firearms collection, not about his rigid religious beliefs. It’s not about being a strong armed leader of a family, or paddling, spanking, or discipline not rising to the level of endangering children. It’s not about isolating the family, or living in a bubble. It’s not about aversion to modern culture, forcing views on others. None of this is a crime. The Defendant is not being sentenced for any of this, and I want to make sure that from this Court, that the situation is not confused further with innuendo and emotions of family members on both sides, friends, neighbors, the community or the media. \*\*\* To your credit, you have effectively no criminal history. However, the crimes involved here are serious. The victim was young at the time, and she did suffer serious psychological harm. You held a position of trust. You were her father. And you were in the position of being her father, when her father died. So your relationship with her facilitated the offense. So it’s wrong on so many levels. As to the endangering, some of your beliefs may have affected your

building of this room and locking her in the room. But that's wrong. And it is a crime. And you did endanger her. And when you struck her with the carousel item that had the pole, that was above and beyond paddling or spanking, or acceptable discipline. Locking her in the room is not acceptable discipline."

{¶13} It is apparent from the record that the trial court gave due consideration to the facts of the case and weighed them against those factors it believed most important. It emphasized that locking a child in a room or beating her with an object is not appropriate discipline. And, irrespective of appellant's minimal criminal record and apologies, the court made it clear that the crimes to which appellant admitted were severe and inexcusable.

{¶14} Finally, even though a trial judge is not required to make specific statutory findings prior to imposing consecutive sentences, see, e.g., *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, paragraph three of the syllabus, the trial court's judgment entry provides:

{¶15} "Pursuant to R.C. 2929.14(E)(4) and R.C. 2929.19(B)(2)(c), the Court finds for the reasons stated on the record that consecutive sentences are necessary to protect the public from future crime or to punish the Defendant and are not disproportionate to the Defendant's conduct and the danger the Defendant poses to the public, and that 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 committed by the Defendant 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 Defendant's conduct and the Court finds the Defendant committed the worst of the offenses."

{¶16} The trial court considered the relevant statutory criteria under R.C. 2929.12 and, even though it was not required to do so, additionally discussed why consecutive sentences were justified in this case. We therefore hold the trial court did not abuse its discretion in selecting its sentence.

{¶17} Appellant's assignment of error is overruled.

{¶18} For the reasons stated above, appellant's sole assignment of error is without merit and the judgment on sentence entered by the Lake County Court of Common Pleas is therefore affirmed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.