

[Cite as *State v. Sparks*, 2010-Ohio-2271.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 23344
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CR-3152
v.	:	
	:	(Criminal Appeal from
DANIEL D. SPARKS	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 21st day of May, 2010.

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Attorney for Defendant-Appellant

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BROGAN, J.

{¶ 1} Daniel D. Sparks was convicted, on his guilty pleas, of abduction, in violation of R.C. 2905.02(A)(3), and rape, in violation of R.C. 2907.02(A)(2). The trial court sentenced him to five years and ten years respectively, and ordered the sentences to run consecutively.

{¶ 2} Sparks appealed, and counsel was appointed. On January 27, 2010, appointed appellate-counsel filed an *Anders* brief, under *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, in which he represented that he could find no potentially meritorious issue for appeal.

{¶ 3} On January 29, 2010, we informed Sparks that his appointed counsel had filed an *Anders* brief, and of the significance of such a brief, and we invited Sparks to present any assignments of error in a pro-se brief within sixty days. Sparks evidently declined our invitation as he has not filed a pro-se brief.

{¶ 4} In his *Anders* brief, appellate counsel suggested that the trial court may have abused its discretion by imposing the maximum sentence for each offense and ordering them to run consecutively. We will consider these issues.

{¶ 5} The length of each sentence and consecutive service are lawful. Each sentence the court imposed is within its respective statutory range of prison sentences. See R.C. 2929.14(A)(3) (one to five years for a third-degree felony) and 2929.14(A)(1) (three to ten years for a first-degree felony). And a trial court may undoubtedly order felony sentences to run consecutively. See *State v. Elmore*, 122 Ohio St.3d 472, 2009-Ohio-3478, at ¶¶31-35. Since nothing about the sentences is contrary to law, the only question that remains is whether the trial court abused its discretion by imposing the sentences. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912. The phrase “abuse of discretion” connotes a decision made with an attitude that is unreasonable, arbitrary, or unconscionable. *State v. Jones*, Greene App. No. 08CA0008, 2009-Ohio-694, at ¶3, citing *State v. Adams* (1980), 62 Ohio St.2d 151.

{¶ 6} After *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, questions about sentence length and consecutive service are within a trial court's discretion, guided by the pertinent statutes. *Jones*, at ¶5 (saying that after *Foster* trial courts "need no longer make particular findings in support of greater-than-minimum or consecutive sentences"); *Elmore*, at ¶33 (explaining that in *State v. Bates*, 118 Ohio St.3d 174, 2008-Ohio-1983, the Court held that after *Foster* trial courts have discretion to determine whether sentences should run consecutively). The trial court must allow its exercise of discretion to be guided by the purposes and principles of sentencing in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. See *Jones*, at ¶5. Here, the trial court did just that.

{¶ 7} The court first considered information related to the purposes and principles of sentencing. The court considered the presentence investigation report. The report revealed that, although Sparks had just been ordered to have no contact with the victim, he engaged in stalking behavior and police found him with a handgun. Less than two weeks later, Sparks was placed on electronic home-detention. The same day, he lied in order to leave his home, and then abducted, choked, strangled, repeatedly threatened to kill, and finally raped the victim. The court also considered the victim-impact statement, in which the victim described the psychological trauma that she suffered and continues to suffer. The court then considered the seriousness and recidivism factors. The court found that the victim suffered serious psychological injury, that Sparks's relationship with the victim facilitated his commission of the offenses, and that Sparks's choking, strangling, and death threats made the offenses more serious. The court found no less serious

factors. The court then found that Sparks has a history of criminal convictions, that he violated a protection order, that he violated his electronic home-detention, and that he engaged in stalking behavior, all of which the court said makes recidivism more likely. The court found no factors that would make recidivism less likely.

{¶ 8} On this record, we cannot find that the court abused its discretion when it imposed the maximum sentences and ordered them to run consecutively. The sentencing issue suggested by appellate counsel has no merit for appellate review.

{¶ 9} Our responsibilities under *Anders* require us to do a complete and independent review of the record to ensure that appointed appellate-counsel correctly concluded that there is no potentially meritorious issue for our review. After having carried out our responsibilities, we agree with appellate counsel's conclusion.

{¶ 10} Accordingly, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and FROELICH, J., concur.

Copies mailed to:

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